New South Wales Aboriginal Land Council

FACT Sheet

1 LAND DEALINGS

Local Aboriginal Land Councils (**LALCs**) must comply with the *Aboriginal Land Rights Act 1983* (**ALRA**) and the *Aboriginal Land Rights Regulation 2020* (**ALRR**) when they want to "deal with land" that is "vested" in them.

What is "deal with land" or a land dealing?

Under section 40(1) of the ALRA, the definition of "deal with land" includes:

- sale, lease or mortgage of land;
- subdivision/consolidation of land so as to affect the interest of an Aboriginal Land Council (**ALC**) in that land;
- granting easements and covenants over land;
- releasing an easement or covenant that benefits land;
- entering into biobanking agreements;
- entering into wilderness protection agreements;
- property vegetation plans;
- making or consenting to the lodgement of a development application (**DA**) in relation to land;
- doing anything that creates or passes a legal or equitable interest in land.

Approval from NSWALC is required

Section 42E of the ALRA states that a LALC "*must not deal with land **vested** in it except in accordance with an approval*" of the New South Wales Aboriginal Land Council (**NSWALC**) under section 42G of the ALRA.

However, approval of NSWALC is **not** required for the following land dealings by LALCs:

- a land dealing in relation to a lease for a period of less than 3 years (including any option to renew the lease) or a short-term residential tenancy agreement, other than a social housing management lease, or
- the making of a DA in relation to land where the development has an estimated cost of less than $500,000.

Please note that lodging a DA is a land dealing under the ALRA, however if the estimated cost of the development is less than $500,000 then it does not require approval from NSWALC (clause 6 of the ALRR). The LALC Board may pass a resolution approving the lodgement of the DA.

If, however the estimated cost of development is $500,000 or more, then the LALC must obtain land dealing approval from members and from NSWALC in accordance with the ALRA and ALRR.

What does "vested" mean?

Section 40(2) of the ALRA states that land is "vested" in an Aboriginal Land Council (**ALC**) if:

(a) the ALC has a legal interest in the land;

(a1) the land is the whole or part of land that is, pursuant to an Aboriginal Land Agreement under section 36AA, to be transferred to the ALC, or

(b) the land is the whole or part of land the subject of a claim under section 36 and:

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(i) the Crown Lands Minister is satisfied that the land is claimable Crown land under section 36, or

(ii) the Court has ordered under section 36 (7) that the land be transferred to the ALC, and the land has not been transferred to the Council.

If LALCs are unsure whether land has "vested" in them or if what they propose to do with the land is a land dealing, please contact the Commercial Unit of NSWALC.

If LALCs wish to "deal with land" that is "vested" in them then LALCs are encouraged to read the other Land Dealing Fact Sheets for further information on how to give their members notice of land dealing meetings, how to hold the meetings and pass a compliant resolution and how to apply to NSWALC for consent to the land dealing.

What LALCs should consider when dealing with land

When LALCs have established that they want to deal with land vested in them, 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: How to find an information broker). 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 the 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.*"

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, 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

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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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