



New South Wales
Aboriginal Land Council

Procedure for the Approval of LALC Community Benefits Schemes (Residential Accommodation)

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1. Purpose

This Procedure has been prepared to outline the processes that NSWALC will apply in considering whether to approve applications from LALCs under the Policy on the Approval of LALC Community Benefits Schemes (Residential Accommodation) (“the Policy”).

This procedure includes Guidelines (Part 3.5) which give more detail about the matters on which an application will be assessed.

2. Scope

This Procedure applies to all applications made by LALCs under the Policy on the Approval of LALC Community Benefits Schemes (Residential Accommodation).

3. Procedure

A LALC seeking NSWALC’s approval must provide a written application which supplies information on its ability to meet each of the statutory requirements referred to the Policy. 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 have been consolidated into the NSWALC CBS (Residential Accommodation) Assessment Instrument.

3.1 Types of CBS (Residential Accommodation)

As described in the Policy, to assist NSWALC in assessing applications for approval of CBS (Residential Accommodation), NSWALC has established two broad categories to distinguish the most obvious ways in which a LALC can operate their scheme:

- a) **Independently Operated Schemes** - where a LALC operates all facets of its community benefits scheme (residential accommodation); and

- b) **Assisted Operator Schemes** - 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.

3.2 Application Stage

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

3.3 Assessment of Application

Once the completed 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 the LALC in relation to instances where the LALC's application does not satisfy the statutory requirements.

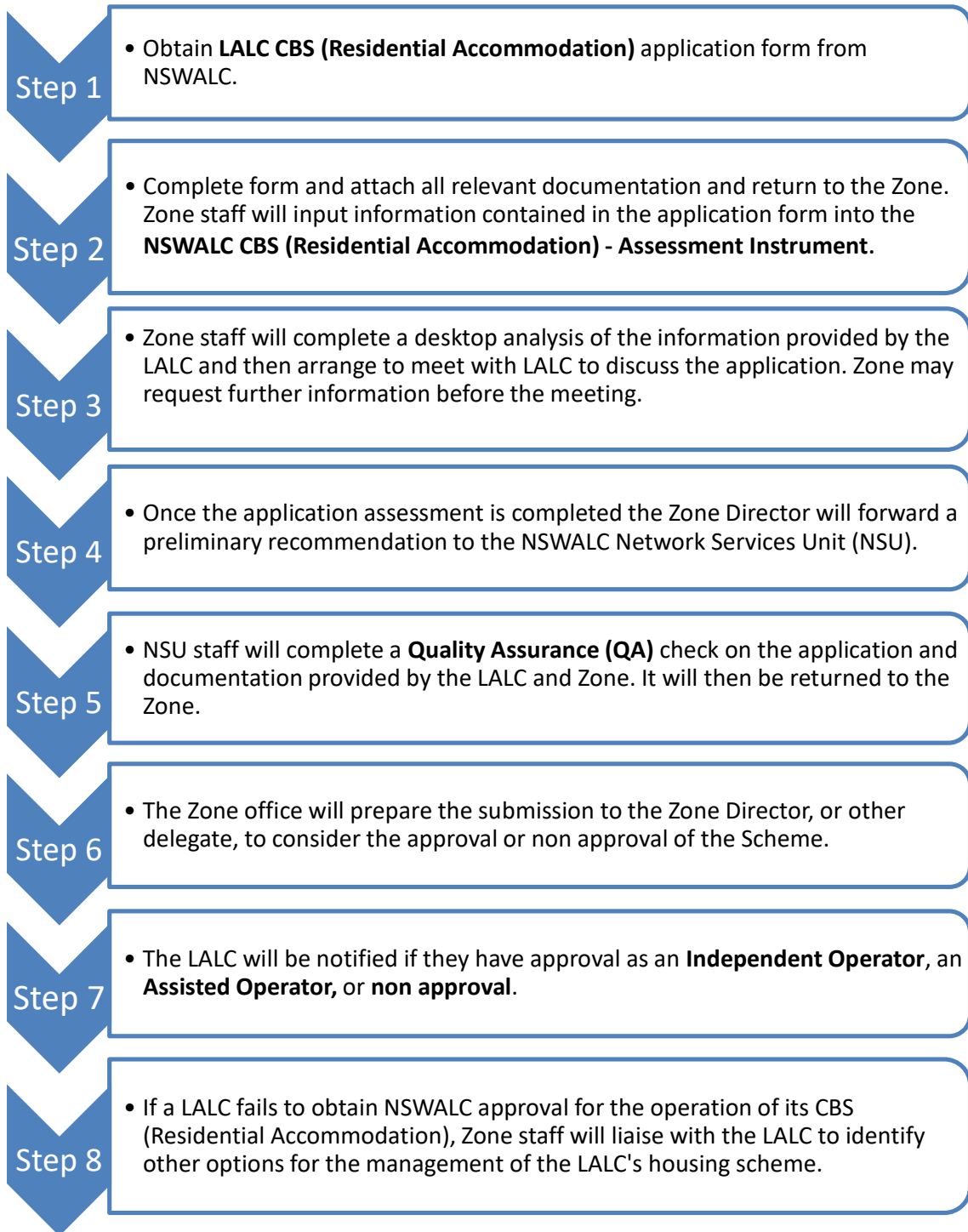
It may be necessary for Zone staff to obtain further documents and material from a LALC, in addition to what has already been submitted in the application. A timeframe will be included for the provision of this information.

