



Registration Approval Certificates and the Community Development Levy

In many cases, following a land dealing approval from Local Aboriginal Land Council (**LALC**) members and the New South Wales Aboriginal Land Council (**NSWALC**), LALCs will be required to apply to NSWALC for a Registration Approval Certificate (**RAC**).

A RAC, signed by the NSWALC CEO, is required to register most land dealings at Land Registry Services (**LRS**). For example, in the case of a LALC selling land, the purchaser will be required to lodge an executed transfer with LRS to effect the transfer of the title of the property to the purchaser. When a transfer is lodged over LALC land, it is required to be accompanied by a RAC (see section 42M of the *Aboriginal Land Rights Act 1983 (ALRA)*) to enable registration of the transfer.

Applying for a Registration Approval Certificate

To apply for a RAC, a LALC must first complete NSWALC's Application for a Registration Approval Certificate which can be found on the NSWALC website by following this link: <http://www.alc.org.au/land-councils/lalc-land-dealings.aspx>. It is recommended that LALCs apply for a RAC **no later than 28 days prior** to when the RAC is required to avoid any issues as a result of delays in obtaining the RAC.

Section 42K(2) of the ALRA states that the NSWALC CEO can only issue a RAC when the following are satisfied:

- (a) that the instrument is a registrable instrument giving effect to or forming part of a land dealing approved by the New South Wales Aboriginal Land Council under this Division,
- (b) that any conditions of the approval by the New South Wales Aboriginal Land Council of the land dealing to which the instrument relates have been met,
- (c) that any community development levy payable in respect of that land dealing has been paid.

Therefore, in order to obtain a RAC, LALCs must first provide evidence that any conditions of the NSWALC approval have been met. These conditions will be listed on the Dealing Approval Certificate (**DAC**) which would have been issued upon NSWALC approval (see NSWALC **Fact Sheet 6** for further information).

The LALC will also be required to provide evidence of payment of any Community Development Levy (**CDL**) where applicable. Further information relating to the CDL is provided below.

As an example, in the case of the sale of LALC land, the LALC may be required to provide the following information:

- A copy of the proposed transfer for the property (normally provided by the purchaser's solicitor close to settlement);
- A copy of the exchanged contract for sale for the property, stamped by the Revenue NSW confirming payment of CDL, if applicable and;
- A copy of a current market valuation of the property.

Please note however that each land dealing is unique in nature and different documents may be required to provide evidence of compliance with the NSWALC conditions of approval. If a LALC has any doubt regarding the required documentation, the LALC should contact the Land & Property Team of NSWALC for clarification.

What is the Community Development Levy?

Division 4A of Part 2 of the *Aboriginal Land Rights Act 1983 (ALRA)* imposes CDL where a Local Aboriginal Land Council (**LALC**) carries out certain land dealing transactions.

The CDL is a payment LALCs are required to pay for any dutiable transaction to which the levy applies, that occurs in relation to a land dealing (see Division 4A of Part 2 (sections 42Q - 42X) of the ALRA and Division 2 of Part 2 (clauses 15-18) of the *Aboriginal Land Rights Regulation 2020 (ALRR)*). The CDL is collected by Revenue NSW and the Revenue NSW determines exemptions where applicable.

Which transactions attract CDL?

The CDL applies to the following dutiable transactions:

- a transfer of land;
- an agreement for the sale or transfer of land;
- a declaration of trust over land;
- a lease of land in respect of which a premium (an amount that is greater than rent and which essentially represents sale price) is paid or agreed to be paid; and
- any other transaction prescribed by the regulations (to date there have been no other transaction prescribed by the regulations).

The CDL does not apply to the following dutiable transactions:

- transactions exempt from duty under the *Duties Act 1997* other than under Section 280;
- transactions under a community benefit scheme providing home ownership for Aboriginal people;
- transactions between LALCs;
- transactions where the dutiable value of the land is \$81,000 or less; and
- any other transactions prescribed by the regulations.

How much is the CDL?

The CDL is calculated similar to the way that stamp duty is calculated under the *Duties Act 1997* and is progressive. This means the more expensive the transaction, the higher the levy will be. In accordance with Clause 15 of the ALRR the levy rate is as follows, for transactions where the dutiable value of land is:

- less than \$81,000 – nil levy payable
- \$81,000 to \$1,000,013 - 100% of the amount of duty;

- \$1,00,013 or more - 150% of the amount of duty.

To assist LALCs with CDL calculations, Revenue NSW provides a CDL calculator on their website at <https://www.apps08.osr.nsw.gov.au/erevenue/calculators/cdl.php>.

When does CDL have to be paid and how is it paid?

CDL is required to be paid before a RAC can be issued by NSWALC (see section 42K(2)(c)). For a contract for sale, Revenue NSW will stamp the original document showing the date and amount of levy paid. The LALC will need to provide a copy of that document to NSWALC **prior** to NSWALC issuing a RAC.

A LALC can pay the levy or mark the relevant document exempt from the levy by sending the relevant documents and a cheque in favour of 'Revenue NSW' for payment of the levy to:

**Revenue NSW
PO Box 666
Wollongong NSW 2520**

Revenue NSW will stamp the original document (contract or other instrument) showing the date of payment and the amount of levy paid. A copy of this document should be provided to NSWALC along with the Application for a Registration Approval Certificate (**RAC**).

If an otherwise "*dutiable transaction*" is exempt from the payment of stamp duty (for instance a dutiable transaction with the Crown, including a statutory body representing the Crown, may be exempt from the payment of stamp duty pursuant to s308 of the *Duties Act 1997*) a LALC may also be exempt from payment of the CDL. Evidence of the exemption will need to be provided to Revenue NSW. Revenue NSW will, if appropriate, stamp the instrument as "Exempt from CDL". The stamped document should then be provided to NSWALC with the Application for a RAC.

Where a LALC does not have sufficient funds to pay the levy, NSWALC suggests the LALC discuss this with its solicitor/conveyancer and include in the contract for sale, a clause requiring the purchaser to release the deposit or part of it for the payment of the levy.