

FACT SHEET



New South Wales
Aboriginal Land Council

Selling a Local Aboriginal Land Council owned house to the tenant at current market value.

Selling a Local Aboriginal Land Council (LALC) owned house to its tenant at current market value has been done on many occasions and is processed as a land dealing in accordance with the Aboriginal Land Rights Act 1983 (ALRA) and the Aboriginal Land Rights Regulation 2020 (ALRR).

Benefits of Home Ownership

There are many reasons why LALC tenants may wish to buy the home they currently live in:

- Home ownership gives security of tenure.
- Home owners are rewarded for the improvements they make and the quality of their maintenance if they decide to sell.
- For many people homeownership has increased their personal wealth as house values have risen.
- If the home owner is moving for employment, they can use their collateral to buy into a new area.
- Many homeowners use their home as collateral to start a new business.
- In retirement if the house is paid off, the home owner can live rent free in their old age.
- Home ownership allows intergenerational transfer of wealth with the ability to pass the home on as inheritance to the family.

Considerations for LALCs

LALCs may wish to sell their housing stock to reduce their liability or to use the money from the sale for other worthwhile purposes.

The sale to a tenant at current market value is fair and transparent and it does not require ongoing administrative support.

Because the sale is based on an independent current market valuation, the property does not need to be put up for open auction, so the disruption to the tenant is minimal.

Approvals

The sale is more likely to be approved as a land dealing by the LALC members as the LALC will receive full current market value. Because the LALC tenant is paying full market value there is no need to set up a Community Benefit Scheme to allow the sale to proceed.

Unless the tenant has enough money to buy the home outright, they will need to pay a deposit and also arrange finance so they can make full payment on settlement. The ability of the tenant to raise the finance will be independently tested by the lending institution and the risk would be taken by the financial institution not the LALC. The tenant will also need to fund the payment of stamp duty and other costs related to the purchase (such as

legal fees, insurance, rates adjustments etc). If the home is the purchaser's first home, the purchaser may be eligible for an exemption or reduction of transfer duty.

Buyers may be able to access various government home ownership support products such as those offered by the Aboriginal Housing Office or Indigenous Business Australia.

NSWALC has produced a set of fact sheets explaining the land dealing process.

It is recommended that LALCs wishing to carry out any land dealing consult directly with NSWALC's Land and Property Unit to assist.

See [Fact Sheet 1 What is a Land Dealing?](#)

Steps for selling a LALC owned house to the tenant at current market value

1. Obtain a title search showing that the property (house/land) is owned by the LALC and that there are no impediments to dealing with the land. The title search will show for example if section 42 of the ALRA applies and an approved determination of native title is required. See [Fact Sheet 2 What LALCs should consider before dealing with land.](#)
2. An Independent Market Valuation will be required for the land dealing approval by NSWALC. The LALC may use local real-estate estimates /opinions to give an indicative guide of the property value to inform the members, and only proceed with purchasing an independent market valuation if the sale is approved at the LALCs' members' meeting. However, the members' resolution must specify a sales price of no less than current market value.
3. LALCs must notify their members of a land dealing meeting to obtain members' approval. The meeting must be advertised and give members 7 clear days notice. [Fact sheet 3 Land Dealing Meeting Notices](#) explains advertising / notice requirements for a LALC members' meeting where a Land dealing is being considered. (Attachment 1 to this Fact Sheet has a sample land dealing notice of meeting for the sale of a house to the tenant at current market value.)
4. LALCs members approve the land dealing by passing a resolution at a LALC Members' meeting. The LALC meeting must have a quorum of at least 10% percent of the voting members. The tenant (and any member) who would be a beneficiary of the sale must declare their interest and remove themselves from the meeting (and from site of the meeting). The resolution must be passed by not less than 80% of the voting members of the LALC present at the meeting. A legible record of attendance must be kept as well as properly recorded minutes. See [Fact Sheet 4 Resolutions approving Land Dealings.](#)
5. LALCs must apply to NSWALC to approve the land dealing. Any LALC land dealing that is not approved by NSWALC is void and unenforceable. [See Fact Sheet 5 Applying to NSWALC for approval of Land Dealings.](#) The NSWALC Application for Approval of a Dealing with Land is available on the [NSWALC website](#) and covers the Prescribed Information required under the ALRA and the ALRR and additional information NSWALC requires as a matter of policy to assess the application.
6. NSWALC makes a determination and if approved issues a Dealing Approval Certificate. NSWALC 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 LALC or other Aboriginal persons within the area of that Council. [Fact Sheet 6 Determination and Dealing Approval Certificate](#) explains the reasoning used in the process for determination and the process for review of NSWALC determinations. Once the LALC has received the Dealing Approval Certificate the house can be sold to the tenant at current market value.

