

FACT SHEET



NEW SOUTH WALES
ABORIGINAL LAND COUNCIL

www.alc.org.au

Fact Sheet 2

What LALCS should consider before dealing with land

When Local Aboriginal Land Councils (LALCs) have established that they want to deal with land vested in them (see **Fact Sheet 1**), they should obtain a title search of the land. This can be obtained from one of the information brokers on the Land and Registry Services NSW website (link: <https://www.nswlrs.com.au/Information-Brokers>). LALCs will also need to know the street address or the Lot, Section and Deposited Plan of the land. These details can be obtained from a rates notice or a Valuer-General's valuation.

Title search

It is important to obtain a title search of the land in question to ensure that it:

- shows that the LALC is the owner of the land (however it may be that title to the land has not yet transferred to the LALC) or the LALC has a legal interest in the land;

- the LALC's name on the title is properly spelt and that it is not in a former name of the LALC;
- does not reveal any affectations on the title that will prevent the LALC from dealing with the land, e.g., "*Section 42 Aboriginal Land Rights Act 1983. Approved determination of native title is required.*" See below for more details on obtaining an approved determination of native title;
- does not reveal someone is claiming an interest in the land, e.g., through a caveat lodged on the title; and
- does not show there are "Restriction(s) on use of Land" that may prevent or delay the land dealing. An example of a restriction may be "*Except with the consent in writing of the Minister of the State of New South Wales administering the National Parks and Wildlife Act 1974, no use shall be made of the land and no activities shall be undertaken thereon which would interfere with or prevent the natural growth or regeneration of vegetation on the land.*"

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 parties should seek independent advice that is suited to their own specific circumstances. Updated May 2023.

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Native Title – section 42 affectation

LALCs may find that if they are granted land pursuant to a land claim lodged on or after 28 November 1994 that the land is transferred subject to existing native title and the title search will show that the land is held subject to “*section 42 Aboriginal Land Rights Act 1983. Approved determination of native title is required.*”

For older certificates of title this notification may refer to section 40AA, which is the older version of section 42. The LALC is not able to deal with the land until native title has been determined in relation to the land.

In these circumstances, if LALCs wish to deal with land that is subject to section 42 of the ALRA and the land does not fall within a native title claim area, LALCs should consider lodging a non-claimant application. LALCs can contact the **National Native Title Tribunal** for assistance in lodging a non-claimant application to have native title determined.

LALCs can also contact the Legal Services Unit of NSWALC for further information about this

process or may instruct a solicitor to lodge a non-claimant application.

If LALCs wish to lodge a non-claimant application, NSWALC highly recommends that LALCs check all of their land holdings to see which parcels are affected by section 42 of the ALRA and lodge a non-claimant application over **all the affected land**, even if the LALC only wishes to deal with one parcel now. This may save LALCs time and money when it wishes to deal with the other affected parcels in the future.

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