

**New South Wales Aboriginal Land Council**  
**Policy No.[ ] of [ ]**

**Interim Policy on the Assessment and Approval of LALC  
Land Dealings pursuant to Division 4 of Part 2 of the  
*Aboriginal Land Rights Act 1983***

DRAFT 15.12.09

## TABLE OF CONTENTS

1	What this policy is about.....	4
1.1	Statutory framework – what the ALRA says about NSWALC approval of LALC land dealings (Division 4, Part 2 of the ALRA) .....	4
1.1.1	What is NSWALC’s role in LALC land dealings? .....	4
1.1.2	How is NSWALC’s approval to be sought? .....	5
1.1.3	How must NSWALC process land dealing approval applications? .....	5
1.1.4	When will NSWALC approve a proposed land dealing?.....	5
1.1.5	When may NSWALC refuse to approve a proposed land dealing?.....	5
1.1.6	Can NSWALC impose conditions on an approval? .....	6
1.1.7	How is NSWALC required to make these decisions?.....	6
1.1.8	What is the role of NSWALC policy?.....	6
1.2	This policy .....	7
1.2.1	What is the purpose of this policy?.....	7
1.2.2	What is in this policy? .....	7
2	Interpretation.....	7
2.1	Definitions .....	7
2.2	Interpreting this policy.....	8
3	The land dealings approval process .....	8
3.1	The 7 stages of the land dealings approval process – from application to completion. ....	8
3.2	Stage 1 – Applying for approval .....	9
3.2.1	What does a LALC have to do when lodging a land dealing approval application ...	9
	Prescribed information and documents.....	9
	Additional information and documents .....	9
3.2.2	NSWALC assistance with making land dealing approval applications.....	10
3.3	Stage 2 – Section 42F(2) compliance check.....	10
3.4	Stage 3 – Section 42G(1) procedural assessment .....	11
3.5	Stage 4 – Preliminary assessment of applications, fees, additional information (if required), expert panel (if required) and estimated time for determining applications .....	12
3.5.1	NSWALC can request a LALC provide additional information in support of a land dealing application.....	12
3.5.2	Referral to an expert advisory panel .....	13
3.5.3	Calculation of the assessment fee .....	14
3.5.4	Time for the payment of the assessment fee .....	14

3.5.5	Security for the payment of the assessment fee .....	15
3.5.6	Waiver of the assessment fee .....	15
3.5.7	Time for determining the application .....	16
3.5.8	Stage 4 notice to the LALC.....	16
3.5.9	LALC to either accept or reject proposed manner of assessment, fees paid and proposed securities .....	16
3.6	Stage 5 – Substantive assessment .....	17
3.7	Stage 6 – Determination (including dealing approval certificates).....	18
3.8	Stage 7 - Implementing and enforcing approvals (including registration approval certificates and registration prohibition notices) .....	18
3.8.1	Registration approval certificate .....	19
3.8.2	Registration prohibition notices .....	19
4	The 5 general matters that NSWALC will take into account when considering whether to refuse approval and/or impose conditions .....	20
4.1	Transparency and probity .....	20
4.1.1	Transfers and other dealings in favour of LALC’s members and others .....	20
4.1.2	Dealings from which LALC’s members and others will otherwise benefit .....	21
4.1.3	Transparent selection of proposals .....	21
4.1.4	Additional information and documents .....	21
4.1.5	Exercise of NSWALC’s discretion .....	21
4.2	Consistency with LALC community, land and business plan.....	22
4.3	Holding and using proceeds .....	23
4.4	Cultural concerns .....	25
4.5	Commerciality .....	26
4.5.1	Where LALCs obtain their own competent and independent advice.....	27
4.5.2	Additional information and documents that NSWALC may require .....	27
4.5.3	Conditions to protect commercial interests .....	28
5	Further considerations in relation to imposing conditions on approvals .....	28
5.1	When will NSWALC impose conditions on an approval? .....	28
5.2	What sorts of conditions might be imposed? .....	29
5.3	Conditions, including land dealing approval agreements, on significant and complex land dealing proposals .....	29

## **Interim Policy on the Assessment and Approval of LALC Land Dealings pursuant to Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983***

### **1 What this policy is about**

#### **1.1 Statutory framework – what the ALRA says about NSWALC approval of LALC land dealings (Division 4, Part 2 of the ALRA)**

- (1) This policy is about the assessment and approval of LALC land dealings by NSWALC under Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983* (the “ALRA”).

##### **1.1.1 What is NSWALC’s role in LALC land dealings?**

- (2) In Division 4 of Part 2 of the ALRA, the expressions “deal with land” and “land dealing”, in relation to land said to be “vested” in Aboriginal Land Councils, are defined very broadly. Most dealings with LALC land must be approved by NSWALC (section 40E(1)).

- (3) The exceptions to this rule are:

- (a) a lease for less than 3 years (including any option to renew the lease), *other than* a social housing management lease, and
- (b) a land dealing prescribed by the regulations (noting that none are presently prescribed)

(section 40E(2)).

This policy is not concerned with land dealings that fall within these exceptions

- (4) If NSWALC approves a LALC land dealing, then it is to issue the LALC with:

- (a) a dealing approval certificate, which is conclusive evidence of the approval and contains the conditions (if any) to which the approval is subject (section 41), and
- (b) if required, and if all relevant conditions are complied with, a registration approval certificate, which authorises the NSW Registrar-General (and his agency LPI), to register any registrable instrument that gives effect to or forms part of the dealing (sub-sections 41 and 42M).

These certificates provide the certainty that LALCs, and persons dealing with them, need that nothing in the ALRA will invalidate the title or interest being passed, or the consents being obtained, by the land dealing.

- (5) However, if a LALC land dealing is done without NSWALC’s approval, or is done contrary to the conditions of NSWALC’s approval (and without the benefit of a dealing approval certificate and, if required, a registration approval certificate), the results will be:

- (a) the dealing will be void (section 42C(1)), and

- (b) the NSW Registrar-General will not register any registrable instrument that gives effect to or forms part of the dealing (section 42M(2)).

Further, any agreement to deal with land is, if the land dealing is not approved, unenforceable (sub-sections 42E(4) & (5)).

#### **1.1.2 How is NSWALC's approval to be sought?**

- (6) The ALRA says that to seek NSWALC's approval for a proposed land dealing, a LALC must make an application to NSWALC (section 42F). The application must meet the requirements in section 42F(2) and clause 104 of the ALR Regulation (including being in the form approved by NSWALC).

#### **1.1.3 How must NSWALC process land dealing approval applications?**

- (7) If an application is made to NSWALC in the way required by the ALR Regulation, NSWALC must then deal with or process the application according to the requirements of the ALRA and the ALR Regulation. NSWALC:
  - (a) must, as soon as practicable after receiving a proper application from a LALC, give the LALC information about such things as how long the approval process is likely to take, whether an expert assessment panel is to be constituted, and how much it will cost (clause 107 of the ALR Regulation),
  - (b) may convene an "expert advisory panel" to assess the whole or part of an application (section 42I and clause 108 to 112 of the ALR Regulation).
- (8) Ultimately, NSWALC must determine whether it will approve the proposed land dealing, and, if so, what conditions (if any) it will impose on the approval (section 42G).

#### **1.1.4 When will NSWALC approve a proposed land dealing?**

- (9) Subject to its discretion to refuse to approve (see below), NSWALC must approve a proposed land dealing where it is satisfied of the matters set out in section 42G(1), that is:
  - (a) that a proper application for approval has been made in accordance with the ALRA and ALR Regulation,
  - (b) that the LALC's members have passed a resolution in accordance with the requirements in section 42G(5),
  - (c) that the proposed land dealing is in accordance with the members' resolution.

#### **1.1.5 When may NSWALC refuse to approve a proposed land dealing?**

- (10) However, NSWALC may refuse to approve a proposed land dealing if it considers that the proposed land dealing 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)).

#### **1.1.6 Can NSWALC impose conditions on an approval?**

- (11) If NSWALC determines that it should approve a proposed land dealing, it may do so subject to conditions (section 42G(6)).
- (12) The conditions have to be about things that are to happen before the proposed land dealing is completed (e.g. before the settlement monies on a contract for sale are paid and the transfer document is registered).
- (13) One of the conditions that NSWALC can impose is that the LALC and/or a third party (e.g. a joint venture partner) enter into an “approval agreement”. These approval agreements are about things that may have to be done after the proposed land dealing is completed (e.g. an approval agreement may require the LALC to apply the proceeds of a land sale in a particular way).

#### **1.1.7 How is NSWALC required to make these decisions?**

- (14) The requirements of section 42G(1) (set out in (9) above, and requiring that the decision to deal with the land be made by the LALC’s members) do *not* involve NSWALC exercising any discretion: either NSWALC is satisfied that the criteria are in fact met or it is not.
- (15) However, the criterion referred to in section 42G(2) (which is referred to in 1.1.5 above) imposes a broad discretion on NSWALC to refuse a proposed land dealing even though it may satisfy the requirements in section 42G(1).
- (16) Section 42G(3) sets out some things that *may* be taken into account by NSWALC, and in doing so gives an idea of what the purpose of NSWALC’s discretion is, but this is not an exhaustive list.
- (17) Similarly, NSWALC’s discretion to impose conditions on an approval is broad.
- (18) Further, the ALRA leaves other aspects of the operation of the land dealings approval regime open to NSWALC’s consideration or discretion. These include:
  - (a) requiring additional information or documents in relation to a land dealing approval application (section 42F(4)),
  - (b) constituting expert advisory panels to assess all or part of an application (section 42I and clause 109 of the ALR Regulation),
  - (c) the calculation of assessment fees (section 42F(5) and clause 106 of the ALR Regulation),
  - (d) stipulating the time for the payment of assessment fees, and
  - (e) requiring security for the payment of assessment fees.

#### **1.1.8 What is the role of NSWALC policy?**

- (19) One of the things listed in section 42G(3) that NSWALC may take into account when deciding whether a proposed land dealing should be refused is any applicable policy of NSWALC.
- (20) Written policy is desirable to promote consistency in NSWALC decision making and to provide some greater predictability and certainty to LALC’s, and persons dealing

with them, about how LALC applications for approval of proposed land dealings will be treated by NSWALC.

- (21) Policies of this kind are made pursuant to section 113 of the ALRA, and in accordance with section 114 of the ALRA.

## **1.2 This policy**

### **1.2.1 What is the purpose of this policy?**

- (1) In order to give guidance to NSWALC itself, to LALCs, and to persons dealing with LALCs, about how NSWALC will perform its approval functions and exercise its discretions under Division 4 of Part 2 of the ALRA (including section 42G), NSWALC has made this policy which sets out the process that will be followed and some considerations that NSWALC will take into account.

### **1.2.2 What is in this policy?**

- (2) This policy has 3 main sections. These are as follows:
- Section 3 – which describes the NSWALC land dealing approval process from start to finish in 7 stages,
  - Section 4 – which provides guidance at a broad level about considerations that NSWALC will take into account when:
    - (i) considering whether a proposed land dealing is, or is likely to be, contrary to the interests of a LALC's members, or other Aboriginal people in the LALC's area, and
    - (ii) considering what conditions, if any, it should place on any approval of a proposed land dealing,
- and
- Section 5 – which provides guidance about various considerations that NSWALC will take into account when formulating conditions that it may place on any approval of a proposed land dealing.

## **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. section 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:

<i>ALRA:</i>	means the <i>Aboriginal Land Rights Act 1983</i>
<i>ALR Regulation:</i>	means the <i>Aboriginal Land Rights Regulation 2002</i>
<i>LALC's members and others:</i>	in relation to a LALC, means the LALC's members and other Aboriginal persons in the LALC's area
<i>LALC:</i>	means a Local Aboriginal Land Council
<i>NSWALC:</i>	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).
- (4) LALCs are encouraged to contact NSWALC and seek clarification if there are any matters in the policy that are unclear.

## **3 The land dealings approval process**

### **3.1 The 7 stages of the land dealings approval process – from application to completion**

- (1) For the purposes of this policy, making a land dealing approval application, the assessment and approval of that application, and the implementation and enforcement of the approval, are divided into the following stages:
  - Stage 1: Applying for approval
  - Stage 2: Section 42F(2) compliance check
  - Stage 3: Section 42G(1) procedural assessment
  - Stage 4: Preliminary assessment
  - Stage 5: Substantive assessment
  - Stage 6: Determination (including dealing approval certificates)
  - Stage 7: Implementing and enforcing approvals (including registration approval certificates and registration prohibition notices)
- (2) NSWALC policy in relation to each of these stages is dealt with in the following sections.
- (3) It is important to recognise that while these are described as discreet and sequential stages in this policy, this is not to say one stage must be completed before activities relevant to another stage may commence.

- (4) If when submitting the application the LALC advises that the application is urgent, then the NSWALC Commercial Unit will endeavour wherever possible to work within the LALC's timeframes.

### **3.2 Stage 1 – Applying for approval**

- (1) In Stage 1, the LALC makes the land dealing approval application to NSWALC.

#### **3.2.1 What does a LALC have to do when lodging a land dealing approval application**

##### *Prescribed information and documents*

- (2) The ALRA (section 42F(2)) and ALR Regulation (clause 107) set out the requirements for a proper land dealing approval application.
- (3) Clause 107 of the ALR Regulation includes the requirement that an application must be made in the form approved by NSWALC, and that it must contain certain things and be accompanied by certain documents. The NSWALC approved form for a land dealing approval application is the one contained in Schedule 1 to this policy.

