



POLICY ON THE APPROVAL OF LALC COMMUNITY BENEFITS SCHEMES (RESIDENTIAL ACCOMMODATION)

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New South Wales Aboriginal Land Council

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

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Introduction:

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

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

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

1.2 When does this policy commence?

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

1.3 What is in this policy?

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

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

2 Interpretation

2.1 Definitions

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

AHA: means the *Aboriginal Housing Act 1998*

AHO: means the Aboriginal Housing Office

ALRA: means the *Aboriginal Land Rights Act 1983*

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

LALC: means a Local Aboriginal Land Council

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

NSWALC: means the New South Wales Aboriginal Land Council

2.2 Interpreting this policy

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

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

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

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

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

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

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

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

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

3.3 When must NSWALC's approval be obtained?

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

3.4 When can NSWALC approve a social housing scheme?

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1 **How can NSWALC's approval be sought?**

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

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

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

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

4.2.2 LALCs must seek approval by 31 October 2015

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

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

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

4.4 How long does an approval last?

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

4.4.1 Limiting the approval period

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

4.4.2 Revocation of schemes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6 Will the scheme be administered in a transparent way?

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

5.7 Statutory requirement E: The proposed scheme is not likely to prevent the Local Aboriginal Land Council from being able to meet its debts as and when they fall due?

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

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

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

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

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

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

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

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

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

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

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

Cessation of funding

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

Registrar's compliance direction

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

Consent to administration

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

- (e) Liaison with Registrar and Minister regarding dissolution

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

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

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

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

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

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



Community Benefits Scheme (Residential Accommodation)

Guide for Local Aboriginal Land Councils

June 2015

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Overview of the Policy

Amendments to the ALRA placed a statutory obligation upon the NSW Aboriginal Land Council (NSWALC) to consider applications by LALCs that wish to operate a community benefit scheme for the provision or acquisition of residential accommodation for Aboriginal persons, or for constructing, upgrading or extending any such accommodation.

To assist with this task, NSWALC has developed a policy document pursuant to s.114 of the ALRA (the "Policy"), entitled:

New South Wales Aboriginal Land Council Policy on the Approval of LALC Community Benefits Scheme (Residential Accommodation)

These guidelines have been developed to assist with the implementation of that Policy, and the guidelines and the Policy should be read together.

The policy is consistent with the ALRA and shows that if approval is to be given then NSWALC must be satisfied that a LALC complies with the statutory requirements prescribed by the ALRA for a scheme for the provision of residential accommodation, whether existing or new.

NSWALC's approval provides permission or licence for a LALC to continue to operate its community benefits scheme for the provision of residential accommodation beyond the 31st of December 2015.

NSWALC's approval does not provide access to funding or other benefits that might support the continued operation of a LALC's CBS (Residential Accommodation).

NSWALC approval is not required for a community benefits scheme (residential accommodation) if a LALC is:

- a) A registered Aboriginal housing organisation (within the meaning of the Aboriginal Housing Act 1998), or
- b) A registered community housing provider (within the meaning of the Community Housing Providers National Law (NSW)).

A LALC is able to obtain registration with the AHO by either achieving PARS accreditation by head leasing their housing stock to the AHO or through their NSWALC approved SHAPE scheme (an application would need to be made to the AHO and may require the provision of additional information to achieve registration). The Policy also removes the need for a LALC that has previously obtained NSWALC approval under SHAPE to seek any further approval.

Both the ALRA and the Policy clearly indicate that NSWALC must not approve a LALC's housing scheme unless it is satisfied that the scheme meets the statutory requirements of the ALRA. The LALC must demonstrate to NSWALC's satisfaction that the proposed community benefits scheme for the provision of residential accommodation:

- (a) complies with the ALRA and regulations;
- (b) is consistent with any applicable policy
- (c) is consistent with the LALC's CLBP
- (d) is fair and equitable and will be administered in a way that is responsible and transparent ;
- (e) Is not likely to prevent the LALC from being able to meet its debts as and when they fall due
- (f) the need for the proposed benefit is not otherwise being adequately met.

Approval for a CBS (Residential Accommodation must be obtained before 1 January 2016. In order to ensure that it is able to properly consider applications before the deadline for approval, NSWALC requires that all applications for approval be submitted on or before the 31st of October 2015.

A LALC may apply to NSWALC for the approval their CBS (Residential Accommodation) at any time after the Policy has been approved by the Minister and gazetted. As stated, all applications for approval to operate such a scheme must be submitted to NSWALC by no later than the 31st of October 2015. Applications will be assessed by NSWALC staff and a recommendation will be made to the elected Council, or its delegate, to either approve or not approve the application.

It will be the LALC's responsibility to provide sufficient information for NSWALC to assess the application.

