New South Wales Aboriginal Land Council

FACT Sheet

3 LAND DEALING RESOLUTIONS

The *Aboriginal Land Rights Act 1983* (**ALRA**) and the *Aboriginal Land Rights Regulation 2020* (**ALRR**) are specific as to how Local Aboriginal Land Councils (**LALCs**) must hold a land dealing meeting and what statement(s) a resolution approving the land dealing must contain.

Opening the land dealing meeting

LALCs should not open the meeting until there is a **quorum** present.

Clause 3 Part 1 of Schedule 3 of the ALRA states:

> **"3 Quorum**
>
> *The quorum of a Local Aboriginal Land Council is 10 per cent of the total number of voting members of the Council".*

LALCs will need to round 10% of the total voting members up to the next whole number.

For example:

- If a LALC has 68 voting members then the quorum is 7 (10% x 68 = 6.8. Rounding up to the next whole number = 7).
- If a LALC has 301 voting members then the quorum is 31 (10% x 301 = 30.1. Rounding up to the next whole number = 31).
- If a LALC has 1455 voting members then a quorum is 146 (10% x 1455 = 145.6. Rounding up to the next whole number = 146).

Pecuniary Interest

At the meeting:

- any Board member, or staff member of the LALC, and their relatives with a pecuniary interest in the land dealing must declare their interest and leave the meeting and be out of sight of the meeting while the land dealing is being discussed and voted on, unless the members determine otherwise (see Subdivision 2, Division 3 of Part 10 of the ALRA);
- for best governance practice, any LALC member and his/her relatives with a conflict of interest should also declare their conflict and leave the meeting and be out of sight of the meeting while the land dealing is being discussed and voted on, unless the members determine otherwise;
- LALCs should table any other relevant documents and plans, including valuations, and any legal advice the LALC has received on the transaction;
- LALCs may wish to have their legal/financial advisor in attendance, especially where the transaction is complex, so that the advisor can explain any relevant documents and answer questions members may have.

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LALCs should carefully minute the meeting, including all the documents tabled and the discussions that occurred.

Land dealing resolution

LALCs can only approve a land dealing by passing a resolution. A LALC may only pass a land dealing resolution if there is a quorum present, otherwise no business can be conducted. The ALRA sets out what the resolution must contain.

Section 42G(5) of the ALRA states:

*"(5) **Requirements for approval resolutions***

A Local Aboriginal Land Council resolution approving a land dealing must:

(a) be passed at a meeting of which prior notice was given, in accordance with the regulations, and at which a quorum was present, and

(b) be passed by not less than 80 per cent of the voting members of the Council present at the meeting, and

(c) contain the following matters:

(i) the identity of the land,

(ii) a statement that the impact of the land dealing on the cultural and heritage significance of the land to Aboriginal persons has been considered in determining whether to approve the dealing,

(iii) the manner in which the land is to be dealt with,

(iv) any conditions to which the approval of the dealing is subject."

Calculating at least 80% of voting members approving the land dealing resolution

Section 42G(5)(b) of the ALRA states the land dealing resolution is required to be passed **by at least 80%** of voting members present at the meeting.

To assist LALCs to calculate if this has been achieved, please see the sample table below:

	Resolution 1	Resolution 2	Resolution 3	Resolution 4
No. For:	40	28	32	31
No. Against:	0	9	3	2
No. Abstained:	0	3	5	7
Calculation	$\frac{40}{40+0+0} \times 100 = 100\%$	$\frac{28}{28+9+3} \times 100 = 70\%$	$\frac{32}{32+3+5} \times 100 = 80\%$	$\frac{31}{31+2+7} \times 100 = 77.5\%$
Motion	**Carried**	**Not** carried	**Carried**	**Not** carried

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Matters that must be included in a land dealing resolution

Section 42G(5)(c) of the ALRA states that a land dealing resolution must contain the identity of the land, the manner in which the land is to be dealt with, and a statement that members had considered the impact of the land dealing on the cultural and heritage significance of the land to Aboriginal persons in determining whether to approve the dealing.

Below are some sample resolutions which may assist a LALC to pass a land dealing resolution in compliance with section 42G(5)(c) of the ALRA.

Sample Resolution 1:

Members of XLALC, having considered the impact of the proposed sale of 12 Smythe Street, Nancyville (Lot 135 Section 2 DP 25739) (**Property**) on the cultural and heritage significance of the Property to Aboriginal persons, approve XLALX selling the Property for a price no less than current market value as assessed by a qualified valuer in a valuation report that is not more than 12 months old at the date of the sale.

Moved by: [LALC to insert the name of the person who moved the motion]

Seconded by: [LALC to insert the name of the person who seconded the motion]

Numbers for: [LALC to insert the number of voting members who voted for the motion]

Numbers against: [LALC to insert the number of voting members who voted against the motion]

Numbers abstained: [LALC to insert the number of voting members who abstained from voting]

Motion carried/not carried.

Sample Resolution 2:

Members of XLALC having considered the impact of the proposed lodgement of a development application for consent to build a house at 98 Seville Road, Maynard (Lot 42 in DP 57321) (**Property**) on the cultural and heritage significance of the Property to Aboriginal persons, approve XLALC lodging a development application for consent to build a single storey house on the Property.

Moved by: [LALC to insert the name of the person who moved the motion]

Seconded by: [LALC to insert the name of the person who seconded the motion]

Numbers for: [LALC to insert the number of voting members who voted for the motion]

Numbers against: [LALC to insert the number of voting members who voted against the motion]

Numbers abstained: [LALC to insert the number of voting members who abstained from voting]

Motion carried/not carried.

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Sample Resolution 3:

Members of XLALC having considered the impact of the proposed lease of 84 Daris Road, Broadland (Lot A DP 278549) (**Property**) on the cultural and heritage significance of the Property to Aboriginal persons, approve XLALC granting a lease of the Property for a term of 5 years on terms and conditions substantially the same as the draft lease tabled at this meeting and for a rent no less than current market rent as assessed by a qualified valuer in a valuation report not more than 12 months old at the time the lease is entered into.

Moved by: [LALC to insert the name of the person who moved the motion]

Seconded by: [LALC to insert the name of the person who seconded the motion]

Numbers for: [LALC to insert the number of voting members who voted for the motion]

Numbers against: [LALC to insert the number of voting members who voted against the motion]

Numbers abstained: [LALC to insert the number of voting members who abstained from voting]

Motion carried/not carried.

In addition to the sample land dealing resolutions above, in order to ensure that LALC resolutions approving the land dealings comply with the ALRA, LALCs or their legal advisors should prepare a draft land dealing resolution and are encouraged to provide the draft resolution to the Commercial Team of NSWALC for further assistance and comments prior to the LALC holding the land dealing meeting.

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