##### *Additional information and documents*

- (4) In addition to the mandatory requirements detailed above:
  - (a) a LALC may include with its application any additional information and documents that it wants NSWALC to consider (section 42F(3)); and
  - (b) NSWALC may require additional information and documents following an initial assessment of the application (section 42F(4)).
- (5) LALCs should be encouraged to provide all relevant additional information and documents that NSWALC is likely to need to properly assess a proposed land dealing when they submit the application. This is in a LALC's interest as it is likely to greatly speed, and reduce the costs of, the assessment and approval process.
- (6) There are a small number of matters in relation to which NSWALC will always require further information and documents. These relate to issues of:
  - (a) transparency and probity, and
  - (b) consistency with the LALC's community, land and business plan.Information and documentation in relation to these matters is asked for in the approved land dealing approval application form in Schedule 1.
- (7) Other than in relation to this small number of matters, there is no standard list of additional information and documents that should always be provided. What is required will depend on the nature and circumstances of the each application. However, guidance about the things that NSWALC is likely to consider that it needs, and hence what should be provided where possible at the outset, is given in this policy. As set out below, staff of NSWALC's [Commercial Unit] can also assist in relation to this.

### **3.2.2 NSWALC assistance with making land dealing approval applications**

- (8) NSWALC staff will endeavour to provide reasonable assistance and guidance that a LALC may request to make a complying land dealing approval application. NSWALC staff may also provide assistance to a LALC, if requested, by advising on the further information that NSWALC will require in assessing the application.
- (9) Feedback on the additional information and documents (if any) that NSWALC may require to make its assessment can be provided by staff of NSWALC's [Commercial Unit].
- (10) In relation to complex and significant land dealing proposals, LALCs are encouraged to approach NSWALC at an early stage – in many cases prior to the making of a formal application (which can only be made after the LALC's members have approved the proposal) – to discuss what further material will best assist in making the approval process a swift and smooth one.
- (11) It is important that when NSWALC staff provide such assistance, LALCs understand that while the assistance is given in good faith:
  - (a) sole responsibility for making complete and adequate applications rests with the LALC, and
  - (b) any assistance given by NSWALC staff is not any kind of representation or promise that the application will be approved.

### **3.3 Stage 2 – Section 42F(2) compliance check**

- (1) In Stage 2, NSWALC staff consider and advise the LALC whether the application complies with the requirements of section 42F(2) of the ALRA and clause 104 of the ALR Regulation.
- (2) If the application does not comply with these requirements, the application is invalid. In those circumstances NSWALC is not required to deal with the application further and the application will not progress through the other Stages of the process described below.
- (3) The Stage 2 compliance check does not involve the exercise of any discretion or the consideration of whether the material submitted with the application establishes that the proposal should be approved. It is a mechanical exercise wholly concerned with whether the application is in the form required, and contains the information and documents required, by the ALRA and the ALR Regulation.
- (4) If NSWALC staff consider that the application complies with the requirements of section 42F(2) and clause 104, the LALC will be given written notice that the application has been received, NSWALC is satisfied that it is a proper land dealing approval application, and it will next be the subject of a preliminary assessment and the LALC can expect to receive further notice about the application within 14 days.
- (5) If, upon a compliance check, NSWALC considers that an application does not comply, the LALC will be given written notice of why the application does not comply, and will be given 28 days (or any longer period that is agreed in writing with the LALC), to rectify the application. If, after that time, the application still does not comply, then the LALC is to be advised that NSWALC does not consider the application to be a proper land dealing approval application and that it will not be

considered further. If the LALC then still wishes to have NSWALC's approval for the proposed land dealing it will have to make a fresh application.

- (6) The compliance check will be completed, and the LALC will be advised of the result as soon as practicable after the application has been received by NSWALC.
- (7) If the LALC has advised that there are reasons why the application needs to be processed as a matter of urgency, NSWALC will endeavour to work within the LALC's timeframes wherever possible.

### 3.4 Stage 3 – Section 42G(1) procedural assessment

- (1) In Stage 3, NSWALC staff will give consideration to whether the land dealing approval application establishes that the proposed dealing complies with section 42G(1) of the ALRA (which are the basic *procedural* requirements that NSWALC must be satisfied of before it will approve any proposed land dealing). The purpose of this initial consideration is to identify, as early as possible, any defects in a proposed land dealing that may mean that there is little point in proceeding to consider the application further.
- (2) If NSWALC staff consider that the proposed land dealing *does* comply with the procedural requirements in section 42G(1), they will proceed with the Stage 4 preliminary assessment.
- (3) If NSWALC staff consider that the proposed dealing does *not* comply with the procedural requirements in section 42G(1), the LALC will be given written notice of this fact, and why it does not comply. Any such notice will be given as soon as practicable after the completion of Stage 2.
- (4) If, after being given such notice, the LALC:
  - (a) disputes the non-compliance with section 42G(1), or
  - (b) does *not*, within [28] days of the notice being given:
    - (i) provide additional information or documents that demonstrate that the proposed dealing does in fact comply, or
    - (ii) withdraw the application in writing,

NSWALC will proceed to determine the land dealing approval application (without consideration of whether the proposed land dealing is, or is likely to be, in the interests of the LALC's members and others).

- (5) If, in determining the application, NSWALC is *not* satisfied that the proposed land dealing meets the procedural requirements in section 42G(1), it will refuse the application and the LALC will be given written notice of this.
- (6) If, in determining the application, NSWALC is satisfied that the proposed land dealing meets the procedural requirements in section 42G(1), the LALC will be given written notice of this fact, and that NSWALC staff will now proceed with the Stage 4 preliminary assessment.

### **3.5 Stage 4 – Preliminary assessment of applications, fees, additional information (if required), expert panel (if required) and estimated time for determining applications**

- (7) In Stage 4, NSWALC staff will form preliminary views in relation to an application, and they will consider:
  - (a) whether additional information or documents are required (pursuant to section 42F(4)),
  - (b) the manner in which it intends to assess the application and whether or not the application, or any part of it, is to be referred to an expert advisory panel (and if so, the details of the panel and the nature and proposed terms of reference for the panel's assessment) (pursuant to section 42I of the ALRA and clause 109 of the ALR Regulation),
  - (c) what the assessment fee for the assessment of the application will be, or how such assessment fee is to be calculated and an estimate of the likely fee (pursuant to section 42F(5) of the ALRA and clause 106 of the ALR Regulation),
  - (d) the time for payment of the assessment fee,
  - (e) whether any security will be required from the LALC to secure the payment of the assessment fee,
  - (f) any application made by the LALC to waive payment of some or the whole of an assessment fee, and
  - (g) the estimated time for determining the application.
- (8) The LALC will then be given the written notice required by clause 107 of the ALR Regulation, and also notice of NSWALC's consideration of all other matters referred to above (together referred to as the "Stage 4 notice").
- (9) Stage 3 ends when the LALC:
  - (a) gives NSWALC the notification referred to in clause 107(2)(b) of the ALR Regulation,
  - (b) provides any security for the payment of an assessment fee that may have been required by NSWALC, and
  - (c) pays any amount by way of assessment fee that may be payable.
- (10) Further guidance in relation to all of these matters is given below.

#### **3.5.1 NSWALC can request a LALC provide additional information in support of a land dealing application**

- (11) As referred to above, the approved application form in Schedule 1 requires that the LALC provide some additional information and documents about a small number of matters whenever it makes a land dealing approval application. However, NSWALC's discretion under section 42F(4) to require additional information and documents goes beyond this small range of matters. Further, there is nothing in section 42F(4) which places any time restriction on when, or at what stage, NSWALC may require the further information and documents.

- (12) There is a vast range of information and documents that might be relevant to a complete understanding of a proposed land dealing. At the same time, however, it is important that the land dealing assessment and approval process be conducted as efficiently as possible. It will not generally be necessary, in order to properly discharge its functions under Division 4 of Part 2, for NSWALC to have all of the information and documents available to the LALC in relation to a proposed land dealing.
- (13) With this in mind:
- (a) NSWALC will require additional information or documents (in addition to those required in the application form in Schedule 1), where it appears to NSWALC staff assessing a land dealing approval application, that, in the absence of the information or documents being provided:
    - (i) NSWALC may consider that the proposed land dealing is, or is likely to be, contrary to the interests of the LALC's members and others for any reason, or
    - (ii) NSWALC may not be able to properly consider whether or not the proposed land dealing is, or is likely to be, contrary to the interests of the LALC's members and others, or
    - (iii) NSWALC may not be able to properly consider what conditions, if any, ought to be placed on any approval that NSWALC may be minded to give,and
  - (b) NSWALC staff will aim to ensure that additional information and documents are required by NSWALC only once, and as early in the assessment process as possible.
- (14) Further, if NSWALC requires additional information or documents, the information and documents required will be identified with as much precision and particularity as reasonably possible, in order to make compliance as straightforward as it can be.
- (15) NSWALC staff may discuss the additional information or documents NSWALC requires with the LALC's contact person for the application in order to assist NSWALC in better identifying the additional information or documents that NSWALC will require and/or in order to assist the LALC to better understand what additional information and documents are being required.

### **3.5.2 Referral to an expert advisory panel**

- (16) NSWALC will refer all or part of a land dealing approval application to an expert advisory panel if it considers it is appropriate to do so.
- (17) NSWALC will consider it appropriate to constitute an expert advisory panel if:
- (a) the LALC requests it to do so, or
  - (b) it appears to NSWALC that it is desirable to obtain the report of external experts, having regard to the nature of the proposal, including the strategic significance or value of the land and the complexity of the proposed transactions, or for any other reason.

- (18) If NSWALC gives notice that it proposes to refer a proposed land dealing to an expert advisory panel, it will also give the LALC notice of:
- (a) the persons who it proposes to appoint to the panel, and
  - (b) the proposed terms of reference for the panel's assessment.

### **3.5.3 Calculation of the assessment fee**

- (19) NSWALC has determined that, for [12] months after the commencement of the *Aboriginal Land Rights (Amendment) Act 2009*, the only assessment fees that will be charged will be the costs of any expert advisory panel. This will allow both NSWALC and LALCs to become familiar with the new legislation, administrative processes and compliance requirements for land dealings.
- (20) The costs of an expert advisory panel are to be reckoned as the total of:
- (a) the professional fees of the experts on the panel,
  - (b) the reasonable service charges (including for photocopying and printing) and expenses of the experts on the panel (including travel), and
  - (c) NSWALC's reasonable expenses ([not including staff time]) of providing all necessary administrative and logistical support to the panel).
- (21) If NSWALC proposes to constitute an expert advisory panel to assess a proposed land dealing (or part of it), NSWALC will also estimate the likely costs of the panel.
- (22) In estimating the likely costs of a panel, NSWALC will seek the views of the panel members about:
- (a) the process to be followed by the panel in conducting the assessment, and
  - (b) how much of their time is likely to be required to complete the assessment and provide a report.
- (23) If NSWALC fixes an amount as the assessment fee, it will give notice to the LALC of the amount of that fee.
- (24) In all other cases, NSWALC will give the LALC notice of:
- (a) the likely assessment fee, and
  - (b) the full details of how all aspects of the actual costs will in fact be determined (including how the members of the panel will calculate their fees), and
  - (c) the major variables that are likely to affect the actual costs.

### **3.5.4 Time for the payment of the assessment fee**

- (25) Generally, NSWALC will require payment upfront of the assessment fee. However, in some instances NSWALC may decide not to require payment of the whole of an assessment fee, or an estimate of an assessment fee, upfront. NSWALC may determine instead that part only of the assessment fee, or no part of the assessment fee, is to be paid up front with the balance payable at a later time, or on the happening of a later event.

- (26) NSWALC will fix the time, and any other arrangements, for the payment of an assessment fee having regard to:
- (a) the amount of the assessment fee payable,
  - (b) the LALC's current financial position, and in particular the current extent of its cash reserves, and
  - (c) the nature and structure of the proposed land dealing, and in particular:
    - (i) whether the LALC will be raising finance in connection with the proposed land dealing, and if so, whether the assessment fee might be paid out of such finance, and
    - (ii) what expectation the LALC may reasonably have of receiving proceeds from the land dealing at a future point in time,and
  - (d) NSWALC's own financial position, and
  - (e) the need to ensure equity amongst the LALCs in relation to the giving of subsidies out of the NSWALC Account.

#### **3.5.5 Security for the payment of the assessment fee**

- (27) If NSWALC decides that some or all of an assessment fee may be payable at a future point in time, it will also decide whether to require that the LALC provide security for the payment of the assessment fee.
- (28) A security may be required where:
- (a) the assessment fee, or the estimate of the assessment fee, is more than [\$20,000],
  - (b) NSWALC considers, having regard to the circumstances of the LALC (including its recent financial history) and/or the risks inherent in the proposed land dealing, that there is a substantial risk that the assessment fee will not otherwise be paid, and
  - (c) NSWALC considers, having regard to the circumstances of the LALC, that it will be reasonably practicable for the LALC to provide a security.

#### **3.5.6 Waiver of the assessment fee**

- (29) If a LALC wishes to seek a waiver of the payment of some or all of an assessment fee, it may do so when it makes the land dealing approval application, or at any time up until it gives the notification referred to in clause 107(2)(b) of the ALR Regulation.