If an application does not contain all of the information required to enable NSWALC to make a proper assessment, NSWALC will advise the LALC of this, and request the missing information within a specified timeframe. If no further information is provided, NSWALC will proceed to assess the application on the basis of the information provided, which may result in the LALC's application not being approved by NSWALC.

The ALRA provides that NSWALC has the power to place conditions upon any approval it grants.

Conditions could include directions to achieve certain things during a specified period of time for example:

Where a LALC has indicated that they will increase rents over a 12 month period to ensure that the income of the scheme is sufficient to meet all costs of the scheme. NSWALC may approve the scheme on the condition that the LALC demonstrate that they have increased rents within the specified timeframe ie 12 months from approval.

Once NSWALC approves a CBS (Residential Accommodation) it will monitor the ongoing operation of that scheme to ensure that the ALRA's statutory requirements and any conditions imposed on the approval are being met. NSWALC has the power to revoke an approval, including where conditions are not met.

NSWALC recognises that some LALCs will not meet all of the requirements for the approval of their CBS (Residential Accommodation). Previous assessments of LALC housing show that some LALCs are unlikely to be able to satisfy some of the statutory requirements of the ALRA either as an independent or assisted operator. It is likely therefore that some LALCs will not have their community benefits scheme approved.

LALCs in this circumstance will not be able to operate the community benefits scheme (residential accommodation) beyond the 31st of December 2015. In such circumstances, NSWALC will work with the LALC to identify alternative options available to the LALC.

Definitions

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

- (3) In addition, the following words and expressions used in this policy have the following meanings:

AHA:	means the Aboriginal Housing Act 1998
AHO:	means the Aboriginal Housing Office
ALRA:	means the Aboriginal Land Rights Act 1983
ALR Regulation:	means the Aboriginal Land Rights Regulation 2012
CBS (Residential Accommodation) Assessment Instrument	means the tool NSWALC will use to assess schemes
LALC:	means a Local Aboriginal Land Council
Material change:	means a change that will affect the statutory basis on which the scheme was approved or its viability (see clause 4.5 of policy for further information).
NSWALC:	means the New South Wales Aboriginal Land Council
Statutory Requirements	means requirements for the approval of LALC CBS (Residential Accommodation) as set out in the ALRA s52a(2)

Purpose of these Guidelines

NSWALC has prepared these Guidelines to assist LALCs in making an application for approval to operate their existing social housing schemes beyond December 2015.

These Guidelines provide advice on the processes that will be adopted in 2015 for making an application. The Guidelines also detail the basis on which an application will be assessed.

A LALC seeking NSWALC's approval must provide a written application and supply information on its ability to meet the statutory requirements of the ALRA. Each statutory requirement has corresponding questions that will be asked by NSWALC Zone Officers when they assess an application.

To assist this process all statutory requirements and their corresponding questions will be consolidated into the NSWALC CBS (Residential Accommodation) Assessment Instrument. This instrument will reflect all the information that will be required in order to assess an application.

Using the Guidelines

The Guidelines will step applicants through the following:

1. Types of Schemes
 - 1.1 Independently Operated Scheme
 - 1.2 Assisted Operator Scheme
2. Application Stage
3. Assessment of applications
4. Approval (with or without conditions) or Non Approval
5. Statutory Requirements

1. Types of CBS (Residential Accommodation)

There is scope within the ALRA for a LALC to provide a community benefit scheme in a number of ways. To assist in the assessment of LALC CBS (Residential Accommodation), NSWALC believes it is useful to establish several broad descriptions to cover the most obvious ways that a LALC can operate their scheme.

- 1.1 An **Independently Operated Scheme** is a where a LALC operates all facets of its community benefits scheme (residential accommodation).
- 1.2 An **Assisted Operator Scheme** is where a LALC uses the services of another body or agency under a management agreement or another form of contract to assist in the operation of the scheme.

2. Application Stage

LALC's must apply to NSWALC for approval no later than the 31st of October 2015. This is to ensure that NSWALC will be able to assess all LALC applications before the last date for approval under the ALRA (31 December 2015).

The application form will be provided directly by the NSWALC Zone Offices.

The completed application form and supporting documentation will need to be returned to the NSWALC Zone Office that services your region.

