



Local Aboriginal Land Council Funding Policy 1 July 2020 to 30 June 2023

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Responsible Manager			Date created	Approved by	Review Cycle	Next review
Craig Craigie, A/g Manager Network Services Unit			2 March 2023	Council: 15 June 2023	Every 5 years	June 2028

1. Purpose

This policy identifies the statutory obligations of both the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs) in relation to LALC funding.

2. Scope

This policy applies to all LALCs.

3. Policy Statement

This policy provides the framework that will enable the NSWALC to determine when a LALC may be funded and the assessment approach and performance standards that will be used to make this determination.

3.1. Guiding Principles

3.1.1. Division 2, Section 106 (8) (e) of the *Aboriginal Land Rights Act 1983* (NSW) (ALRA), provides that the NSWALC has the function to grant funds for the payment of the costs and expenses of LALCs.

NSWALC's funds must be spent responsibly and efficiently to improve, protect, and foster the best interests of Aboriginal people of NSW.

NSWALC's primary strategy is to provide incentives and assistance to LALCs to administer themselves properly. LALCs which administer themselves effectively and without the need for prompting and assistance from NSWALC, will be subject to less onerous financial reporting requirements.

3.1.2. Funding principles

- NSWALC's principal objective is to support LALCs to ensure sound and sustainable financial and operational management;
- NSWALC will adopt a risk management approach to making funding decisions;

- LALCs should not be unduly penalised for falling short of minimum operational performance standards;
- NSWALC is to work closely with LALCs in ensuring satisfactory performance and proper management; and
- The funding policy should focus on early identification of problem areas and on timely assistance where required.

3.1.3. Risk Management

NSWALC has adopted a risk management approach to guide the terms of Funding Agreements with LALCs and associated reporting requirements.

As NSWALC focuses more attention on overall good management, the need for a risk management approach is highlighted. Risk management can be defined as consideration of events that could occur and what the impact would be if such events occurred (likelihood and consequence). These considerations enable risk events to be identified and if there is a likelihood of them occurring, strategies can be developed that would either reduce the likelihood or mitigate the impact of these events.

NSWALC will work with LALCs to identify and develop strategies to address areas of risk (e.g. develop strategies to address and mitigate risk, implement these strategies, and monitor progress).

NSWALC will utilise a risk management framework to determine each LALC's eligibility for funding and reporting obligations.

The NSWALC risk management principles are the same as those outlined in the Australian Standard on Risk Management. These recommend that the following procedures be implemented:

- Identifying risks;
- Analysing the identified risks;
- Assessing or evaluating the risks;
- Treating or managing the risks; and
- Monitoring and reviewing the risks and the risk environment regularly

There are a number of ways NSWALC identifies LALC operational risk:

- Risk Assessment System (RAS) Risk rating;
- Compliance with the ALRA;
- Financial Reporting Evaluation (both annual and periodic);
- Budget Evaluation;
- LALC Annual Reports (including Community Land and Business Plan (CLBP) implementation report)

- Community Benefit Scheme (CBS) Approval and Monitoring (including CBS Residential Accommodation);
- Debt Repayment Agreement;
- Significant Management Difficulties
 - Non-payment of Council Rates
 - Repeat or Significant Management Letter Issues;
 - Non-payment of Statutory Liabilities
 - Negative Liquidity Ratios;
 - Not Holding the Required Number of Meetings; and
- Failure to adequately implement LALC Performance Improvement Plans

3.1.4. Funding of LALCs

Under this Policy, it is NSWALC's intent to provide a contribution towards LALCs ordinary operating costs by way of an annual grant. Funding will generally only be provided to LALCs that have entered into either a Funding Agreement or Assistance Agreement with NSWALC.

These Agreements will outline the terms and conditions under which NSWALC will provide financial and other support to the LALCs.

The Agreements will also outline the range and type of financial and performance reports required to be lodged under the ALRA or the terms of the Agreement. Without limiting the types of reports they may include:

- Annual Report (including CLBP Implementation Report)
- Community Benefit Schemes (including CBS Residential Accommodation)
- Operational/Financial Reports.

NSWALC will use its funding function as a tool to encourage improved LALC performance and ensure that LALCs are offered any assistance that they require at an early stage.