- (30) In general terms, and having regard to:
- (a) the other demands on the NSWALC Account, and
  - (b) the need to ensure equity between LALCs,

NSWALC intends that its land dealing assessment process will be a user pays system to the greatest extent that this is reasonably practicable. This is the purpose of all assessment fees.

- (31) NSWALC will only waive an assessment fee if it is satisfied that it is appropriate to do so having regard to factors such as:
- (a) the amount of the assessment fee payable,
  - (b) the LALC's current financial position, and in particular the extent of its cash reserves,
  - (c) any expectation that the LALC may have of receiving proceeds from the land dealing out of which the assessment fee might be paid,
  - (d) NSWALC's own financial position, and
  - (e) the need to ensure equity amongst the LALCs in relation to the giving of subsidies out of the NSWALC Account.

### **3.5.7 Time for determining the application**

- (32) Estimates of time required to determine a land dealing approval application will be calculated on the following bases:
- (a) times stated will run from the time when NSWALC receives from the LALC the notification referred to in clause 107(2)(b) of the ALR Regulation, and
  - (b) it will be assumed that requests for additional information or documents will be complied with within [28] days.
- (33) When the LALC is notified of the estimate of the time required to determine the land dealing application, it will also be notified of:
- (a) these and any other assumptions upon which the estimate is based,
  - (b) the major variables that are likely to affect the actual time required to determine the application.

### **3.5.8 Stage 4 notice to the LALC**

- (34) Having regard to NSWALC's obligation under clause 107(1) of the ALR Regulation to give the notice referred to in that provision as soon as practicable after receiving a land dealing approval application, NSWALC will ordinarily aim to give the applicant LALC the Stage 4 notice (which includes the notice required by clause 107(1) of the ALR Regulation), as soon as reasonably practicable after the completion of Stage 2.
- (35) Where the LALC has advised of some urgency in relation to determination of a land dealing approval application, NSWALC will endeavour to work where possible within the LALCs timeframes.

### **3.5.9 LALC to either accept or reject proposed manner of assessment, fees paid and proposed securities**

- (36) After giving the Stage 4 notice referred to above, NSWALC will take no further action in relation to the land dealing approval application unless the LALC:
- (a) Agrees to the manner in which the land dealing is to be assessed and any fees payable as per clause 107(2)(b) of the ALR Regulation,

- (b) provides any security for the payment of an assessment fee that may have been required in NSWALC's notice,
- (c) pays any amount by way of assessment fee that may be payable in accordance with NSWALC's notice,
- (d) If the LALC does not agree with NSWALC's Stage 4 notice and agreement cannot be reached in relation to alternative assessment methods/options NSWALC is not required to determine the application or further assess the application and NSWALC will refuse the application.

### **3.6 Stage 5 – Substantive assessment**

- (1) In Stage 5, NSWALC staff will undertake any further substantive assessment required.
- (2) If the application, or part of it, has been referred to an expert advisory panel, Stage 5 will also include assessment by that panel, and consideration of the panel's report by NSWALC staff.
- (3) The purpose of the Stage 5 substantive assessment is for NSWALC staff to decide what recommendation to make to the Council of the NSWALC about:
  - (a) whether the proposed land dealing should be approved or whether it should be considered to be contrary to, or likely to be contrary to, the interests of the LALC's members and others and refused, and
  - (b) the conditions, if any, that should be placed on any approval.
- (4) The Stage 5 assessment will be carried out, having regard to:
  - (a) the estimate of the time required by NSWALC to determine the application as set out in the Stage 4 notice, and
  - (b) the need for the land dealing approval process to operate efficiently in general.
- (5) The Stage 5 assessment will be undertaken having regard to section 42G of the ALRA and each of the matters set out in Sections 4 and 5 of this policy.
- (6) The Stage 5 assessment will be carried out on the basis of:
  - (a) all the material provided to NSWALC by the LALC (including any additional information or documents required by NSWALC and provided by the LALC),
  - (b) any report of an expert advisory panel that has been obtained, and
  - (c) any other relevant material available to NSWALC and that has been provided to the LALC that is not in the public domain.
- (7) NSWALC staff will aim to complete Stage 5 as soon as practicable after:
  - (a) receiving all additional information or documents required from the LALC, or
  - (b) receiving any report of an expert advisory panel that has been obtained, whichever one comes later.
- (8) At the end of Stage 5, NSWALC staff will submit the application to NSWALC with their recommendation.

- (9) The LALC will be given written notice of the completion of the Stage 5 assessment and of the date/s of the NSWALC meeting at which the land dealing approval application is expected to be considered and determined.

### **3.7 Stage 6 – Determination (including dealing approval certificates)**

- (1) In Stage 6, NSWALC will determine the land dealing approval application, and if it approves the proposed land dealing a dealing approval certificate will be issued to the LALC.
- (2) NSWALC's determination will be a determination of:
  - (a) whether or not proposed land dealing is approved, and
  - (b) the conditions, if any, that are placed on any approval.
- (3) The determination will be made, having regard to section 42G of the ALRA and each of the matters set out in Sections 4 and 5 of this policy.
- (4) The determination will be made on the basis of:
  - (a) all the material provided to NSWALC by the LALC (including any additional information or documents required by NSWALC and provided by the LALC),
  - (b) any report of an expert advisory panel that has been obtained,
  - (a) any other relevant material available to NSWALC and that has been provided to the LALC, and
  - (b) the recommendation of NSWALC staff in relation to all of that material.
- (5) Unless, on considering the application, NSWALC considers that it requires additional information and documents in order to determine the application, NSWALC will generally determine an application at the first scheduled meeting after the completion of the Stage 5 substantive assessment.
- (6) If NSWALC determines that the proposed land dealing should be approved, NSWALC's Chief Executive Officer will, as required by section 42K(1) of the ALRA, issue a dealing approval certificate within 14 days of the determination being made (provided that any assessment fee that is payable at that time has been paid).

### **3.8 Stage 7 - Implementing and enforcing approvals (including registration approval certificates and registration prohibition notices)**

- (1) If NSWALC approves a proposed land dealing subject to conditions, compliance with those conditions is critical to whether or not the land dealing is authorised under the ALRA and may proceed (see sub-sections 42C(1), 42E(1) and 42K(2) of the ALRA).
- (2) If NSWALC approves a proposed land dealing subject to a condition that:
  - (a) a party enters a land dealing approval agreement that is registrable under section 42N of the ALRA with NSWALC, or
  - (b) the transferee of the land enters a land dealing approval agreement of another kind with NSWALC (which will only generally be the case where the transferee

is a related entity of the LALC and the LALC and/or its members remain interested in the land and further dealings with it),

compliance with the approval agreement may be critical to whether or not the land may be further dealt with by the transferee (see sub-sections 42O and 42P of the ALRA).

- (3) If NSWALC approves a proposed land dealing subject to a condition that the LALC enters a land dealing approval agreement with NSWALC, non-compliance with the land dealing approval agreement will be taken to be a breach of the ALRA, with the potential consequences that breaches of the ALRA may have (section 42G(7)). These include a compliance direction under Part 12 of the ALRA and the appointment of an administrator under Part 11 of the ALRA.

### **3.8.1 Registration approval certificate**

- (4) Where a land dealing involves the registration of a registrable instrument (as defined in section 40 of the ALRA), registration will not be possible without a registration approval certificate from NSWALC. Before a registration approval certificate is issued, however, NSWALC's Chief Executive Officer will require proof of compliance with all relevant conditions of the approval (see section 42K(2) of the ALRA).
- (5) Proving compliance with the conditions, and demonstrating the other matters referred to in section 42K(2), will be the LALC's responsibility. It is also the responsibility of the LALC to provide all information and documents that are required within a reasonable timeframe to NSWALC so that they can be reconciled against NSWALC's files.
- (6) A LALC seeking a registration approval certificate should apply to NSWALC [using the form in Schedule 2 to this policy, and providing all information and documents requested in that form].
- (7) If, at the time that this application is made and considered, one or more conditions of approval are still to be fulfilled, NSWALC's Chief Executive Officer will write to the LALC and tell the LALC what outstanding conditions have not been met and what the LALC needs to do address this in order to receive the registration approval certificate.
- (8) LALCs should note that the community development levy must be paid *before* NSWALC can issue a registration approval certificate.
- (9) NSWALC's Chief Executive Officer will consider the application for a registration approval certificate and provide written a response to the LALC as soon as practicable after receiving the application.
- (10) A registration approval certificate, where it is to be issued, will generally be given at a point in time immediately prior to registration being required (e.g. at settlement in the case of a sale and transfer of land).

### **3.8.2 Registration prohibition notices**

- (11) If there is a land dealing approval agreement:
  - (a) registered under section 42N, or

- (b) with the transferee of LALC land (which will only generally be the case where the transferee is a related entity of the LALC and the LALC and/or its members remain interested in the land and further dealings with it),

NSWALC may have a registration prohibition notice recorded on the title of the land (section 42O). In that case, compliance with the land dealing approval agreement will be critical to the registered proprietor's ability to further deal with the land (section 42P).

- (12) Proving compliance with a land dealing approval agreement in these circumstances, will be the registered proprietor's responsibility.
- (13) A registered proprietor seeking NSWALC's consent to deal with the land, or the removal of the registration prohibition notice, should apply to NSWALC [using the form in Schedule 3 to this policy, and providing all information and documents requested in that form].
- (14) NSWALC's Chief Executive Officer will consider the application and provide a written response to the applicant within [14] days of receiving the application.

## **4 The 5 general matters that NSWALC will take into account when considering whether to refuse approval and/or impose conditions**

### **4.1 Transparency and probity**

- (1) Decisions to deal with LALC land must be made transparently and with a high degree of probity. It will always be contrary, or likely to be contrary, to the interests of the LALC's members and others if land is dealt with in circumstances where transparency and probity are not evident in the decision making.
- (2) In all cases, the disclosure requirements in Part 10 of the ALRA must be strictly complied with wherever they apply. There will also be circumstances where disclosure beyond what is required by Part 10 is important.

#### **4.1.1 Transfers and other dealings in favour of LALC's members and others**

- (3) One instance where it is particularly important that transparency and probity in decision making beyond the requirements of Part 10 should be evident, is where a LALC proposes to transfer land, or to give some other interest (e.g. a lease), to a LALC members and others.
- (4) In such cases it will be important that:
  - (a) the members voting on the matter be aware that the proposed land dealing that they are voting on is in favour of the LALC member and others,
  - (b) if the LALC member is present at the relevant meeting or meetings, he or she:
    - (i) discloses his or her interest in the proposed land dealing,
    - (ii) does not remain present at, or within sight of, the meeting at any time during which the matter is being considered or discussed, or is being voted on.

- (5) It is also important to appreciate that a proposal to transfer or lease (or otherwise deal with) LALC land in favour of LALC's members and others may be a community benefits scheme for the purposes of section 52A (and perhaps section 52B) of the ALRA. In this case, the proposal will have to be also approved as a community benefits scheme and this will require an examination by NSWALC of the fairness, equity and transparency of the scheme.

#### **4.1.2 Dealings from which LALC's members and others will otherwise benefit**

- (6) Similar considerations apply where one or more LALC members and others will benefit from the land dealing in some particular way. An example of this is where a member of the LALC is to be engaged as a consultant in connection with a land development project. In this case, the same measures as those referred to above should be taken to ensure that transparency and probity are evident.

#### **4.1.3 Transparent selection of proposals**

- (7) The need for transparency in decision making to be clearly evident is also particularly important in relation to major land dealing proposals involving land which is significant in terms of its size, value or strategic importance, particularly in situations where the LALC will take on a large part of the risk of the proposal, or other more profitable options might have been available to the LALC.
- (8) In these circumstances, it may be important for NSWALC to explore more closely the relationship between the LALC and its officers and staff on the one hand, and the other party or parties to the proposal.
- (9) Concerns about transparency and probity in these circumstances will, however, be easily allayed if the decision making process was founded on any open and transparent market testing process such as a call for expressions of interest overseen by an external probity officer.

#### **4.1.4 Additional information and documents**

- (10) In relation to all proposed land dealings, NSWALC will require some additional information and documents to satisfy potential concerns about transparency and probity. For this reason, the land dealing approval application form in Schedule 1 asks several questions in response to which information and in some cases documentation is required.
- (11) In some cases, such as those described in paragraph (7) above, NSWALC will require further additional information and documentation.

#### **4.1.5 Exercise of NSWALC's discretion**

- (12) If NSWALC cannot be satisfied that the decision to undertake a proposed land dealing was made with transparency and probity (and particularly if requests for further information and documents are not answered or are not answered satisfactorily), it will generally consider that the proposed dealing or dealings concerned are likely to be contrary to the interests of the LALC's members and others, and it may refuse to approve the application.

- (13) NSWALC may impose conditions on an approval of a proposed land dealing that aim to ensure that the dealing is done transparently.
- (14) If a proposal anticipates that LALC land be transferred or leased to a LALC's members and others (or otherwise dealt with in favour of a LALC's members and others) according to a community benefits scheme, NSWALC is likely to impose a condition on any approval aimed at ensuring that the land is dealt with only in accordance with that scheme.