3. Assessment of Application

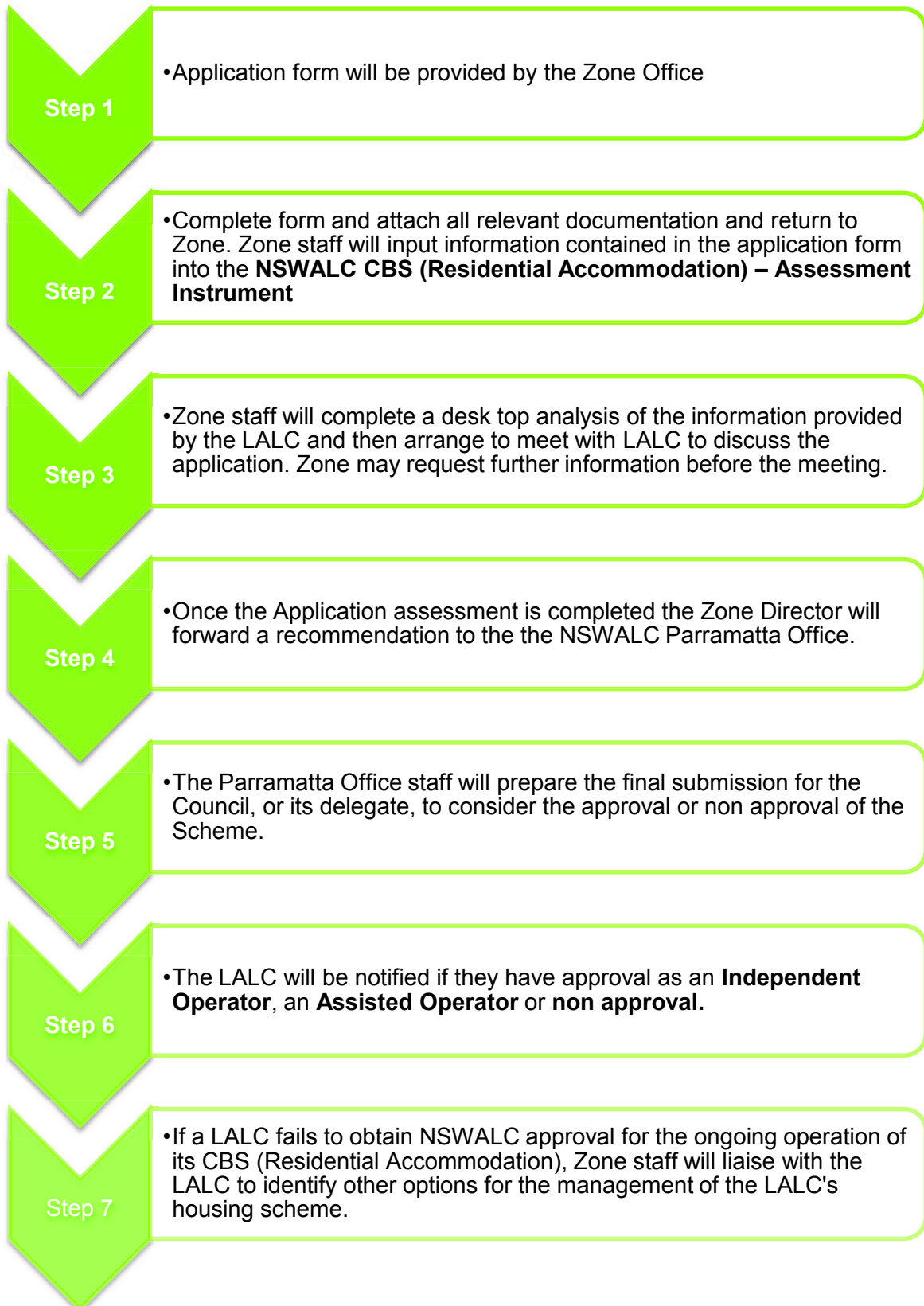
Once the final application has been received at the NSWALC Zone Office staff will then undertake an assessment using the CBS (Residential Accommodation) Assessment Instrument and will provide formal feedback to your LALC in relation to instances where the LALC's application does not satisfy the statutory requirements.

It may be necessary for Zone staff to obtain further documents and material from a LALC, in addition to what has already been submitted in the application. A timeframe will be included for the provision of this information.

Zone staff will then complete the final assessment of your LALC's housing scheme against the statutory requirements set out in this guide.

The outcomes of this assessment will lead to the development of a recommendation to the NSWALC Council for either the approval (with or without conditions) or non approval.

Application Assessment Process



4. Approval subject to conditions

NSWALC has the power to place conditions upon any approval. This could include directions to achieve certain things during a specified period of time.

The Policy gives the following examples of conditions that NSWALC may consider;

Where a LALC has indicated that they will increase rents over a 12 month period to ensure that the income of the scheme is sufficient to meet all costs of the scheme. NSWALC may approve the scheme on the condition that the LALC demonstrate that they have increased rents within the specified timeframe ie 12 months from approval.

Another example of a condition that NSWALC may impose is a condition to ensure that the LALC continues to fund the scheme in the manner it proposes in its application for approval. This could mean that if a LALC identifies an income stream (such as rental income from commercial lands) that it plans to use in the scheme to make it financially viable, NSWALC may require, as a condition of its approval, that this income stream continue to be applied to the scheme during the term of the approval.