Zone staff will then complete the final assessment of the application under the Policy and the guidelines set out in this Procedure.

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

3.4 Application Assessment Process

The application assessment process is set out in the diagram on the following page.



3.5 Guidelines on assessing Statutory Requirements under the Policy

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 Procedure sets out Guidelines regarding 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 the statutory requirements are met.

The majority of the information sought under each statutory requirement is considered to be a upfront minimum requirement for NSWALC and failure to provide the information and /or documentation will result in the scheme not being approved.

There are several questions where the relevant information or documentation may not be treated as an upfront minimum requirement but 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?	- This question establishes the way in which a LALC residential accommodation scheme is operated i.e. either independently or with external assistance?

<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)</p>	<ul style="list-style-type: none"> - NSWALC will need to sight the agreement between the LALC and the external agent or provider.
<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?</p>	<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>3. Are all decisions to offer residential tenancies approved at a duly convened Board meeting?</p>	<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>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?</p>	<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>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>	<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.

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: <ul style="list-style-type: none"> a. the 3year budget referred to below; and b. documentation relating to the investment
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: <ul style="list-style-type: none"> c. the 3 year budget referred to below; and d. documentation relating to the investment

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 – Land Dealing and Debtor Management.

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 - 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. 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).
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. 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.

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;<ul style="list-style-type: none">- 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<ul style="list-style-type: none">- 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;<ul style="list-style-type: none">- 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	<ul style="list-style-type: none">- The LALC will need to provide and NSWALC will need to sight the policies and procedures.

<ul style="list-style-type: none"> - How people will be notified of the outcome dealing with applicant and tenant appeals - 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 – ie. are they:</p> <ul style="list-style-type: none"> a. based on clear objective criteria b. not arbitrary c. not unlawfully discriminatory (on the grounds of sex, pregnancy, marital status, disability, homosexuality, age or transgender) d. not unfairly favouring 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>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>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.

5. Does the LALC have a policy on dealing with nuisance and annoyance and has this policy been enforced?	LALC must demonstrate that they have a policy and the policy is enforced.
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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.	- 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.
7. Does the LALC housing management records enable tenants’ arrears to be individually identified and reconciled.	- NSWALC should sight any written policy or procedures about arrears management

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
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
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
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> .	NSWALC will check LALC records for payment of utility and water charges attributable to the NSWALC tenants

Asset protection and maintenance	
12. Does the LALC inspect all tenanted LALC houses at least every 12 months?	- NSWALC will need to sight any inspection schedule and reports and the LALC will need to otherwise demonstrate that it conducts annual inspections
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?	NSWALC will need to sight information
14. Does the LALC deal appropriately with damage to property caused by tenants?	- 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.
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?	- NSWALC will need to sight LALC records - NSWALC may check this against any records NSWALC has of unpaid rates and charges.
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?	- NSWALC will check its records of unpaid rates and charges and action required by NSWALC under its policy
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?	- 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.

Insurances

18. Are all CBS (Residential Accommodation) properties adequately insured i.e. Replacement value	- NSWALC will need to sight the LALC's most recent certificates of insurance.
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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
19. Is clear, written information about: <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 available to members and applicants and given to tenants on request?	- The LALC will need to provide and NSWALC will need to sight evidence of this.
20. Does the LALC maintain adequate records of its decision making under the schemes policies and procedures?	- 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
21. Does the LALC maintain adequate records of its complaints and appeals processes?	- 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.

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 housings 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

	<p>the LALC from being able to meet its debts as and when they fall due. NSWALC will focus on the ability of 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
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.	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.
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.
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.
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.
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.
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?	against LALC documentation of these costs.
8. Has sufficient allowance been made for repairs and maintenance to a reasonable level eg. 1.5% of the assets replacement value annually?	- NSWALC will need to assess whether the amounts allowed for meet the guideline requirements of 1.5% annually for repairs and maintenance.
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.	- 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.
10. Is the projected rental collection rate realistic?	- The NSWALC will compare prior year actual collection rates against projected collection rates to determine any material differences.
11. If income from other LALC operations has been assumed, is the projected income in each case realistic?	- The LALC will need to demonstrate that all projections of income sources are realistic.

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?	- 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.

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

* The amounts shown for each house type are the amounts contained in the 2016 version of this policy. These amounts are currently being updated to reflect market conditions in 2023 and revised amounts will be included in the re-issued policy.

4. Definitions

It is recommended to list the definitions, key terms or acronyms related to the policy. These should be provided to the Governance Unit to incorporate in the NSWALC Glossary.

1. Words and expressions used in this policy guide 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

5. Approval and Version History

Approval and Version History	Details
Fist Approved Authority and Date	[Relevant approval authority and first approved date DD/MM/YYYY]
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.]