#### **4.2 Consistency with LALC community, land and business plan**

- (1) Community, land and business plans, are intended to encourage better land use decision making by requiring LALCs to establish a strategic framework within which decisions can be made in the short to medium term.
- (2) Community, land and business planning is intended to encourage LALCs to:
  - (a) think carefully about the best range of uses for their land portfolios as a whole,
  - (b) formulate sensible objectives, and
  - (c) develop strategies for the use of the land in a manner that supports the achievement of those objectives.
- (3) If significant land use decisions:
  - (a) are made in an *ad hoc* fashion,
  - (b) are made in reaction to external interest or pressure,
  - (c) do not form part of an overall strategic plan for use or development of the LALC's lands as a whole, or
  - (d) are made without adequate consideration of what the LALC's broader objectives may be and how the proposed use may support or compromise those objectives,

it is likely that the result will not be in the best interests of the LALC's members and others.

- (4) Dealings that result from land use decisions made in this way may be contrary to LALC's members and others' interests because, for example:
  - (a) land that would have been useful for meeting community needs and objectives other than cash (e.g. community facilities or employment and business opportunities) may be alienated,
  - (b) the LALC fails to take advantage of a strategic commercial advantage that it may have obtained from planning for and dealing with its land portfolio as a whole (e.g. where lands without development potential, or in which there are cultural values making it unsuitable for development, are managed to offset environmental impacts on other lands for which development consent is obtained), or
  - (c) the LALC has not obtained advice about the highest and best commercial use of its lands.

- (5) It is unrealistic to expect that all land dealings that a LALC may propose during the life of a community, land and business plan will be specifically anticipated in the plan. However, the more significant a land dealing proposal may be in terms of:
  - (a) the area of the land affected by the proposal,
  - (b) what proportion of the LALC's total lands this area is,
  - (c) the strategic importance of the land to the LALC in other respects,
  - (d) the complexity of the proposal,
  - (e) any investment of LALC resources required to undertake the proposal, and
  - (f) the extent to which the future use of the land will be affected by the proposal,the more important it will generally be that the decision to deal with the land forms part of, or is at least clearly consistent with the objects and strategies in, the LALC's approved community, land and business plan.
- (6) Key considerations for NSWALC in relation to proposed significant land dealings will be:
  - (a) is the proposed land dealing part of the broader plan for the use of the LALC's land and the achievement of the LALC's objectives in the LALC's community, land and business plan,
  - (b) is the proposed land dealing consistent with the LALC's objectives and strategies set out in the community, land and business plan, and
  - (c) will the proposed dealing support the achievement of the LALC's objectives set out in the community, land and business plan (e.g. by generating income to enable the provision of a proposed or existing community benefits scheme)?
- (7) If these considerations are not easily answered by reference to the community, land and business plan itself, or indeed if the LALC does not have an approved plan, NSWALC may require additional information and/or documents from the LALC, to enable it to be satisfied that the proposed land dealing forms part of a broader plan for the use of the LALC's land and the achievement of its objectives.
- (8) In some cases where a proposed significant land dealing is not clearly contemplated by the LALC's community, land and business plan, NSWALC may consider it necessary for the LALC to amend its plan to ensure that the members have considered the proposal in the context of a broader strategy.

### **4.3 Holding and using proceeds**

- (1) If a LALC disposes of land, or gives a lease or some other interest in the land, in order to produce an income, it is turning a land asset (which enjoys significant protections under the ALRA, including the protection against compulsory acquisition in section 42B) into cash (which does not enjoy the same protections).
- (2) If a LALC disposes of land in return for an injection of cash, or an income stream, and:
  - (a) there are no clearly identified uses for the proceeds (or the identified uses are not authorised under the ALRA), or

- (b) there is an inadequate management regime or inadequate legal structures in place to manage the cash for the purposes intended,  
this may result in significant losses for the LALC as well as community strife.
- (3) The more significant a land dealing proposal may be in terms of:
  - (a) the area of the land affected by the proposal,
  - (a) what proportion of the LALC's total lands this area is,
  - (b) the strategic importance of the land to the LALC in other respects,
  - (c) any investment of LALC resources required to undertake the proposal,
  - (d) the extent to which the future use of the land will be affected by the proposal, and
  - (e) the proceeds that it is expected to producethe more important it is that proper and robust arrangements are in place to hold and deal with the proceeds.
- (4) Further, the risks will be greater where the LALC has a history of financial and/or management concerns. Indicators of this include where:
  - (a) funding has ceased to the LALC, or frequently ceases, because of section 163 of the ALRA,
  - (b) the LALC's most recent audit has raised significant concerns,
  - (c) the LALC has recently been subject to investigation or has recently had an administrator appointed.
- (5) Key considerations for NSWALC in relation to proposed significant land dealings will be:
  - (a) Will the LALC receive the proceeds as a lump sum payment or series of payments, or will a long term income stream be produced (as large injections of cash will generally create greater management challenges)?
  - (b) Have clearly identified uses for the proceeds been identified, and:
    - (i) are these uses authorised under the ALRA, and
    - (ii) do they form part of the LALC's objectives as set out in its community, land and business plan?
  - (c) Does the LALC have a recent history of financial and/or management issues?  
and
  - (d) Having regard to the above, are there adequate managerial systems and legal structures in place to ensure that the proceeds are used as intended (e.g. formalised procedures or purpose trusts)?
- (6) For these reasons, in relation to significant land dealing proposals, NSWALC will generally require additional information and documents relating to:
  - (a) how the proceeds are to be held, including:
    - (i) by whom, and

- (ii) subject to what protections or restrictions,
  - and
  - (b) how the proceeds will be applied, including what managerial and/or legal framework will determine this.
- (7) If the proceeds are to be applied in whole or in part to community benefits schemes of the LALC, then it will be necessary for those schemes to be approved pursuant to section 52A of the ALRA.
- (8) If it is proposed that the proceeds be held on trust by or for the LALC or its members and others, approval may also be required pursuant to section 52C of the ALRA.
- (9) The conditions that NSWALC imposes on any approval of a LALC land dealing involving significant proceeds may include a condition that the LALC enter a land dealing approval agreement with NSWALC aimed at ensuring that the proceeds are held and used in the manner proposed to and approved by NSWALC.

#### 4.4 Cultural concerns

- (1) Land is of cultural and heritage importance to Aboriginal people for many reasons. Some lands, or places and objects on the lands, may be of particular cultural or heritage significance.
- (2) LALCs, and NSWALC, have statutory functions to take action to protect the culture and heritage of Aboriginal persons (section 52(4)(a) and section 106(7)(a)).
- (3) NSWALC is also conscious that there are processes under other State and Commonwealth legislation relevant to the protection of some aspects of the cultural significance of land. This includes the provisions in Part 6 of the *National Parks and Wildlife Act 1974* that give some protection to significant Aboriginal objects and places.
- (4) In relation to some LALC land, where the land may be held subject to native title rights and interests, section 42 of the ALRA may also be relevant in this regard.
- (5) To the extent that the Aboriginal cultural and heritage significance of land is not protected under other regimes, NSWALC recognises that the LALC's members and others of the LALC are generally the people best placed to ensure that proper consideration is given to the protection of that significance.
- (6) LALC members must consider the impact of a proposed land dealing on the cultural and heritage significance of land when they pass a resolution to approve the land dealing (sub-sections 42G(1)(b) and 42G(5)(c)(ii)). Further, to the extent that the proposed land dealing is foreshadowed in the LALC's approved community, land and business plan, that plan will have been prepared in consultation with any Aboriginal owners of land within the LALC's area (sub-sections 82(2)(b) & (6)).
- (7) However, where credible information is known to, or received by NSWALC, raising concerns that:
  - (a) the LALC's members did not have proper regard to the impact of the proposed dealing on the cultural and heritage significance of the land when it determined to deal with the land, or

- (b) the likely impact of the proposed land dealing on the cultural and heritage significance of the land is such that it should not be approved,

NSWALC may require additional information, and may consider that the matter should be considered by an expert advisory panel (constituted pursuant to section 42I of the ALRA), so that it may satisfy itself in relation to these concerns before it approves the proposed land dealing.

- (9) If the members of a LALC themselves impose conditions on their decision to approve a proposed land dealing aimed at preserving aspects of the land's cultural or heritage significance, NSWALC will generally impose conditions on its approval that aim to ensure that those conditions are satisfied.

#### 4.5 Commerciality

- (1) It is important that LALC land be dealt with according to sound commercial principles. If it is not, it will generally not be in the best interests of the LALC's members and others.
- (2) This is not to disregard the fact that a LALC may have very good reasons for wishing to deal with land for little or no financial return. For example, pursuant to a community benefits scheme, a LALC may propose to lease land for a "peppercorn" to facilitate the provision of a service (e.g. a pre-school) to a LALC's members and others that would otherwise not be available to them. Even in such a case, however, there are commercial aspects to the proposed arrangement (such as insurances and the management of risk generally) that need to be considered by the LALC to protect the interests of the LALC's members and others.
- (3) Commerciality is a broad concept that involves consideration of:
  - (a) whether the proposed land dealing is the highest and best commercial use of the land,
  - (b) the adequacy of the proceeds that the LALC will, or expects to, obtain from dealing with its land in the manner proposed,
  - (c) the risks inherent in proceeding with the land dealing,
  - (d) having regard to the nature of the proposed land dealing and the risks inherent in it, the capacity and capability of the persons involved in conducting the proposal (which, in addition to the LALC, may include its advisors or other consultants, a joint venture partner and/or a person taking an interest in the land),
  - (e) the sufficiency of the proposed terms, by which risks inherent in the proposal are allocated and are to be managed, and
  - (f) importantly, the risks or opportunity costs of *not* proceeding with the proposed land dealing, or of not proceeding with it expeditiously.

These considerations are often interrelated. Which one or more aspect is most important in any given case will depend on the nature and circumstances of the proposal concerned.

- (4) The more significant a proposed land dealing is in terms of:
  - (a) the area of the land affected by the proposal,

- (b) what proportion of the LALC's total lands this area is,
  - (c) the strategic importance of the land to the LALC in other respects,
  - (d) the complexity of the proposal,
  - (e) any investment of LALC resources required to undertake the proposal, and
  - (f) the extent to which the future use of the land will be affected by the proposal,
- the more closely NSWALC will wish to satisfy itself as to the commerciality of the proposal, and the more likely it is that it may wish to refer the proposal, or part of it, to an expert advisory panel.

#### **4.5.1 Where LALCs obtain their own competent and independent advice**

- (5) This is not to say that NSWALC will in these circumstances wish to second guess the LALC's own advice and consideration of a proposal about what the best use of land may be.
- (6) Importantly, where a LALC's proposal is clearly based on competent and independent advice, it is likely that the advice obtained by the LALC will be sufficient to satisfy any concerns NSWALC might otherwise have about the proposal's commerciality.
- (7) It would, however, be sensible for LALCs wishing to rely on their own advice for approval purposes, to have discussed their intentions, and NSWALC's likely requirements in relation to the advice, at an early stage. This may require that the LALC approach NSWALC in relation to the matter prior to any formal land dealing approval application being made. NSWALC will not regard such approaches as inappropriate. It may be necessary in this case, however, for NSWALC to point out limits to the extent to which the advice of its staff can be taken to be binding on the determination that must ultimately be made by NSWALC itself.

#### **4.5.2 Additional information and documents that NSWALC may require**

- (8) NSWALC may require additional information and documents to enable it to assess the commerciality of a proposal. Whether, and if so what, additional information and documents will be required to assess commerciality, will depend on the proposal concerned.
- (9) By way of illustration only, where a significant land dealing is proposed such as a proposal that involves the subdivision, development and sale of a large and strategically important parcel of land in joint venture with a third party, NSWALC will generally require, in order to assess the proposed dealing for approval purposes, information and/or documents:
  - (a) setting out the full details of the proposal, including the terms on which it is to be done (e.g. any contract, or other formal documentation of the proposal, that is in existence),
  - (b) concerning the identity and capabilities of key personnel responsible for the proposal's successful completion,
  - (c) disclosing the advice that the LALC has received in relation to the commerciality of the proposal,

- (d) demonstrating the relevant expertise and independence of the people who provided the advice,
  - (e) showing the consideration that the LALC has otherwise given to the commerciality of the proposal, and
  - (f) otherwise demonstrating that the proposal is in the interests of the LALC's members and others from a commercial perspective.
- (10) By contrast, where a LALC proposes to sell a single residential lot, and proposes to do so by public auction following a marketing campaign conducted by a real estate agent, NSWALC may require less information or documentation than for more complex transactions.

#### **4.5.3 Conditions to protect commercial interests**

- (11) If NSWALC approves a proposed land dealing, it may impose conditions aimed at ensuring that the dealing is not done in a manner, or on terms, contrary to the commercial interests of the LALC's members and others. For example, where the proposal is approved on the basis of representations by the LALC about terms under which the dealing will be done, the conditions will aim to ensure that the dealing is in fact carried out on those terms.

## **5 Further considerations in relation to imposing conditions on approvals**

### **5.1 When will NSWALC impose conditions on an approval?**

- (1) NSWALC will impose conditions on an approval of a proposed LALC land dealing if it considers that this is desirable to ensure that the proposed dealing is done in accordance with and the interests of the LALC's members and others.
- (2) The purpose of approval conditions is not solely, or primarily, to act as a restriction on the LALCs ability to deal with its land. It is also, importantly, a means by which the interests of the LALC and the LALC's members and others are protected at all stages through a land dealing.
- (3) Where the members of the LALC themselves impose conditions on their decision to approve a proposed land dealing, then NSWALC will impose conditions on its approval that duplicate the members' conditions, or otherwise aim to ensure that the restrictions on the proposed dealing required by the members must be observed.
- (4) Where NSWALC approves proposed land dealing on the basis of representations made to it by the LALC about, for example, the key terms on which the proposal will be transacted, NSWALC will impose conditions that aim to ensure the integrity of its approval, by requiring that the proposal is in fact conducted on the basis of those key terms.
- (5) Alternatively, independently of any representations made to it, NSWALC may reach its own view that it may only be satisfied that a proposed land dealing is not likely to be contrary to the interests of the LALC's members and others if certain conditions are observed.