NSWALC is able to provide conditional approval to LALC's to enable them to ensure that they have the required policies in place to ensure fair, equitable, transparent and responsible management practices in place. Generally the time frames for the completion of such actions will be 12 months.

In relation to demonstrating that the operation of the scheme will not prevent the LALC from being able to meet its debts as and when they fall due, NSWALC will consider placing conditions on any such approval in line with the budget submitted by the LALC. An example of this would be when a LALC, via its budget, proposes that they will generate sufficient income from the scheme to cover all management costs, including providing for repairs and maintenance on an annual basis at a level that is equivalent to 2% of the value of the assets within the scheme, at a particular time within the 3 year budget submitted with the LALC's CBS (Residential Accommodation) application. The timeframe for any such conditional approval will be tailored to the LALC budget submitted.

5. Statutory Requirements

The following section concerns the statutory requirements of the ALRA that determine whether or not NSWALC will be able to approve a LALC's community benefits scheme for the provision of residential accommodation.

The Policy discusses the statutory requirements and how NSWALC will apply them. This section of the Guidelines sets out the specific questions that will be asked when NSWALC makes its decision whether to approve a CBS (Residential Accommodation).

It also outlines the information and/or documentation that NSWALC will need to consider to be satisfied of compliance with the statutory requirements.

The majority of the information sought under each statutory requirement will be considered as minimum standards for NSWALC and that failure to provide relevant information and /or documentation may result in the scheme not being approved.

There are also several questions where the relevant information or documentation is not considered a minimum standard but may be considered to be conditional and will result in NSWALC placing a condition on the approval of the scheme.

Statutory Requirement A

Does the CBS (Residential Accommodation) comply with the Act and Regulations?

The scheme itself must comply with section 52A.. It must also comply generally with the ALRA and the ALR Regulations. Compliance with the ALRA and ALR Regulations is a broad requirement and the policy provides the following example of where a scheme may not be in compliance:

The operation of the CBS (Residential Accommodation) is supported financially by the proceeds of a LALC investment and that investment itself was not authorised.

To satisfy itself that this statutory criterion is met, NSWALC will ask the following questions.

Questions	Information Required
1. Is the LALC an independent operator who does not use the services of an external agent or provider to help administer the scheme?	<ul style="list-style-type: none">- This question establishes the way in which a LALC residential accommodation scheme is operated i.e. either independently or with external assistance? <p>Conditional</p>
2. a) If the LALC uses the services of an external agent or provider to assist in the management of their community benefits scheme, does the arrangement with that agent or provider comply with s72 of the ALRA? (Delegation by Boards)	<ul style="list-style-type: none">- NSWALC will need to sight the agreement between the LALC and the external agent or provider. <p>Mandatory</p>
b) If the LALC has engaged, or proposes to engage, an external agent or body to assist in the operation of the community benefits scheme for residential accommodation, does the agent or body hold the appropriate license or registration or accreditation?	<ul style="list-style-type: none">- NSWALC requires that any external agent is licensed to carry out housing management activities or is a registered community housing provider under the NSW Regulatory Code or is a registered Aboriginal housing organisation with appropriate registration with the Aboriginal Housing Office. <p>Mandatory</p>

Questions	Information Required
3. Are all decisions to offer residential tenancies approved at a duly convened Board meeting?	<ul style="list-style-type: none"> - NSWALC will need to sight examples of notices for and minutes of one or more LALC Board meetings where decisions to lease the residential properties in accordance with the LALC's housing scheme were made. <p>Mandatory unless delegated.</p>
4. a) If the CBS (RA) includes or relies upon income from the proceeds of a land dealing, is the land dealing authorised under the ALRA and ALR Regulation?	<ul style="list-style-type: none"> - a) NSWALC will need to sight: <ol style="list-style-type: none"> 1. the 3 year budget referred to below; and 2. any dealing approval certificate or registration for the land dealing. <p>Conditional</p>
b) If there is a relevant land dealing which is not yet approved by NSWALC, the proposed land deal must be approved in accordance with the requirement of the ALRA and the LALC CLBP. Evidence of NSWALC approval will be required.	<p>The LALC will need to provide evidence in relation to a proposed land dealing that:</p> <ol style="list-style-type: none"> 1. Identifies the land concerned; and 2. Identifies the type of land dealing. 3. Any dealing approval certificate or registration for the land dealing. <p>Conditional</p>
5. If the CBS (Residential Accommodation) includes or relies upon income from a current investment, is the investment authorised under the ALRA and ALR Regulation?	<ul style="list-style-type: none"> - NSWALC will need to sight: <ol style="list-style-type: none"> a. the 3year budget referred to below; and b. documentation relating to the investment <p>Conditional</p>
6. The scheme does not include or rely upon income from a future proposed investment?	<ul style="list-style-type: none"> - NSWALC will need to sight: <ol style="list-style-type: none"> c. the 3 year budget referred to below; and d. documentation relating to the investment <p>Conditional</p>

Statutory Requirement B

Is the CBS (Residential Accommodation) consistent with any applicable policy of the NSWALC?