7. Before settlement of the sale, the LALC must obtain a Registration Approval Certificate (RAC) issued by the NSWALC CEO to enable registration of the transfer at Land Registry Services. See [Fact Sheet 7 Registration Approval Certificates and the Community Development Levy](#). To apply for a RAC, the LALC will also be required to provide evidence of payment of any Community Development Levy (CDL) that may be payable on the transaction. If the purchaser is exempt from stamp duty the LALC will not be required to pay CDL. [See Fact Sheet Community Development Levy \(CDL\)](#)

Other support available to tenants wanting to buy their house

There are several products that will support home buyers that should be considered by LALC tenants buying their home.

The **Commonwealth's First Home Loan Deposit Scheme** is a government backed deposit guarantee that lowers the minimum deposit for a home loan to 5%. The aim of the Scheme is to shorten the time for first home buyers to save a deposit.

The Scheme also allow buyers to avoid paying Lenders Mortgage Insurance which is required when borrowing more than 80% of the home's purchase price. Under the Scheme, the Federal

Government acts as a guarantor for up to 15% of the home loan. Each financial year, 10,000 Scheme places are released through participating banks and lenders.

AHO Aboriginal Home Buyer Saver scheme offers a financial grant of up to \$2,500 for legal & administrative costs. It also matches deposit savings on a dollar-for-dollar (\$1: \$1) basis up to a maximum of \$10,000.

IBA Home Loan products have lower deposit requirements and starting interest rates, depending on applicant income. They also guarantee the loan, so the borrower does not require Lenders Mortgage Insurance. Interest rates are stepped up each year until they reach the reference rate (similar to a commercial bank home loan rate). Then the loan is re-financed with a conventional bank home loan.

Conclusion

LALC tenants buying their home at current market value can be of benefit to both the tenant and the LALC. The process is well understood and the NSWALC Land and Property Unit can assist LALCs with this and other land dealings.

For more information on Land Dealings, including all the Fact Sheets, visit:

<https://alc.org.au/lalc-land-dealings/>

Or scan the QR Code below:



Attachment 1. A sample of a land dealing meeting notice

“ _____ LALC invites its members to attend a land dealing meeting.

Date: Friday 18 September 2022

Time: 2.30pm

Place: _____ LALC Office, 49 Muriel Road, Mt Dial

At the meeting members will decide to approve or not approve the following land dealing(s):

Sale of 12 Smythe Street, Nancyville (Lot 135 of Section 2 in DP 25739) for current market value;

Meeting authorised by [insert name and position]”

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 calendar days before the day on which the meeting is to be held.

Attachment 2. A Sample of resolutions approving a land dealings

“Meeting of _____ Local Aboriginal Land Council (_LALC) held on Friday 18 September 2022 commencing 2.30pm Sample

Resolution 1: The members of _LALC have considered the impact of the sale of 12 Smythe Street, Nancyville (Lot 135 of Section 2 in DP 25739) (Lot 135) on the cultural and heritage significance of Lot 135 to Aboriginal persons, and approves selling Lot 135 for a price no less than current market value as assessed by a qualified valuer in a valuation report that is not more than 12 months old at the date of the sale.

Moved by: [LALC to insert the name of the person who moved the motion]

Seconded by: [LALC to insert the name of the person who seconded the motion]

Numbers for: [LALC to insert the number of voting members who voted for the motion]

Numbers against: [LALC to insert the number of voting members who voted against the motion]

Numbers abstained: [LALC to insert the number of voting members who abstained from voting]

Motion carried/not carried.”

Section 42G(5)(b) of the ALRA states the land dealing resolution is required to be passed by at least 80% of voting members present at the meeting.

Note: The content of this fact sheet is intended for information purposes only. It is not intended as advice and should not be relied upon as advice. All readers should seek independent advice that is suited to their own specific circumstances.