## **5.2 What sorts of conditions might be imposed?**

- (1) The ALRA imposes some restrictions on the conditions that may be imposed by NSWALC on a land dealing approval. Specifically, section 42G(6) will not allow NSWALC to impose conditions that can only be satisfied after the completion of a land dealing.
- (2) An example of such a condition might be one which requires the proceeds of a land sale to be held and application according to the terms of a particular charitable trust. The holding and application of those proceeds would occur after the land had been sold and transferred and so such a condition would be unlawful.
- (3) On the other hand, section 42G(6) does allow NSWALC to impose a condition that requires the LALC or other parties to the land dealing to enter into a land dealing approval agreement, the terms of which are to be performed after the completion of the land dealing. In the example given above, NSWALC could impose a condition that required the LALC to enter a land dealing approval agreement that said that the proceeds of the sale are to be held and application according to the terms of the charitable trust. Some further considerations in relation land dealing approval agreements are set out below.
- (4) Beyond the restrictions in section 42G(6), NSWALC is conscious that approval conditions, if badly crafted, may have a significant impact on the workability of a land dealing proposal and ultimately may affect the validity of any interest in the land that the dealing is intended to pass.
- (5) NSWALC will give special consideration, when imposing conditions, to ensuring that the conditions:
  - (a) effectively protect the interests of the LALC and a LALC's members and others in the manner intended,
  - (b) do not unduly interfere with the conduct of the approved proposal,
  - (c) do not render unworkable any aspect of the approved proposal, and
  - (d) do not raise unintended doubts about the validity of the interests of any participant in the approved proposal.

## **5.3 Conditions, including land dealing approval agreements, on significant and complex land dealing proposals**

- (1) The conditions on which significant and complex land dealing proposals are approved may need to be detailed, and may need to include a land dealing approval agreement, to achieve their purposes.
- (2) In these circumstances, and in order to ensure that the conditions are well understood by all parties and are workable, it may be important that the conditions be the subject of discussions with the LALC's representatives, and in some cases other parties involved in the proposed transactions.
- (3) For this reason, it will generally be preferable that the LALC approach NSWALC at an early stage in the development of any significant or complex proposal, to seek guidance from NSWALC staff about which aspects of the proposal are likely to be of concern to NSWALC and are likely to become the subject of conditions.

- (4) In some cases it may be appropriate, and ultimately helpful to all concerned, if NSWALC has visibility of negotiations between the LALC and other parties to the proposal, to ensure that the proposal being developed is likely to be approved by NSWALC and that the conditions that NSWALC is likely to impose will not impede the conduct of the proposal if it is approved. It may be necessary in such cases, however, for NSWALC to point out limits to the extent to which the guidance of its staff can be taken to be binding on the determination that must ultimately be made by NSWALC itself.

DRAFT 15.12.09

## **Schedule 1 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New application form to be completed by LALCs seeking NSWALC approval of LALC land dealing after commencement of Division 4 of Part 2 *Aboriginal Land Rights Act 1983* on 31 March 2010**

DRAFT 15.12.09



**Schedule 1 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New South Wales Aboriginal Land Council**

**Application for Approval of a Dealing with Land**

Land dealing approval application number <i>(for office use)</i>	
---	--

**Part A: Information about this application**

<b>Applicant's Details</b>	
1. Name of LALC submitting application	
2. Name and position of authorised LALC officer/staff making the application for the LALC	
3. Name and position of authorised LALC officer/staff who may be contacted to discuss this application	
4. Contact details for the LALC's contact person	a. Business phone
	b. Mobile phone
	c. Fax
	d. email
	e. Postal address

## Part B: Prescribed information

*Aboriginal Land Rights Act 1983, s.42, s.42F(2)*

*Aboriginal Land Rights Regulation 2002, cl.104*

<b>What land does the LALC propose to deal with (<i>this will be referred to in this application as the land dealing</i>)?</b>			
5. Street Address/Location			
6. Other means by which the land is known or identified (e.g. "Dolphin Point Development Stage 2")			
7. Folio reference ( <i>this can be found on the title search of the land</i> )		Lot	
		DP	
		Parish	
		County	
8. Does the title search of the land indicate that section 42 of the ALRA applies to the land? Section 42 states that an Aboriginal Land Council must not deal with land vested in it subject to native title rights and interests unless the land is the subject of an approved determination of native title. If section 42 applies to the land, the LALC cannot deal with the land and NSWALC will not consider an application from a LALC for approval to deal with the land until this reference is removed or evidence is provided of a native title determination or unless the type of land dealing falls into one of the categories specified in section 42(2).			
<b>What does the LALC intend doing with the land?</b>			
9. What are all of the ways in which the LALC proposes to deal with the land? (ie is this application for approval of a sale of LALC land, or a lease, or a creation of an easement over LALC land, etc - please tick all the boxes below that apply and provide details if the boxes do not apply)			
easement		lease	sale
subdivision		option to purchase	biobanking
development application		mortgage	other (please specify)

<p>10. Please provide further details of the proposed dealing(s) and what it involves, including information about the stage that planning and negotiations for the dealing are at. If there are documents in existence that describe the proposed land dealing(s) (e.g. meeting papers provided to members, or draft development application), please state what the documents are and attach them.</p>		
<p><b>What are the proposed terms and conditions, or details of, of the land dealing(s) ?</b></p>		
<p>11. What are the proposed terms or conditions for the proposed land dealing(s)? If there are draft documents setting out the proposed terms and conditions (e.g. a draft contract for sale of land, a lease, a letter of offer or a heads of agreement or memorandum of understanding or MOU), please state what they are and attach them.</p>		
<p><b>The Members' meeting and resolution</b></p>		
<p>12. Is a copy of the resolution by which the members approved the dealing/s attached? An extract from official minutes signed by the Chairperson is preferable (as it may answer some of the questions below).</p>		
<p>13. Details of meeting at which resolution passed</p>	<p>Date</p>	
	<p>Time</p>	
	<p>Place</p>	
<p>14. Was notice of the meeting given as required (see s.42G(5), ALRA and cl.103, ALRR)?</p>		
<p>15. What documentation (e.g. newspaper advertisement) is attached to prove this?</p>		
<p>16. Was a quorum present?</p>		
<p>17. What documentation (e.g. attendance list, official minutes, membership roll) is attached to prove this?</p>		

18. Was the resolution passed by 80% or more of the voting members present?		
19. What documentation (e.g. attendance list, official minutes, membership roll) is attached to prove this?		
<b>Valuation</b>		
20. Is a valuation commissioned by and for the LALC, prepared by a registered valuer within the last 12 months attached? A copy must be attached.		
<b>Application fee</b>		
21. Is a cheque or money order payable to the NSW Aboriginal Land Council for \$250 for the application fee attached? Please note that if the land dealing consists of a development application, no application fee is required.		
<b>Request for assessment by panel?</b>		
22. Does the LALC want to request that the land dealing be assessed by an expert panel?		
<b>Attachments Checklist</b>		
23. Please tick the following boxes to check that you have attached all the necessary information:	a. A recent title search for each parcel of land the LALC wants to deal with	
	b. Documentation (if it exists) describing the proposed land dealing(s) (ie a contract, lease, joint venture agreement etc)	
	c. Documentation (if it exists) setting out proposed terms for the land dealing(s) (e.g. a draft contract for sale of land, a lease, a letter of offer or a heads of agreement or memorandum of understanding or MOU))	
	d. A copy of the relevant resolution/s of the LALC members approving the	

land dealing(s)	
e. Documentation establishing that the required notice of the meeting to approve the land dealing was given to LALC members	
f. Documentation establishing that a quorum of LALC members was present at the LALC meeting that approved the land dealing	
g. Documentation establishing that the LALC members' resolution/s was/were passed by 80% or more of the voting LALC members present at the members meeting	
h. A valuation for each parcel of land that the LALC wants to deal with that has been prepared by a registered valuer within the last 12 months	
i. The \$250 application fee	

**Part C: Further information and documentation required by NSWALC**

*Aboriginal Land Rights Act 1983, s.42F(4)*

Please note that s.42F(4) of the ALRA gives NSWALC power to require further information and documents. Some additional information and documentation required by NSWALC as a matter of policy is set out in this part of this application form. NSWALC may require further information or documents after reviewing the application if this is considered necessary.

<p><b>LALC land dealings in favour of LALC members and others</b></p>	
<p>24. Will the proposed land dealing give one or more known LALC members, officers, staff members, consultants, or NSWALC councillors, or a company controlled by them, an interest in the LALC's land?</p>	
<p>25. If the answer to question 23 is yes,</p> <ul style="list-style-type: none"> <li>a. What are the details of this?</li> <li>b. Was this fact disclosed to the LALC's members when the LLAC members decided to deal with the land?</li> <li>c. Were the LALC officers, staff members, consultants or NSWALC councillors present at or in sight of the LALC meeting when: <ul style="list-style-type: none"> <li>i. the proposed land dealing was being considered or discussed?</li> <li>ii. any question relating to the proposed land dealing was voted on?</li> </ul> </li> <li>d. What documentation showing this is attached?</li> </ul>	
<p><b>Proposed LALC land dealings in which LALC officers or staff members, consultants or NSWALC councillors have a pecuniary interest</b></p>	
<p>26. Do one or more LALC officers, staff members, consultants or NSWALC councillors otherwise have a pecuniary</p>	

<p>interest in the proposed land dealing(s) by the LALC?</p>	
<p>27. If so:</p> <ul style="list-style-type: none"> <li>a. What are the details of this?</li> <li>b. Was this fact disclosed to the LALC's members when the decision to deal with the land was made (whether or not the LALC officer, staff member, consultant or NSWALC councillor was present at the meeting)?</li> <li>c. Were the LALC officers, staff members, consultants or NSWALC councillors present at or in sight of the LALC meeting when: <ul style="list-style-type: none"> <li>i. the proposed land dealing was being considered or discussed?</li> <li>ii. any question relating to the the proposed land dealing was voted on?</li> </ul> </li> <li>d. What documentation showing this is attached?</li> </ul>	
<p><b>Proposed LALC land dealings from which LALC members will benefit directly</b></p>	
<p>28. Will one or more known LALC members, or a company controlled by them, directly benefit in some other way from the proposed land dealing?</p>	
<p>29. If so:</p> <ul style="list-style-type: none"> <li>a. What are the details?</li> <li>b. Was this fact disclosed to the LALC's members when the decision to deal with the land was made?</li> <li>c. Were the LALC members concerned present at or in sight of the LALC meeting when: <ul style="list-style-type: none"> <li>i. the proposed land dealing was being considered or discussed?</li> </ul> </li> </ul>	

<p>ii. any question relating to the the proposed land dealing was voted on?</p> <p>d. what documentation showing this is attached?</p>	
<p><b>Consistency of the LALC land dealing with the approved LALC community, land and business plan</b></p>	
<p>30. Does the proposed LALC land dealing(s) form part of the LALC's approved community, land and business plan?</p>	
<p>31. If so, please provide details and references to the relevant parts of the plan.</p>	
<p>32. If not, is the proposed land dealing still consistent with the approved community, land and business plan? If so, please explain and provide references to the relevant parts of the plan.</p>	
<p>33. If the proposed land dealing may not be consistent with the approved community, land and business plan:</p> <p>a. please give the reasons why the proposed land dealing should nevertheless be approved, and</p> <p>b. advise whether the LALC proposed to amend the community, land and business plan.</p>	
<p><b>Proposed LALC land dealings that form part of community benefits schemes</b></p>	
<p>34. Does the proposed LALC land dealing form part of a community benefits scheme?</p>	
<p>35. If so, has the scheme been approved by NSWALC?</p>	
<p>36. If the community benefits scheme has not been approved by NSWALC, has an application been made by the LALC to NSWALC for approval of the scheme ?</p>	

**Part D: Further information and documents provided by the applicant LALC**

*Aboriginal Land Rights Act 1983, s.42F(3)*

**If the LALC wishes to provide additional information and documents in support of this application for NSWALC approval of the LALC land dealing, please list those documents below and attach copies to this application**

<b>Additional information</b>
37. The following additional information is provided in support of this application ( <i>list the information</i> ):
<b>Additional documents</b>
38. The following additional documents are provided in support of this application ( <i>list the documents</i> ):

**Part E: Declaration**

I declare that: <ul style="list-style-type: none"><li>• I am authorised to make this application on behalf of the LALC</li><li>• The application is complete and all documents required to be attached are attached</li><li>• All of the information in this application (including in the attached documents) is true and correct to the best of my knowledge and belief</li><li>• All of the documents attached to this application are originals or genuine copies of original documents</li></ul>	
Signature of the LALC officer/staff making this application for the LALC	
Date	

Draft 15.12.09

**Schedule 2 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New form to be completed by LALCs seeking Registration Approval Certificate from NSWALC for a LALC Land dealing that needs to be registered**

DRAFT 15.12.09



**Schedule 2 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New South Wales Aboriginal Land Council**

**Application for Registration Approval Certificate**

Registration approval certificate application number <i>(for office use)</i> .	
--	--