NSWALC must be satisfied that the scheme is consistent with any applicable NSWALC policies.

This will include the CBS (Residential Accommodation) Policy, but may include other policies.

Questions	Information Required
1. Is the CBS (RA) consistent with all other applicable NSWALC policies about LALC functions?	<ul style="list-style-type: none">- NSWALC will need to consider if there are other applicable NSWALC policies,- If there are not, the answer to this question will be “yes”,- If there is another applicable policy, NSWALC will need to consider the requirements of the applicable policy.- As an example the following NSWALC policies may be applicable<ul style="list-style-type: none">– Land Dealing and Debtor Management. <p>Mandatory</p>

Statutory Requirement C

Is the CBS (Residential Accommodation) consistent with the LALC's community land and business plan?

NSWALC must be satisfied that the community benefits scheme for the provision of residential accommodation is consistent with the LALC's approved community, land and business plan.

The applicant will be asked to provide the relevant sections of its community, land and business plan relating to the provision of residential accommodation, and may need to explain how the proposed scheme is consistent with this plan.

NSWALC will ask the following questions to assess whether this requirement is being met.

Question	Information Required
1. Does the LALC have a current approved CLBP?	<ul style="list-style-type: none"> - NSWALC will need to sight or otherwise confirm the existence of the LALCs approved CLBP <p>Conditional</p> <ul style="list-style-type: none"> - If a LALC does not have a current approved CLBP, under transitional provisions, a LALC must demonstrate a member approved CLBP by the 1st of July 2016.
2. Does the CLBP identify residential accommodation as one of the needs of the LALC's community, and meeting that need as one of the LALC's objectives or strategies OR Community benefits scheme for the provision of residential accommodation as one of the LALC's operations?	<ul style="list-style-type: none"> - NSWALC will need to sight the relevant part or parts of LALC CLBP. <p>Conditional</p> <p>If a LALC has a conditional approval due to an expired CLBP (SRC1) then a condition of any approval will be issued to ensure that the CLBP (when developed) clearly references the operation of a CBS (RA).</p>
3. If the CLBP identifies a residential scheme as one of the LALC's operations, there is <u>no</u> material difference between the scheme described in the CLBP and that described in the application?	<ul style="list-style-type: none"> - NSWALC will need to sight the relevant part or parts of LALC CLBP and compare with the scheme as described in the application. <p>Conditional</p> <p>As per SRC1 and 2, if the LALC has a conditional approval due to an expired CLBP then a condition of any approval will issued to ensure that the CBS(RA) is not materially different to that documented in the LALC CLBP.</p>

Statutory Requirement D

Is the Scheme Fair and Equitable?

NSWALC must be satisfied that the residential accommodation scheme is fair and equitable. In making this assessment NSWALC will have particular regard to whether the LALC can show:

- the scheme is operated according to set policies or procedures that address and define issues such as eligibility for housing, applying for housing, allocating housing and rent setting; and
- those policies or procedures are fair and equitable.

The following questions will be asked and recorded in the NSWALC CBS (Residential Accommodation) Assessment Tool.

Questions	Information Required
<p>1. Does the CBS (Residential Accommodation) have formal policies and/or procedures about each of:</p> <p>a. eligibility for housing</p> <ul style="list-style-type: none">- How applicants can apply;- How eligibility will be assessed;- How applicants will be notified of their eligibility. <p>b. allocation of available housing</p> <ul style="list-style-type: none">- How houses will be allocated- Who is responsible for making these decisions <p>c. setting rents and terms</p> <ul style="list-style-type: none">- How rents will be set;- Who is responsible for making these decisions- What the process is for implementing rent increases <p>d. terminating tenancies</p> <ul style="list-style-type: none">- When tenancies will be terminated- What the process will be- Who is responsible for making these decisions <p>e. dealing with applicant and tenant complaints</p> <ul style="list-style-type: none">- How people can lodge complaints- How they will be dealt with and who will be dealing with them- How people will be notified of any outcome <p>f. dealing with applicant and tenant appeals</p>	<p>- The LALC will need to provide and NSWALC will need to sight the policies and procedures.</p> <p>Conditional</p>

