

Amendments to the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*

The ALRA 2009 will commence on 31 March 2010. LALCs will still need to seek consent from NSWALC before they deal with their land but the process for making the application will change.

What do the changes mean for LALCs?

The changes are aimed at ensuring LALCs can legally deal with their land in a manner that is consistent with the purpose of the ALRA. LALCs will be required to comply with all the changes stemming from the new application process and pay any applicable fees or levies.

Which land dealings will require approval?

Under the amendments the scope of 'land dealings' has been widened and includes:

- sale of land;
- lease of land;
- mortgage of land;
- easements and covenants over land;
- biobanking agreements;
- subdivision plans; and
- development applications.

All land dealings by LALCs will require NSWALC approval before they can proceed. LALCs will need to comply with the new application process set out in section 42F(2) and clause 104 of the *Aboriginal Land Rights Regulation 2002 (ALRR)* to make a valid application.

What is involved in the new application process?

An application by a LALC for approval of a land dealing must:

- identify the land affected by the proposed land dealing;
- specify the manner in which the land is to be dealt with;
- set out any terms or conditions of the proposed dealing;
- be accompanied by a copy of the resolution of the LALC members approving the dealing;
- be accompanied by information establishing the LALC has complied with the requirements in section 42G(5) and passed a valid resolution approving the dealing (discussed below);
- be accompanied by a valuation of the land prepared by a registered valuer within the preceding 12 months; and
- be accompanied by the \$250 application fee (unless the proposed dealing is a development application).

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.

What are the requirements for LALC resolutions approving a land dealing?

LALC resolutions approving land dealings must:

- be passed at a meeting of which at least 7 days clear notice was given (in accordance with the ALRR);
- be passed at a meeting specifically called for the purpose of the land dealing (EOM);
- The EOM must achieve quorum (i.e. at least 10% of the voting members attended);
- be passed by not less than 80% of the voting members of the LALC present at the meeting; and
- 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 Aborigines 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.

Conditions of approval

NSWALC can impose certain conditions on a land dealing. These can be conditions that must be satisfied before completion of the land dealing or conditions requiring LALCs or third parties to enter binding agreements with NSWALC as to certain matters. Examples of the types of conditions include:

- a **land dealing approval agreement** – which may be registered on the title of the land and run with the land, binding future owners; or
- a **registration prohibition notice** on the title to land – which stops any dealings with the land that are made without NSWALC consent, even where the land is no longer owned by a LALC.

For more information on conditions of approval see the relevant Fact Sheet.

The two certificate process

If a land dealing is approved by NSWALC then NSWALC must give a **dealing approval certificate** to the LALC within 14 days of approval being given. If an instrument relating to a land dealing is a registrable instrument, NSWALC must give a **registration approval certificate** if it is satisfied that:

- the instrument is a registrable instrument forming part of a land dealing approved by NSWALC;
- any conditions imposed by NSWALC on the land dealing have been met;
- any community development levy in respect of the land dealing has been paid.

NSWALC can refuse to give a dealing approval certificate or registration approval certificate if any assessment fee payable in relation to the application has not been paid. For more information on the two-certificate process see the relevant Fact Sheet.

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What else must LALCs be aware of?

LALCs should also be aware that:

- restrictions on land dealings apply with regard to land that is subject to native title rights or land that is reserved or dedicated under the *National Parks and Wildlife Act*;
- land dealings of a certain value will be subject to the community development levy. For more information see the community development levy Fact Sheet;
- NSWALC can require that a land dealing application be assessed by an expert advisory panel before NSWALC will consider and make a determination on the approval. For more information see the expert panel Fact Sheet;
- only the LALC concerned with NSWALC's decision to approve or not approve the land dealing can bring proceedings for judicial review in the Land and Environment Court; and
- **land dealings made in contravention of the requirements of the ALRA are void.**