**Part A: Application for a registration approval certificate**

<b>The applicant LALC</b>	
1. Name of LALC submitting application	
2. Name and position of authorised LALC officer/staff making the application for the LALC	
3. Name and position of authorised LALC officer/staff who may be contacted to discuss this application	
4. Contact details for the LALC's contact person	a. Business phone
	b. Mobile phone
	c. Fax
	d. email
	e. Postal address
<b>The land</b>	
5. Street address/location of the land	

6. Other means by which the land is known or identified (e.g. "Dolphin Point Development Stage 2")		
7. Folio reference ( <i>this can be found on the title search of the land</i> )	Lot	Parish
	DP	County
<b>The NSWALC Council approval decision (<i>the dealing approval certificate</i>)</b>		
8. Is a copy of the NSWALC Council dealing approval certificate for the way in which the LALC proposes to deal with the land attached?		
<b>The "registrable instrument"</b>		
9. Is a copy of the document or instrument that the LALC wants to register to deal with the land attached? (eg transfer of land, lease, biobanking agreement, easement, etc)		
<b>Approval conditions</b>		
10. If NSWALC imposed conditions on its approval decision that had to be satisfied before the LALC land dealing document or instrument is registered, please state in relation to each condition: a) how the condition has been satisfied, and b) where applicable, what document is attached to prove this.		
<i>Condition(s) imposed by NSWALC Council when approving the LALC land dealing</i>	<i>Describe the condition has been satisfied</i>	<i>Document attached</i>
a)		
b)		
c)		
<b>Community development levy</b>		
11. Is the community development levy payable in relation to the land dealing, and if yes, has the levy been paid? Proof of this must be attached.		
12. If not, what arrangement has been made to pay the community development levy?		
<b>Assessment fee payable by LALC on the NSWALC approval decision</b>		
13. Did NSWALC charge the LALC an assessment fee on the land dealing		

approval application?		
14. If the answer to 13 is yes, has any assessment fee that has become payable been paid? Proof of this must be attached.		
<b>Attachments Checklist</b>		
15. Please tick the following boxes to ensure that you have attached all the necessary information::	a. A copy of the NSWALC dealing approval certificate	
	b. A copy of the registrable instrument or document that will effect the LALC land dealing	
	c. Documents proving that the conditions of the NSWALC approval, if any, have been satisfied	
	d. Documents proving that any community development levy payable in relation to the land dealing has been paid	
	e. Documents providing that any NSWALC assessment fee that has become payable has been paid	

## Part B: Declaration

I declare that:	
<ul style="list-style-type: none"> <li>• I am authorised to make this application on behalf of the LALC</li> <li>• The application is complete and all documents required to be attached are attached</li> <li>• All of the information in this application (including in the attached documents) is true and correct to the best of my knowledge and belief</li> <li>• All of the documents attached to this application are originals or genuine copies of original documents</li> </ul>	
Signature of the LALC officer/staff making this application for the LALC	

Date	
------	--

Draft 15.12.09

**Schedule 3 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New application form for consent to withdrawal of NSWALC registration prohibition notice over land**

DRAFT 15.12.09



**Schedule 3 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New South Wales Aboriginal Land Council**

**Application for Withdrawal of a Registration Prohibition Notice**

Withdrawal of registration prohibition notice application number ( <i>for office use</i> )	
--	--

**Part A: Application for Withdrawal of a Registration Prohibition Notice**

<b>The applicant</b>	
1. Name of applicant	
2. Name and position of authorised person making this application for the applicant	
3. Name and position of authorised person who may be contacted to discuss this application	
4. Contact details for the contact person	a. Business phone
	b. Mobile phone
	c. Fax
	d. email
	e. Postal address
<b>The land</b>	

5. Street address/location of the land		
6. Other means by which the land is identified (e.g. "Dolphin Point Development Stage 2")		
7. Folio reference	Lot	Parish
	DP	County
<b>The NSWALC Council approval decision (<i>the dealing approval certificate</i>)</b>		
8. Is a copy of the NSWALC Council dealing approval certificate for the way in which the LALC proposes to deal with the land attached?		
<b>The land dealing approval agreement (<i>this is an agreement made as a condition of the NSWALC approval in respect of the land</i>)</b>		
9. Is a copy of the land dealing approval agreement attached?		
<b>The "registration prohibition notice" (<i>this is a document like a caveat that prevents dealings with the land</i>)</b>		
10. Is a copy of the registration prohibition notice attached?		
<b>Reasons for the request for withdrawal of the "registration prohibition notice"</b>		
11. Please explain briefly why NSWALC should withdraw its registration prohibition notice from being registered against the land. Please attach any relevant documents or information.		
12. If the reason for this request is that all the relevant terms and conditions of the land dealing approval agreement have been performed, please explain in relation to each relevant term or condition of the land dealing approval agreement: <ul style="list-style-type: none"> <li>• how the term or condition has been satisfied,</li> <li>• where applicable, what document is attached to prove this.</li> </ul>		
<i>Term or condition</i>	<i>How the relevant term or condition of the land dealing approval agreement has been satisfied</i>	<i>Document attached</i>
a.		

b.		
c.		
d.		
e.		
<b>Attachments Checklist</b>		
13. Please tick the following boxes to check that you have attached all the necessary information:	a. A copy of the dealing approval certificate	
	b. A copy of the land dealing approval agreement	
	c. Copy of registration prohibition notice	
	d. Documents supporting reasons for requesting the withdrawal	
	e. Documents proving that the terms and conditions of the approval agreement have been satisfied	

## Part B: Declaration

I declare that:	
<ul style="list-style-type: none"> <li>• I am authorised to make this application on behalf of the applicant</li> <li>• The application is complete and all documents required to be attached are attached</li> <li>• All of the information in this application (including in the attached documents) is true and correct to the best of my knowledge and belief</li> <li>• All of the documents attached to this application are originals or genuine copies of original documents</li> </ul>	
Signature of the person making this application for the applicant	
Date	

Draft 15.12.09

**Schedule 4 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings**

**New application form for NSWALC consent to register a dealing on land that is subject to a registration prohibition notice**

DRAFT 15.12.09



<p><b>Schedule 4 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings</b></p>
--

**New South Wales Aboriginal Land Council**

**Application for Consent to Register a Dealing  
(for land that is subject to a registration prohibition notice)**

Consent to register application number <i>(for office use)</i>	
--	--

**Part A: Application for Consent to Register a Dealing**

<b>The applicant</b>	
1. Name of applicant	
2. Name and position of authorised person making this application for the applicant	
3. Name and position of authorised person who may be contacted to discuss this application	
4. Contact details for the contact person	a. Business phone
	b. Mobile phone
	c. Fax
	d. email
	e. Postal address
<b>The land</b>	
5. Street address/location of	

the land		
6. Other means by which the land is identified (e.g. "Dolphin Point Development Stage 2")		
7. Folio reference <i>(this can be found on the title search of the land)</i>	Lot	Parish
	DP	County
<b>The NSWALC Council approval decision <i>(the dealing approval certificate)</i></b>		
8. Is a copy of the NSWALC Council dealing approval certificate for the way in which the LALC proposes to deal with the land attached?		
<b>The land dealing approval agreement <i>(this is an agreement made as a condition of the NSWALC approval in respect of the land)</i></b>		
9. Is a copy of the land dealing approval agreement attached?		
<b>The "registration prohibition notice" <i>(this is a document like a caveat that prevents dealings with the land)</i></b>		
10. Is a copy of the registration prohibition notice attached?		
<b>The proposed land dealing that cannot be registered because of the registration prohibition notice</b>		
11. Is a copy of the land dealing which currently cannot be registered because of the existence of the registration prohibition notice against the land attached?		

<b>If the land dealing is said to be permitted under the land dealing approval agreement</b>		
If it is submitted that the land dealing is already permitted under the land dealing approval agreement, please identify the relevant terms or conditions of the agreement that permit the dealing or the relevant terms and conditions that have been satisfied and that permit the registration of the land dealing		
<i>Term or condition of the land dealing approval agreement</i>	<i>How does the term or condition permit the dealing or how has the term or condition been satisfied in order to permit the dealing been satisfied (if applicable)</i>	<i>Document attached</i>
a)		
b)		
c)		
d)		
e)		
<b>If the land dealing is said not to materially affect the performance or enforcement of the approval agreement</b>		
12. If it is submitted that the land dealing does not materially affect the performance or enforcement of the land dealing approval agreement, please provide details and an explanation of why this is said to be the case		
<b>Attachments Checklist</b>		
Please tick the following boxes to check that you have attached all the necessary information:	a. A copy of the dealing approval certificate	
	b. A copy of the land dealing approval agreement	
	c. A copy of the proposed dealing and any relevant documents for the proposed dealing	
	d. Documents proving that the terms and conditions of the approval agreement have been satisfied	

## Part B: Declaration

I declare that: <ul style="list-style-type: none"><li>• I am authorised to make this application on behalf of the applicant</li><li>• The application is complete and all documents required to be attached are attached</li><li>• All of the information in this application (including in the attached documents) is true and correct to the best of my knowledge and belief</li><li>• All of the documents attached to this application are originals or genuine copies of original documents</li></ul>	
Signature of the person making this application for the applicant	
Date	

Draft 15.12.09

## Schedule 5 to Interim NSWALC Policy on the Assessment and Approval of LALC Land Dealings

**New Division 4 of Part 2 *Aboriginal Land Rights Act 1983* and new regulations due to commence on 31 March 2010**

### Division 4 of Part 2 Land dealings by Aboriginal Land Councils

#### 40 Interpretation

(1) In this Division and Division 4A:

**agreement** includes an arrangement.

**deal with land** means:

- (a) sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in, land, or
- (b) grant an easement or covenant over land or release an easement or covenant benefiting land, or
- (c) enter into a biobanking agreement relating to land under the [Threatened Species Conservation Act 1995](#) or a conservation agreement under the NPW Act, or
- (d) enter into a wilderness protection agreement relating to land under the [Wilderness Act 1987](#), or
- (e) enter into a property vegetation plan under the [Native Vegetation Act 2003](#), or
- (f) subdivide or consolidate land so as to affect, or consent to a plan of subdivision or consolidation of land that affects, the interests of an Aboriginal Land Council in that land, or
- (g) make a development application in relation to land, or
- (h) any other action (including executing an instrument) relating to land that is prescribed by the regulations.

**Note.** In this Act, a reference to land includes any estate or interest in land, whether legal or equitable (see section 4 (1)).

**dealing approval certificate**—see section 41.

**development application** means:

- (a) a development application within the meaning of the [Environmental Planning and Assessment Act 1979](#), or
- (b) an application for approval of a project under Part 3A of the [Environmental Planning and Assessment Act 1979](#).

**General Register of Deeds** means the General Register of Deeds maintained under the [Conveyancing Act 1919](#).

**land dealing** means an action in relation to land of a kind referred to in paragraphs (a)–(h) of the definition of **deal with land**.

**land dealing approval agreement** means an agreement entered into under a condition imposed under section 42G (6) (b).

**Register** means the Register maintained under the [Real Property Act 1900](#).

**registrable instrument** means:

- (a) an instrument (other than a caveat or registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or capable of being made registrable under the [Real Property Act 1900](#) or in respect of which a recording is required or permitted (under that or any other Act or Commonwealth Act) to be made in the Register maintained under that Act, or
- (b) a plan that is required or permitted to be registered under Division 3 of Part 23 of the [Conveyancing Act 1919](#) and that is or gives effect to or forms part of a land dealing (within the meaning of this Division), or
- (c) an instrument (other than a registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or in respect of which a recording is required or permitted to be made in the General Register of Deeds.

**registration approval certificate**—see section 41.

**registration prohibition notice**—see section 42O.

(2) For the purposes of this Division, land is **vested** in an Aboriginal Land Council if:

- (a) the Council has a legal interest in the land, or
- (b) the land is the whole or part of land the subject of a claim under section 36 and:
  - (i) the Crown Lands Minister is satisfied that the land is claimable Crown land under section 36, or
  - (ii) the Court has ordered under section 36 (7) that the land be transferred to the Council,

and the land has not been transferred to the Council.

(3) In this Division, an Aboriginal Land Council is taken to **make a development application** for land vested in the Council if the Council consents to such an application by another person.

(4) For the purposes of this Division, land is of **cultural and heritage significance to Aborigines** if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aborigines.

#### 41 Certificates—land vested in Aboriginal Land Councils

(1) A **dealing approval certificate**:

- (a) for a land dealing relating to land vested in the New South Wales Aboriginal Land Council, is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the dealing complies with section 42D, or

- (b) for a land dealing relating to land vested in a Local Aboriginal Land Council, is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the dealing has been approved by the New South Wales Aboriginal Land Council.
- (2) A **registration approval certificate** for a registrable instrument relating to land vested in an Aboriginal Land Council is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that:
- (a) the registration, under the [Real Property Act 1900](#), of the instrument is authorised under this Act, or
  - (b) the registration, under Division 3 of Part 23 of the [Conveyancing Act 1919](#), of the instrument is authorised under this Act, or
  - (c) the making of a recording in respect of the instrument in the Register or the General Register of Deeds is authorised under this Act.
- (3) A dealing approval certificate signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council is conclusive evidence of the matters certified in the certificate in favour of any person.
- (4) Subsection (3) does not operate in favour of any person who had knowledge that any of the matters certified in the certificate was incorrect before the land dealing was completed (whether or not any subsequent registration was required or has taken place).
- (5) A dealing approval certificate must set out any conditions of the relevant approval.