Questions	Information Required
<ul style="list-style-type: none"> - How people can lodge appeals. - How they will be dealt with and who will be dealing with them - How people will be notified of any outcome 	
<p>2. Are the policies and/or procedures fair and equitable – i.e. they:</p> <ul style="list-style-type: none"> a. are based on clear and objective criteria; b. are not arbitrary; c. are not unlawfully discriminatory (discriminatory on the grounds of sex, pregnancy, marital status, disability, homosexuality, age or transgender); d. do not unfairly favour any section of the LALC membership or community? 	<ul style="list-style-type: none"> - The LALC will need to provide and NSWALC will need to assess the LALC’s policies and/or procedures. <p>Conditional</p>
<p>3. Are the policies and/or procedures being implemented and adhered to?</p>	<ul style="list-style-type: none"> - The LALC will need to demonstrate, and NSWALC will need to sight evidence, that the policies and procedures are being implemented and adhered to? <p>Conditional</p>
<p>4. Does the LALC comply with, and/or ensure that any external agent or manager complies with, the obligations of landlords under the <i>Residential Tenancies Act 2010</i> in relation to each of the following pre-tenancy requirements:</p> <ul style="list-style-type: none"> a. using and giving each new tenant a copy of a written residential tenancy agreement (s.14 and s.28); b. providing the “New Tenant Checklist” to new tenants (s.26); and c. providing 2 copies of a completed condition report to new tenants (s.29)? 	<ul style="list-style-type: none"> - The LALC will need to provide, and NSWALC will need to sight, evidence that the LALC complies with these basic pre-tenancy requirements and/or ensures that any external agent does so. - If not all current tenants are on written residential tenancy agreements, the LALC will need to provide and NSWALC will need to sight evidence this practice has been introduced. <p>Conditional</p>
<p>5. Does the LALC have a policy on dealing with nuisance and annoyance and has this policy been enforced?</p>	<p>LALC must demonstrate that they have a policy and the policy is enforced.</p> <p>Conditional</p>

Statutory Requirement D Continued

Will the Scheme be managed in a responsible way?

NSWALC will assess the written policies and procedures for administering the scheme and consider current and past performance in operating the scheme.

NSWALC is of the view that the management of a community benefits scheme for the provision of residential accommodation in a responsible way will require evidence that a LALC provides certain information to its tenants, takes a range of issues into consideration when setting rent levels and managing its housing assets. The LALC will need to demonstrate that it takes a responsible approach to the paying of rates and charges, insurances and selection of external agents and providers involved in the delivery of the Community Benefits Scheme (Residential Accommodation).

NSWALC will also take into consideration the manner in which a LALC has performed its functions in the past, including the management of its housing. NSWALC will take into consideration prior rent collection levels achieved and payment of rates and charges. NSWALC will also consider how a LALC has performed its other functions more generally.

The following questions will be asked and recorded in the NSWALC CBS (Residential Accommodation) Assessment Tool.

Questions	Information Required
Collecting rents and managing arrears	
6. In the 12 month period immediately prior to the application, was the current rental collection rate 85% or above that of rent receivables.	<ul style="list-style-type: none">- NSWALC will need to compare the actual rent collected – as evidenced in the LALC’s records - with that charged and collectable for the 12 month period preceding the application. <p>Conditional</p>
7. Does the LALC housing management records enable tenants’ arrears to be individually identified and reconciled.	<ul style="list-style-type: none">- NSWALC should sight any written policy or procedures about arrears management- NSWALC will need to sight information – such as rental ledgers – to confirm that the LALC, or its agent, meet this standard. <p>Conditional</p>

Questions	Information Required
8. Are arrears reviewed on at least a fortnightly basis?	<ul style="list-style-type: none"> - NSWALC should sight any written policy or procedures about arrears management - NSWALC will need to sight evidence that the LALC, or its agent, review the arrears fortnightly - NSWALC will need to review the past 2 months activity <p style="text-align: center;">Conditional</p>
9. Does the LALC ensure that rental arrears are not waived if a new lease is signed or there is a change in management of the tenancies?	<ul style="list-style-type: none"> - NSWALC should sight any written policy or procedures about arrears management - NSWALC will need to sight any available examples <p style="text-align: center;">Conditional</p>
10. Does the LALC take appropriate and timely action to recover rental arrears (including seeking NCAT orders)?	<ul style="list-style-type: none"> - NSWALC should sight any written policy or procedures about arrears management - NSWALC will need to sight evidence of the action taken by the LALC - NSWALC will need to consider the appropriateness and timeliness of the action taken <p style="text-align: center;">Conditional</p>

Other payments by tenants

11. Are individual tenants required to meet the costs of: <ul style="list-style-type: none"> a. utility charges; and b. water usage charges in accordance with ss.38 and 39 of the <i>Residential Tenancies Act 2010</i>	<ul style="list-style-type: none"> - NSWALC will check LALC records for payment of utility and water charges attributable to the tenants <p style="text-align: center;">Informative</p>
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Asset protection and maintenance