There are 2 main funding categories:

- **F – Funded**
- **UF - Unfunded**

NSWALC will determine which funding category a LALC falls within based on:

- whether the LALC has breached the ALRA, including the LALC's compliance or otherwise with sections 153, 158, 161 of the Act and applicable NSWALC Policy eg LALC Financial Reporting Policy, LALC Budgets Policy and LALC Annual Reports Policy;
- whether the LALC has met or is attempting to meet minimum operational performance standards, including evidence that the LALC is co-operating with NSWALC to address problems or issues;

- whether the LALC has complied with the terms of the Funding or Assistance Agreement;
- the LALC's most recent risk assessment rating.

NSWALC will offer Funding Agreements to LALCs who it determines to fall within funding category **F**. NSWALC may offer Assistance Agreements to LALCs who it determines to fall within funding category **UF**.

3.1.5. Determining Reporting Requirements

NSWALC will use a risk assessment approach in determining reporting requirements. The reporting required of a LALC will relate directly to their level of risk assigned by NSWALC.

It is the LALC's responsibility to ensure it is able to meet reporting timeframes. If a LALC fails to provide reports on the dates identified in the funding agreement, funding will cease until such time as those reports are submitted and accepted as satisfactory.

Consistent with a risk-management approach, exceptional circumstances will be addressed on a case-by-case basis.

3.1.6. Cessation of Funding

In the interests of the broader Aboriginal Land Rights system, there are instances where NSWALC should rightly cease funding a LALC.

Examples of where NSWALC may cease providing funds, are:

- a LALC is in breach of the provisions of the Funding Agreement; or
- a LALC is operating outside its approved budget; or
- there are reasons to believe that the grant funds may not be properly applied; or
- there are reasons to believe the grant funds may be at risk if released; or
- there is no evidence of a LALC cooperating with NSWALC in addressing problem issues and working towards meeting minimum operational performance standards; or
- NSWALC has concern with regard to the management capacity of a LALC: or
- a LALC is in breach of the ALRA including the NSWALC policies on LALC Financial Reporting, LALC Annual Reports, Community Land and Business Plan and LALC Budgets and CBS (Residential Accommodation)
- There are circumstances where a LALC's funding status may result in the forfeiture of funds that are payable under a Funding Agreement itself.

NSWALC recognises that there may be circumstances where compliance with the terms of a funding agreement and/or assistance agreement may either be outside the control of the LALC or where failure to comply with the funding/assistance agreement poses minimal risk to NSWALC funds. In these circumstances LALCs may apply to NSWALC for an extension of time in order to comply with the terms of the funding/assistance agreement.

The process for an extension application is clearly outlined in the funding agreement and/or assistance agreement.

3.1.7. Essential Payments

Where a LALC is in an unfunded category, NSWALC may consider making essential payments on behalf of the LALC as a means of protecting LALC assets and ensuring that the LALC administration functions continue to be performed.

NSWALC will negotiate with the LALC on what constitutes an essential payment at the time a LALC remains unfunded for a period of not less than 28 days.

Essential payments will only be made by NSWALC where it can be demonstrated that a LALC does not have sufficient cash reserves on hand to meet these expenses.

4. Related policy and procedures

LALC Annual Financial Reporting Policy

LALC Annual Report Policy

LALC Budget Policy

Community Land and Business Plan Policy

NSWALC Policy on the approval of LALC Community Benefits Scheme (Residential Accommodation)

NSWALC Policy on the approval of LALC Community Benefits Scheme

Appointment of Administrators Policy

Performance Improvement Order and Advisor Policy

5. Related legislation and policy

Aboriginal Land Rights Act (1983)

Aboriginal Land Rights Regulations (2014)

6. Definitions

ALRA – Aboriginal Land Rights Act (1983)

LALC – Local Aboriginal Land Council

NSWALC – NSW Aboriginal Land Council

7. Approval and Version History

Approval and Version History	Details
Council 15 June 2023	444 th Council Meeting 15/06/2023
Version History and dates and other notes	[If relevant, add notes to alert readers about the document/s this one replaces, e.g. This document consolidates and replaces X Policy, Y Procedure and Z Procedure.]