#### **42 Restrictions on dealing with land subject to native title**

- (1) An Aboriginal Land Council must not deal with land vested in it subject to native title rights and interests under section 36 (9) or (9A) unless the land is the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act).
- (2) This section does not apply to or in respect of:
- (a) the lease of land by the New South Wales Aboriginal Land Council or one or more Local Aboriginal Land Councils to the Minister administering the NPW Act under Part 4A of that Act in accordance with a condition imposed under section 36A (2), or
  - (b) a transfer of land to another Aboriginal Land Council, or
  - (c) a lease of land referred to in section 37 (3) (b).

#### **42A Restrictions on dealing with land reserved or dedicated under the NPW Act**

- (1) An Aboriginal Land Council must not deal with land that is vested in it and that is reserved or dedicated under Part 4A of the NPW Act except in accordance with that Act.

(2) This Division and Division 4A (other than sections 40, 42B and this section) do not apply to land referred to in subsection (1).

#### **42B Appropriation or resumption of Aboriginal land**

Despite anything in any Act, land vested in an Aboriginal Land Council must not be appropriated or resumed except by an Act of Parliament.

#### **42C Land dealings by Aboriginal Land Councils generally**

- (1) A land dealing by an Aboriginal Land Council in contravention of section 42D or 42E is void.
- (2) This Division is in addition to any requirements of or under any other Act in relation to a land dealing.
- (3) This section has effect despite any other Act or law.

#### **42D Land dealings by New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council must not deal with land vested in it unless:
  - (a) it has notified the Local Aboriginal Land Council (if any) for the area in which the land is situated in writing of the land affected and the type of proposed dealing, and
  - (b) it has considered any comments made by that Council within 28 days of that notice being given, and
  - (c) in the case of a land dealing with land transferred to the New South Wales Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed dealing, and
  - (d) it has had regard to its community, land and business plan and any of its policies that are applicable, and
  - (e) if it is appropriate to do so in the circumstances, it has considered the cultural and heritage significance of the land to Aborigines in determining whether to deal with the land, and
  - (f) the land dealing complies with a resolution of the New South Wales Aboriginal Land Council approving the dealing.
- (2) The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a dealing approval certificate for a land dealing by the Council if the Chief Executive Officer is satisfied that the Council has complied with this Division in relation to the dealing.
- (3) The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a registration approval certificate for an instrument if the Chief Executive Officer is satisfied that the instrument is a registrable instrument relating to a land dealing by the Council that complies with this Division.

(4) This section does not apply to or in respect of the following land dealings by the New South Wales Aboriginal Land Council:

- (a) a lease for a period of less than 3 years (including any option to renew the lease),
- (b) a land dealing prescribed by the regulations for the purposes of this section.

#### **42E Approval required for land dealings by Local Aboriginal Land Councils**

(1) A Local Aboriginal Land Council must not deal with land vested in it except in accordance with an approval of the New South Wales Aboriginal Land Council under section 42G.

(2) However, the approval of the New South Wales Aboriginal Land Council is not required for the following land dealings by a Local Aboriginal Land Council:

- (a) a lease for a period of less than 3 years (including any option to renew the lease), other than a social housing management lease,
- (b) a land dealing prescribed by the regulations for the purposes of this section.

(3) A Local Aboriginal Land Council must not deal with land vested in it that is land transferred to the Council under section 36 unless both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed dealing.

(4) An agreement to deal with land vested in a Local Aboriginal Land Council that is made by the Council is, if the land dealing is not approved by the New South Wales Aboriginal Land Council and an approval is required, unenforceable against the Local Aboriginal Land Council.

(5) A person is not entitled to damages, or any other remedy, against a Local Aboriginal Land Council in respect of a warranty or other promise relating to an unenforceable agreement referred to in subsection (4).

(6) In this section:

***social housing management lease*** means a lease entered into for the purposes of the provision of or management of a social housing scheme (other than a residential tenancy agreement).

(7) This section has effect despite any other Act or law.

**Note.** Approval of a land dealing by a Local Aboriginal Land Council must be by resolution of the voting members (see section 52G (e)).

#### **42F Applications for approval of LALC land dealings by NSWALC and assessment fees**

(1) A Local Aboriginal Land Council may apply to the New South Wales Aboriginal Land Council for the approval of a land dealing relating to land vested in the Local Aboriginal Land Council.

(2) An application by a Local Aboriginal Land Council to the New South Wales Aboriginal Land Council for approval of a dealing with land is:

- (a) to be made in accordance with the regulations, and
  - (b) to contain the matters prescribed by the regulations, and
  - (c) to be accompanied by any application fee, and any documents, prescribed by the regulations.
- (3) An application may also be accompanied by such additional documents and other information as the Local Aboriginal Land Council thinks fit.
- (4) The New South Wales Aboriginal Land Council may require the Local Aboriginal Land Council to provide additional documents and other information in relation to an application.
- (5) Regulations may be made for or with respect to the following:
- (a) the fees that may be charged by the New South Wales Aboriginal Land Council for assessing and determining applications for approval of land dealings,
  - (b) without limiting paragraph (a), the fees that may be charged by the New South Wales Aboriginal Land Council with respect to the costs of appointing an expert advisory panel to assess an application for approval of a land dealing,
  - (c) waiver of assessment fees,
  - (d) provision of securities in respect of the payment of assessment fees,
  - (e) notice by the New South Wales Aboriginal Land Council to applicants for approval of proposed assessment fees or security arrangements and other matters relating to determination of the application,
  - (f) the circumstances in which the New South Wales Aboriginal Land Council may refuse to assess or determine an application.

#### **42G Approval of LALC land dealings by NSWALC**

##### **(1) Approval requirements**

The New South Wales Aboriginal Land Council must (subject to subsection (2) and any requirements of the regulations), on an application for approval of a land dealing being made by a Local Aboriginal Land Council in accordance with this Act, approve (with or without conditions) the land dealing if the New South Wales Aboriginal Land Council is satisfied that:

- (a) the application is in accordance with this Act, and
- (b) the members of the Local Aboriginal Land Council have passed a resolution in accordance with subsection (5) and that the dealing is in accordance with that resolution.

##### **(2) Refusal if contrary to LALC members' interests**

The New South Wales Aboriginal Land Council may refuse to approve a land dealing if it considers that the dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of that Council.

(3) In considering whether a land dealing is contrary to any such interests, the New South Wales Aboriginal Land Council may consider (and is not limited to considering) the following:

- (a) the community, land and business plan of the Local Aboriginal Land Council and whether, and to what extent, the land dealing is consistent with that plan,
- (b) the terms of the land dealing and whether those terms are fair and equitable to the Local Aboriginal Land Council in all the circumstances,
- (c) whether the Local Aboriginal Land Council, in passing the resolution, had proper regard to the cultural and heritage significance of the land to Aborigines,
- (d) any assessment of the application for approval of the land dealing by an expert advisory panel under this Division,
- (e) whether it is likely that the proceeds of the land dealing will be managed and applied in the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of the Council,
- (f) any applicable policy of the New South Wales Aboriginal Land Council in relation to land dealings by Local Aboriginal Land Councils.

(4) The New South Wales Aboriginal Land Council is not required to consider any additional information or other material provided by a person other than the Local Aboriginal Land Council in considering whether a land dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of that Council.

**(5) Requirements for approval resolutions**

A Local Aboriginal Land Council resolution approving a land dealing must:

- (a) be passed at a meeting of which prior notice was given, in accordance with the regulations, and at which a quorum was present, and
- (b) be passed by not less than 80 per cent of the voting members of the Council present at the meeting, and
- (c) contain the following matters:
  - (i) the identity of the land,
  - (ii) a statement that the impact of the land dealing on the cultural and heritage significance of the land to Aborigines has been considered in determining whether to approve the dealing,
  - (iii) the manner in which the land is to be dealt with,
  - (iv) any conditions to which the approval of the dealing is subject.

**(6) Conditions of approval**

The New South Wales Aboriginal Land Council may only impose the following kinds of conditions on an approval of a land dealing:

- (a) a condition that is to be satisfied before completion of the land dealing,
- (b) a condition that requires the Local Aboriginal Land Council or one or more parties to the land dealing to enter into an agreement with the New

South Wales Aboriginal Land Council as to specified matters to be carried out before or after the dealing is completed.

**Note.** Section 119 enables conditions to be imposed on approvals and also enables approvals to be revoked.

(7) Without limiting any other action that may be taken, failure by a Local Aboriginal Land Council to comply with a provision of a land dealing approval agreement is taken to be a breach by the Council of this Act.

**(8) Approval may relate to more than one dealing**

An approval under this section may relate to one or more land dealings.

#### **42H Reasons for refusal or conditions**

If the New South Wales Aboriginal Land Council refuses an application for approval of a land dealing, or approves a land dealing subject to conditions, it must give the Local Aboriginal Land Council concerned a written statement of the reasons for the decision within 28 days after a request by that Local Aboriginal Land Council for the statement.

#### **42I Assessment of dealings by expert advisory panels**

(1) The New South Wales Aboriginal Land Council may constitute expert advisory panels to assess applications for approval of land dealings by Local Aboriginal Land Councils.

(2) An expert advisory panel is to be constituted in accordance with the regulations.

(3) Regulations may be made for or with respect to the following:

- (a) a register of persons eligible to be appointed to expert advisory panels,
- (b) the addition of persons to, or removal of persons from, the register,
- (c) qualifications for inclusion on the register,
- (d) the appointment and removal of members of panels,
- (e) the remuneration of members of panels,
- (f) the circumstances in which an assessment by a panel is required or may be requested,
- (g) reports by panels,
- (h) regulating the assessment of matters by panels in respect of conflicts of interest and prohibiting persons from assessing matters if there is a conflict of interest or a pecuniary interest in a matter.

#### **42J Amendment and revocation of land dealing approvals**

(1) The New South Wales Aboriginal Land Council must not amend or revoke an approval of a land dealing if the land dealing has been completed or a registrable instrument has been registered in reliance on that approval.

**Note.** This provision limits the power of the New South Wales Aboriginal Land Council to amend or revoke an approval (see section 119 (4)).

- (2) If an approval of a land dealing under this Division is revoked by the New South Wales Aboriginal Land Council, any dealing approval certificate or registration approval certificate relating to the land dealing ceases to have effect.
- (3) A Local Aboriginal Land Council must return any dealing approval certificate or registration approval certificate given to it that is revoked to the New South Wales Aboriginal Land Council within 14 days of notice of the revocation being given.

#### **42K Certificates for dealings by Local Aboriginal Land Councils**

##### **(1) Dealing approval certificate**

If the New South Wales Aboriginal Land Council approves a land dealing by a Local Aboriginal Land Council under this Division, the Chief Executive Officer of the New South Wales Aboriginal Land Council must give a dealing approval certificate for the land dealing to the Local Aboriginal Land Council within 14 days of approval being given.

##### **(2) Registration approval certificates**

The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a registration approval certificate for an instrument relating to a land dealing by a Local Aboriginal Land Council if the Chief Executive Officer is satisfied as to the following:

- (a) that the instrument is a registrable instrument giving effect to or forming part of a land dealing approved by the New South Wales Aboriginal Land Council under this Division,
  - (b) that any conditions of the approval by the New South Wales Aboriginal Land Council of the land dealing to which the instrument relates have been met,
  - (c) that any community development levy payable in respect of that land dealing has been paid.
- (3) The Chief Executive Officer may refuse to give a dealing approval certificate or a registration approval certificate under this section if any assessment fee payable in relation to the application for approval of the land dealing to which the certificate relates has not been paid or is not subject to arrangements for payment that are satisfactory to the New South Wales Aboriginal Land Council.
- (4) For the purposes of any other Act or law, a dealing approval certificate for a land dealing by a Local Aboriginal Land Council land is taken to be a written consent by the New South Wales Aboriginal Land Council to the dealing.

#### **42L Review of approval decisions**

- (1) Despite any other Act or law, the only person who has standing to bring proceedings:
  - (a) under the [Land and Environment Court Act 1979](#), or
  - (b) for judicial review in any other court,

in relation to a decision to approve or not to approve of a land dealing, or an act or omission of the New South Wales Aboriginal Land Council in connection with any such decision, is the Local Aboriginal Land Council concerned.

(2) This section does not confer any standing on a Local Aboriginal Land Council in respect of class 3 proceedings under the [Land and Environment Court Act 1979](#) in connection with any such decision.

#### 42M Registration of dealings and instruments

(1) The Registrar-General must, if an Aboriginal Land Council is the registered proprietor of an estate in fee simple in land, make a recording in the Register to the following effect:

- (a) that the land is subject to this Division,
- (b) that a registrable instrument may not be registered, or a recording in respect of a registrable instrument may not be made, unless the Registrar-General is satisfied that a registration approval certificate has been obtained or is not required.

(2) The Registrar-General must not register a registrable instrument in relation to land referred to in subsection (1) if the registered proprietor of the land is an Aboriginal Land Council, unless the registrable instrument is accompanied by:

- (a) a registration approval certificate, or
- (b) a statement signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the instrument gives effect to or forms part of a land dealing for which a registration approval certificate is not required under this Division.

**Note.** If the registered proprietor of land is an Aboriginal Land Council, an instrument or plan affecting the land that is accompanied by a registration approval certificate or the signed statement referred to above has on registration or recording all the protections afforded under the [Real Property Act 1900](#).