12. Does the LALC inspect all tenanted LALC houses at least every 12 months?	<ul style="list-style-type: none"> - NSWALC will need to sight any inspection schedule and reports and the LALC will need to otherwise demonstrate that it conducts annual inspections <p style="text-align: center;">Informative</p>
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Questions	Information Required
13. Does the LALC have a process for recording requests for R&M, including when works have been undertaken and are urgent repairs undertaken in accordance with the Residential Tenancies Act?	<ul style="list-style-type: none"> - NSWALC will need to sight information <p>Conditional</p>
14. Does the LALC deal appropriately with damage to property caused by tenants?	<ul style="list-style-type: none"> - NSWALC will need to sight any written policy or procedures - NSWALC will need to sight examples of how damage by tenants has been dealt with e.g. invoice to tenant. <p>Conditional</p>
Payment of rates and charges	
15. Did the LALC pay its rates and charges on the CBS (Residential Accommodation) properties in the previous rating period?	<ul style="list-style-type: none"> - NSWALC will need to sight LALC records - NSWALC may check this against any records NSWALC has of unpaid rates and charges. <p>Mandatory</p>
16. If NSWALC paid the LALC's rates and charges in respect of the residential properties that are included in the benefits scheme, has the LALC complied with any action required by NSWALC under its policy in relation to the management of LALC debts?	<ul style="list-style-type: none"> - NSWALC will check its records of unpaid rates and charges and action required by NSWALC under its policy <p>Mandatory</p>
17. Have all rates and charges for the properties that are a part of the benefits scheme, that have become payable in the current rating period been paid? Alternatively, does the LALC have, and is it complying with, a payment agreement with the rating authority?	<ul style="list-style-type: none"> - NSWALC will need to sight the most recent rates and charges notices and evidence of either: <ul style="list-style-type: none"> a. payment b. rate payment running balance from local rating authority c. a payment agreement and compliance with that agreement. <p>Mandatory</p>
Insurances	
18. Are all CBS (Residential Accommodation) properties adequately insured i.e. Replacement value.	<ul style="list-style-type: none"> - NSWALC will need to sight the LALC's most recent certificates of insurance. <p>Mandatory</p>

Statutory Requirement D Continued

Will the scheme be administered in a transparent way?

NSWALC must be satisfied that the rules and criteria for determining important matters are visible and the application of those rules is open.

The following questions will be asked and recorded in the NSWALC CBS (Residential Accommodation) – Assessment Tool.

Questions	Information Required
<p>19. Is clear, written information about:</p> <ul style="list-style-type: none"> a. the policies and procedures that guide the operation of the scheme; b. internal and external complaints procedures; c. internal and external appeals procedures <p>available to members and applicants and given to tenants on request?</p>	<ul style="list-style-type: none"> - The LALC will need to provide and NSWALC will need to sight evidence of this. <p>Conditional</p>
<p>20. Does the LALC maintain adequate records of its decision making under the schemes policies and procedures?</p>	<ul style="list-style-type: none"> - The LALC will need to provide meeting minutes and other decision making records that are related to the operation of the scheme for the past 12 month period <p>Mandatory</p>
<p>21. Does the LALC maintain adequate records of its complaints and appeals processes?</p>	<ul style="list-style-type: none"> - The LALC will need to provide and NSWALC will need to sight records of any complaints and appeals in the past 12 month period. A minimum requirement to satisfy this question would be the existence of a complaints/appeals register. NSWALC will cross reference treatment of complaints with the LALC's related policy. <p>Conditional</p>

Statutory requirement E

The proposed scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due?

In its application to NSWALC the LALC must provide a 3 year projected budget for the proposed scheme demonstrating that the projected income of the scheme is or will be sufficient to meet the expenses of the scheme.

The budget must be sufficient and credible.

It must detail all of the expected major expenses of the community benefits scheme (residential accommodation) including

- Rates
- Insurances (to replacement value)
- Repairs and maintenance (provisioning for repairs and maintenance @ 1.5% of replacement value annually)
- Other expenses, including management costs.

NSWALC has determined that it is a requirement of the CBS (Residential Accommodation) approval processes for a LALC to demonstrate that their scheme generates sufficient income to enable a reasonable level of repairs and maintenance to be undertaken on a regular basis. Based on this, NSWALC requires that LALC's demonstrate that they will generate sufficient income to provision for 1.5% of replacement value of their housing assets annually for repairs and maintenance annually. LALC's are able to use either the "deemed values" at the bottom of this Guide or use the insurance replacement values.

There are a range of methods available to LALC's in relation to rent setting eg cost rent formula or AHO Build and Grow Rent Policy, to name several options. NSWALC does not intend to proscribe any particular model for LALC's however as a minimum LALC's must demonstrate that rents are set at a level that will ensure sufficient rent is charged, together with any other income that the LALC will use to support its housing scheme, to cover the costs of rates, insurance, management costs and allowances for repairs and maintenance).

