New South Wales Aboriginal Land Council

FACT Sheet

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DETERMINATION AND DEALING APPROVAL CERTIFICATES

One of the functions of the New South Wales Aboriginal Land Council (**NSWALC**) under the *Aboriginal Land Rights Act 1983* (**ALRA**), is the approval of land dealings by Local Aboriginal Land Council (**LALC**) land (see section 106(3)(a) of the ALRA).

Section 42G(2) of the ALRA states that NSWALC "*may refuse to approve a land dealing if it considers that the dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of that Council*".

Section 42G(3) of the ALRA then lists matters that may be considered by NSWALC (although NSWALC is not limited to considering only these matters) when determining if a proposed land dealing is, or is likely to be, contrary to the interest of LALC members. They are:

(a) the community, land and business plan of the LALC and whether, and to what extent, the land dealing is consistent with that plan,

(b) the terms of the land dealing and whether those terms are fair and equitable to the LALC in all the circumstances,

(c) whether the LALC, in passing the resolution, had proper regard to the cultural and heritage significance of the land to Aboriginal persons,

(d) any assessment of the application for approval of the land dealing by an expert advisory panel under this Division,

(e) whether it is likely that the proceeds of the land dealing will be managed and applied in the interests of the members of the LALC or other Aboriginal persons within the area of the Council,

(f) any applicable policy of the New South Wales Aboriginal Land Council in relation to land dealings by LALCs.

Issuing a Dealing Approval Certificate

If NSWALC approves a LALC land dealing, NSWALC must issue a Dealing Approval Certificate (**DAC**) to the LALC within 14 days (see section 42K(1) of the ALRA). A DAC is taken to be written consent by NSWALC to the land dealing and will contain NSWALC's conditions of approval, if any.

NSWALC may impose two types of conditions on a LALC land dealing, including:

- a condition that is to be satisfied before completion of the land dealing,
- a condition that requires the LALC or one or more parties to the land dealing to enter into an agreement with the NSWALC as to specified matters to be carried out before or after the dealing is completed.

Compliance with the conditions as stated in a DAC is essential to ensuring the land dealing can proceed. In most cases, once a LALC has complied with the conditions of a DAC, the LALC will be required to apply for a Registration Approval Certificate (**RAC**) in order to complete the land dealing. Details on how to apply for a RAC can be found in NSWALC's **Fact Sheet 6**.

Reasons for NSWALC decisions

If NSWALC refuses a Land Dealing Application, or imposes conditions on a land dealing approval, a LALC may request a written statement from NSWALC detailing the reasons for the decision. Upon receipt of such a request, NSWALC must respond within 28 days.

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Review of NSWALC decisions

If a LALC does not think that NSWALC's decision is lawful, it can commence proceedings for judicial review of NSWALC's decision in the Land and Environment Court. However, before commencing proceedings for judicial review, a LALC must refer their dispute to the Registrar, and the Registrar may, with the parties' consent implement a dispute resolution process (see section 239A of the ALRA).

Dispute resolution

Following the referral of a dispute to the Registrar, the Registrar may, with the parties' consent, attempt to resolve the dispute by mediation/conciliation/arbitration or can refer the dispute for mediation/conciliation/arbitration by an independent person. This is aimed at reducing costly and unnecessary litigation between the parties.

The referral does not require the Registrar to resolve the dispute before court proceedings can commence but the referral may provide a non-litigious option for the LALC and NSWALC to discuss the dispute without going to court. After the referral is made, a LALC is then able to commence proceedings for judicial review of NSWALC's decision in the Land and Environment Court if it so wishes.

Judicial review

A LALC may seek judicial review of NSWALC's decision. Judicial review means the Court will examine the decision made by NSWALC and decide whether or not NSWALC made an error of law when making its decision. This will not involve a review of the merits upon which the decision was made by NSWALC.

Only the LALC that has made the Land Dealing Application to NSWALC may commence proceedings for judicial review of that decision in the Land and Environment Court. No other party will be able to bring a proceeding against NSWALC for its decision to refuse to grant approval or place a condition on the land dealing.

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