(3) Despite section 42 of the [Real Property Act 1900](#) or any other Act, the registration of a registrable instrument, or the making of a recording, that is prohibited by this section has no effect and does not create or pass or otherwise affect any estate or interest in the land of any registered proprietor of the land, as otherwise recorded under the [Real Property Act 1900](#).

(4) In this section, **register** a registrable instrument means:

- (a) register the instrument in the Register or under the [Conveyancing Act 1919](#), or
- (b) make a recording in the Register in respect of any such instrument, or
- (c) register a plan under Division 3 of Part 23 of the [Conveyancing Act 1919](#).

(5) This section does not affect the operation of any other prohibition or restriction relating to transfers or other dealings with land under this or any other Act.

#### 42N Certain land dealing approval agreements to run with land

- (1) This section applies to a land dealing approval agreement if it imposes obligations as to the use, development or management of, or dealings with, land vested in, or formerly vested in, an Aboriginal Land Council.
- (2) A land dealing approval agreement may be registered under this section if the following persons agree to its registration:
  - (a) the New South Wales Aboriginal Land Council,
  - (b) if the agreement relates to land under the [Real Property Act 1900](#), each person who is the registered proprietor of an estate or interest in the land,
  - (c) if the agreement relates to land not under the [Real Property Act 1900](#), each person who is a party to the agreement.
- (3) On lodgment by an Aboriginal Land Council of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the land dealing approval agreement:
  - (a) by making an entry in the relevant folio of the Register if the agreement relates to land under the [Real Property Act 1900](#), or
  - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the [Real Property Act 1900](#).
- (4) A land dealing approval agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable by and against, the successors in title to the owner who entered into the agreement and those successors in title are taken to have notice of the agreement.
- (5) The Registrar-General may, on the request in writing of the Chief Executive Officer of the New South Wales Aboriginal Land Council, cancel the registration of a land dealing approval agreement.
- (6) A reference in this section to a land dealing approval agreement includes a reference to any agreement amending a land dealing approval agreement.
- (7) In this section:

**successors in title** includes a mortgagee, chargee, covenant chargee or other person in possession of land pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before or after the registration of the land dealing approval agreement.

#### 42O Enforcement of land dealing approval agreements—registration prohibition notices

- (1) This section applies to land under the [Real Property Act 1900](#) if:
  - (a) a land dealing approval agreement has been registered under section 42N, or
  - (b) a current registered proprietor of an estate or interest in the land is a party to a land dealing approval agreement in respect of the land.

- (2) The New South Wales Aboriginal Land Council may lodge with the Registrar-General a notice in writing prohibiting, except with the consent of that Council, the registration or recording of any dealing affecting an estate or interest in land to which this section applies (a **registration prohibition notice**).
- (3) A registration prohibition notice is to be in the form approved by the Registrar-General and must contain the following:
- (a) the name and address of the person who is the registered proprietor of an estate or interest in the land affected by the notice,
  - (b) if the registration notice relates only to part of the land described in a folio of the Register, a description of that part,
  - (c) a statement that the prohibition notice relates to the land (or part of the land) in respect of which a dealing approval agreement has been entered into under this Division.
- (4) On the lodgment of a registration prohibition notice, the Registrar-General must give notice in writing of the lodgment to any registered proprietor of an estate or interest in land affected by the notice, at the address specified in the notice.
- (5) Notice of lodgment is not required to be given to a registered proprietor under subsection (4) if the consent of the registered proprietor to the lodgment is endorsed on the registration prohibition notice.
- (6) The Registrar-General must, if satisfied that the notice complies with any requirements made in respect of it under this Division or the [Real Property Act 1900](#), record in the Register such particulars of the notice as the Registrar-General thinks appropriate.
- (7) A caveat does not prevent the recording of a registration prohibition notice under this section.
- (8) A registration prohibition notice lodged under this section has effect when particulars of the notice are recorded in the Register under this section.
- (9) A registration prohibition notice may be withdrawn by the New South Wales Aboriginal Land Council, by notice in writing in the form approved by the Registrar-General and on payment of the fee (if any) prescribed by the regulations, and on being withdrawn, ceases to be in force.

#### **42P Effect of registration prohibition notices**

- (1) The Registrar-General must not, except with the consent in writing of the New South Wales Aboriginal Land Council notified in writing by the Chief Executive Officer of the Council, record or register in the Register any dealing if it appears to the Registrar-General that the registration or recording of the dealing is prohibited by a registration prohibition notice that has effect under this Division.
- (2) The New South Wales Aboriginal Land Council must not refuse to give consent under this section if:
- (a) the dealing or the registration or recording of the dealing is permitted by the applicable land dealing approval agreement, or

- (b) the dealing or the registration or recording does not materially affect the performance or enforcement of that agreement.
- (3) The regulations may provide that a registration prohibition notice does not prevent the Registrar-General from registering or recording a dealing of a class prescribed by the regulations.
- (4) If in any legal proceedings a question arises as to the validity of a registration prohibition notice, the court is to disregard any failure to comply strictly with the requirements of this Division as to the form of the notice.
- (5) This section:
  - (a) has effect despite the [Real Property Act 1900](#) or any other Act or law, and
  - (b) does not affect the operation of any other prohibition or restriction relating to transfers or other dealings with land.

DRAFT 15.12.09

## **Aboriginal Land Rights Regulation 2002**

### **Part 10 Land dealings**

#### **Division 1 Approval of land dealings**

##### **101 Interpretation**

(1) In this Part:

**land dealing approval application** means an application under section 42F of the Act by a Local Aboriginal Land Council for approval by the New South Wales Aboriginal Land Council of a land dealing.

(2) Words and expressions in this Part have the same meaning as they have in Divisions 4 and 4A of Part 2 of the Act.

##### **102 Form of certificates**

(1) For the purposes of sections 42D (2) and 42K (1) of the Act, the prescribed form of a dealing approval certificate is Form 1 in Schedule 6.

(2) For the purposes of sections 42D (3) and 42K (2) of the Act, the prescribed form of a registration approval certificate is Form 2 in Schedule 6.

##### **103 Notice of meetings of LALCs**

(1) For the purposes of section 42G (5) (a) of the Act, notice of a meeting to approve a land dealing must be given not less than 7 clear days before the meeting.

(2) The notice must:

- (a) clearly identify the land subject to the dealing, and
- (b) state the manner in which the land is to be dealt with, and
- (c) state that at the meeting it is proposed to decide whether or not to approve of the land dealing.

##### **104 Applications for approval of land dealings**

(1) A land dealing approval application is to be made in the form approved by the New South Wales Aboriginal Land Council.

(2) An application must:

- (a) identify the land affected by the proposed land dealing, and
- (b) specify the manner in which the land is to be dealt with, and
- (c) set out any terms or conditions of the proposed dealing, and
- (d) be accompanied by a copy of the resolution of the Local Aboriginal Land Council approving the dealing, and
- (e) be accompanied by information and other material establishing that the Local Aboriginal Land Council has complied with the requirements of section 42G (5) of the Act, and

(f) be accompanied by a valuation of the land prepared by a registered valuer within the preceding 12 months, and

(g) be accompanied by the application fee.

#### 105 Approval application fees

(1) For the purposes of section 42F (2) (c) of the Act, the fee for making an application to the New South Wales Aboriginal Land Council for approval of a land dealing is \$250.

(2) No application fee is payable if the land dealing consists of a development application.

#### 106 Application assessment fees

(1) A Local Aboriginal Land Council must pay to the New South Wales Aboriginal Land Council the assessment fee (if any) determined by the New South Wales Aboriginal Land Council for assessment of a land dealing approval application.

(2) The assessment fee is to be an amount that reflects the reasonable costs incurred by the New South Wales Aboriginal Land Council in assessing the land dealing approval application concerned, including (but not limited to), the costs of any expert advisory panel constituted for the purposes of assessing the application for approval.

(3) The assessment fee must be paid:

(a) on or before the date, or on or after the occurrence of an event, as required by the New South Wales Aboriginal Land Council, or

(b) in accordance with arrangements agreed between the Local Aboriginal Land Council and the New South Wales Aboriginal Land Council.

(4) The New South Wales Aboriginal Land Council may, after an application is made, require a Local Aboriginal Land Council to give security (whether by way of deposit of money or otherwise) for the payment of the assessment fee for an approval.

**Note.** A security in the form of a mortgage is a land dealing for which compliance with the Act will be required.

(5) The New South Wales Aboriginal Land Council may waive the payment by a Local Aboriginal Land Council of the whole or any part of an assessment fee.

#### 107 Application procedures

(1) The New South Wales Aboriginal Land Council must, as soon as practicable after receiving a land dealing approval application, notify the Local Aboriginal Land Council, in writing, of the following:

(a) the manner in which it intends to assess the application and whether or not the application, or any part of it, is to be referred to an expert advisory panel,

(b) the assessment fee for the application, or the manner in which the assessment fee is to be determined and an estimate of the amount of the fee,

- (c) the time within which, or the event on the occurrence of which, the assessment fee is to be paid and any security for payment required to be provided,
  - (d) the estimated time for determining the application,
  - (e) that the New South Wales Aboriginal Land Council is not required to determine the application unless the Local Aboriginal Land Council agrees to the proposed manner of determination, fees and any security.
- (2) The New South Wales Aboriginal Land Council is not required to assess a land dealing approval application, if notice has been given in accordance with this clause in relation to the application, unless:
- (a) the application complies with section 42F (2) of the Act, and
  - (b) the Local Aboriginal Land Council notifies the New South Wales Aboriginal Land Council that it agrees to the proposed manner of determination, fees and any security, and
  - (c) any security required by the notice under subclause (1) has been provided, and
  - (d) any assessment fee is paid in accordance with that notice or it is satisfied that the fee will be paid in accordance with that notice.

#### **108 Register of members for expert advisory panels**

- (1) The New South Wales Aboriginal Land Council is to establish a register of persons who may be appointed to expert advisory panels.
- (2) A person may be listed on the register if the person has expertise in one or more of land valuation, property development, planning, business, finance, corporate governance or aboriginal heritage or culture or any other expertise that the New South Wales Aboriginal Land Council considers relevant.
- (3) The register is to be in the form determined by the New South Wales Aboriginal Land Council.
- (4) The register is to contain the following particulars:
  - (a) the name and contact address of each person on the register,
  - (b) the area of expertise of each such person,
  - (c) any other particulars determined by the New South Wales Aboriginal Land Council.
- (5) The New South Wales Aboriginal Land Council may at any time add the name of a person to or remove the name of a person from the register.
- (6) The New South Wales Aboriginal Land Council must, not less than once every 12 months, forward a copy of the register to the Minister.
- (7) The New South Wales Aboriginal Land Council must, if the name of a person is added to or removed from the register, forward a copy of the revised register to the Minister.
- (8) The New South Wales Aboriginal Land Council must ensure that the register is made publicly available.

#### **109 Expert advisory panels**

- (1) The New South Wales Aboriginal Land Council may constitute an expert advisory panel to assess a land dealing approval application, or any part or aspect of an application, if:
  - (a) it is of the opinion that it is appropriate to do so and clause 107 has been complied with, or
  - (b) at the request of the Local Aboriginal Land Council seeking approval of the land dealing concerned.
- (2) A panel may consider one or more land dealing approval applications.
- (3) A panel is to determine the procedure for the calling of any meetings held by it and for the conduct of business at those meetings.
- (4) A panel is to consist of one or more members selected from the persons listed on the register established under this Division, as determined by the New South Wales Aboriginal Land Council.
- (5) A member of an expert advisory panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the New South Wales Aboriginal Land Council may from time to time determine in respect of the member.
- (6) The New South Wales Aboriginal Land Council may at any time and for any or no reason remove a member of an expert advisory panel from office.

#### **110 Assessments and reports by expert advisory panels**

- (1) For the purposes of an assessment, an expert advisory panel must review any material provided to the New South Wales Aboriginal Land Council by the Local Aboriginal Land Council relating to the relevant land dealing approval application and any other material provided to the panel by the New South Wales Aboriginal Land Council.
- (2) A panel may, at the request of the New South Wales Aboriginal Land Council, consider whether the proposed land dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council concerned or other Aboriginal persons within the area of the Council.
- (3) An expert advisory panel may, if requested to do so by the New South Wales Aboriginal Land Council, include in a report to the Council a recommendation as to whether the proposed land dealing approval application should be approved and a recommendation as to conditions that may be imposed on any approval.
- (4) A panel must submit a report to the New South Wales Aboriginal Land Council within the time required by the Council.

#### **111 Pecuniary interests in land dealings**

- (1) A member of an expert advisory panel who has a pecuniary interest in a matter being assessed by the panel must disclose the nature of the interest to the New South Wales Aboriginal Land Council as soon as practicable.
- (2) A person who has, or who discloses, a pecuniary interest in a matter is not eligible to be appointed to, or to remain as a member of, an expert advisory panel assessing the matter.
- (3) Words and expressions used in this clause have the same meaning as they have in Part 10 of the Act.

**112 Effect of other Acts on appointment to panel**

(1) Chapter 2 of the [Public Sector Employment and Management Act 2002](#) does not apply to or in respect of the appointment of a member of an expert advisory panel.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of an expert advisory panel or from accepting and retaining any remuneration payable to the person under this Regulation as such a member.

DRAFT 15.12.2019