On this basis the LALC must show within the three year projected budget all income (including any grants and subsidies) and the level/s to which rents will be set to ensure expenses are covered.

The following questions will be asked and recorded in the NSWALC CBS (Residential Accommodation) Assessment Instrument

Questions	Information Required
A balanced budget	
1. Has the LALC provided a comprehensive 3 year budget in relation to all aspects of operating the benefits scheme with adequate explanatory notes to enable assessment with its application?	<ul style="list-style-type: none">- The LALC will be required to provide the detailed 3 year budget with the application for approval.- A 3 year budget will provide LALC's with an opportunity to demonstrate that their scheme will not prevent the LALC from being able to meet its debts as and when they fall due. NSWALC will focus on the ability of

	<p>the scheme to generate sufficient income to pay for all anticipated costs that the scheme will incur, including reasonable repairs and maintenance.</p> <ul style="list-style-type: none"> - Budget templates will be made available to assist LALC's in this process. <p>Mandatory</p>
2. Does the LALC have a liquidity ratio of at least 1:1 ie does the LALC have sufficient current assets to meet its current liabilities.	<p>The LALC will need to provide evidence that it is able to meet this liquidity requirement. Evidence could include a LALC's most recent certified annual financial statements.</p> <p>Informative</p>
Is the expenditure allowed for adequate?	
3. Has sufficient allowance been made for rates and charges payable on the properties?	<ul style="list-style-type: none"> - The LALC must demonstrate that the amount allowed for rates and charges is adequate by comparison with the most recent rates and charges notices and any known information about likely increases. <p>Mandatory</p>
4. Has sufficient allowance been made for insurances (replacement value)?	<ul style="list-style-type: none"> - The LALC must demonstrate that the amount allowed for insurances is adequate by comparison with the current certificates of insurance. <p>Mandatory</p>
5. Has sufficient allowance been made for the employment costs of any staff who will be employed to administer the CBS (RA)?	<ul style="list-style-type: none"> - NSWALC will check and compare the s.158, ALRA, budget and also the CBS (RA) budget in this regard. NSWALC will also compare actual costs as contained in the prior year LALC audited financial statements. <p>Mandatory</p>
6. If an external agent or provider is engaged to assist with the operation of the CBS (RA), have their fees or costs been adequately allowed for?	<ul style="list-style-type: none"> - NSWALC will need to check LALC documentation in relation to the engagement of the agent or external body to ensure that the allowance is adequate. <p>Mandatory</p>
7. If the LALC provides public services and amenities, such as garbage collection	<ul style="list-style-type: none"> - NSWALC will need to check the CBS (Residential Accommodation) budget

and public space, has sufficient allowance appear to have been made for these services?	<p>against LALC documentation of these costs.</p> <p>Mandatory</p>
8. Has sufficient allowance been made for repairs and maintenance to a reasonable level eg. 1.5% of the assets replacement value annually?	<p>- NSWALC will need to assess whether the amounts allowed for meet the guideline requirements of 1.5% annually for repairs and maintenance.</p> <p>Conditional</p>

Is the income allowed for realistic and assured?

9. NSWALC grant funds are not being used for the payment of rates, insurance or repairs and maintenance of LALC housing that is part of the scheme.	<p>- NSWALC will need to check that no part of the income allowed for in the 3 year CBS (RA) budget is derived from NSWALC funding.</p> <p>Conditional</p>
10. Is the projected rental collection rate realistic?	<p>- The NSWALC will compare prior year actual collection rates against projected collection rates to determine any material differences.</p> <p>Conditional</p>
11. If income from other LALC operations has been assumed, is the projected income in each case realistic?	<p>- The LALC will need to demonstrate that all projections of income sources are realistic.</p> <p>Conditional</p>

Statutory Requirement F

The Need for the Proposed Benefit is not Otherwise being Adequately Met

The LALC will have to demonstrate that there is a need for the housing that it is not otherwise being adequately met (by, for example, the general rental market or other social housing providers).

If NSWALC cannot be satisfied that there is an unmet need for the proposed housing scheme, it must refuse to approve the proposed scheme (s.52A (2) (f)).

Questions	Information/Evidence Required
1. Is the need for the CBS (Residential Accommodation) not otherwise being adequately met?	<ul style="list-style-type: none">- The LALC will need to demonstrate that the need for the housing scheme is not otherwise being adequately met. A housing waiting list would satisfy this requirement. <p>Mandatory</p>

Deemed Values for Repairs and Maintenance Provisioning Requirements

	1 Bedroom \$150,000	2 Bedroom \$200,000	3 Bedroom \$250,000	4 Bedroom \$300,000
1.5%	\$2,250	\$3,000	\$3,750	\$4,500