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fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

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

Under amendments to the land dealing provisions in the ALRA commencing 31 March 2010, a community development levy has been introduced. The purpose of this levy is to ensure, as far as possible, that the economic benefits from development of land can be shared across the Local Aboriginal Land Council (LALC) network.

What is the community development levy?

The community development levy is a payment LALCs are required to pay for any “*dutiable transaction*” (whether or not the LALC is liable to pay duty in respect of the transaction under the *Duties Act 1997*) to which the levy applies in relation to a dealing in land vested in the LALC.

Currently Aboriginal Land Councils (ALCs) are exempt from stamp duty payments under section 280 of the *Duties Act 1997*. The operation of that exemption has not changed. However, if the community development levy applies to the “*dutiable transaction*” (regardless of whether the payment of the stamp duty is exempted under section 280), then the levy is still payable. This is because the levy will apply whether or not the LALC is liable to pay duty under the *Duties Act*.

Which transactions attract the levy?

The community development levy 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 is paid or agreed to be paid;
- any other transaction prescribed by the regulations (to date there have been no other transaction prescribed by the regulations).

The community development levy will 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 ALCs;
- transactions where the dutiable value of the land is \$80,000 or less; and
- any other transactions prescribed by the regulations.

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How much will the levy cost?

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

- more than \$80,000 but not more than \$1million = 100% of the amount of duty;
- more than \$1million = 150% of the amount of duty.

For example:

On a transfer of \$500,000, the levy = \$17,990.

On a transfer of \$1million, the levy = \$40,490.

The Office of State Revenue (**OSR**) has provided assistance in calculating the amount of levy payments by providing a community development levy calculator which can be found on the OSR website, www.osr.nsw.gov.au. The calculator can be found on the right hand side of the home page under the heading “Services”, “Calculator”, “Community Development Levy”.

When does the levy have to be paid and how is it paid?

Under clause 114 of the *Aboriginal Land Rights Regulations 2002* the lodgement period for the community development levy is separated into two categories depending on the type of transaction;

- a) in the case of an agreement for sale or transfer of land for consideration, and any transfer in completion of such an agreement, the community development levy must be paid before settlement of the agreement or transfer.
- b) in any other case the community development levy must be paid within 3 months after the liability first arises. (Interest may be payable outside this timeframe)

The levy will need to be paid to the OSR at Parramatta, and evidence of that payment provided by the LALC to NSWALC, before a Registration Approval Certificate is issued by NSWALC. The OSR will stamp the original document – vendor’s copy of contract, lease or other instrument - showing the date of payment and the amount of levy paid.

The OSR is located at Lang Centre, corner Hunter and Marsden Streets, Parramatta 2150. Payment is accepted by the OSR office from 8.30 am to 4.30pm weekdays. Acceptable methods of payment are listed on the OSR website under the *OSR Cheque Acceptance Policy for Duties*.

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 s 308 of the *Duties Act 1997*), a LALC may also be exempt from payment of the community development levy. Evidence of the exemption will need to be provided to the OSR. The OSR will, if appropriate, stamp and endorse the instrument as “CDL Not Payable”. The stamped document should then be provided to NSWALC with the Application for a Registration Approval Certificate.

Obtaining a Registration Approval Certificate (RAC) from NSWALC where a Community Development Levy is Payable

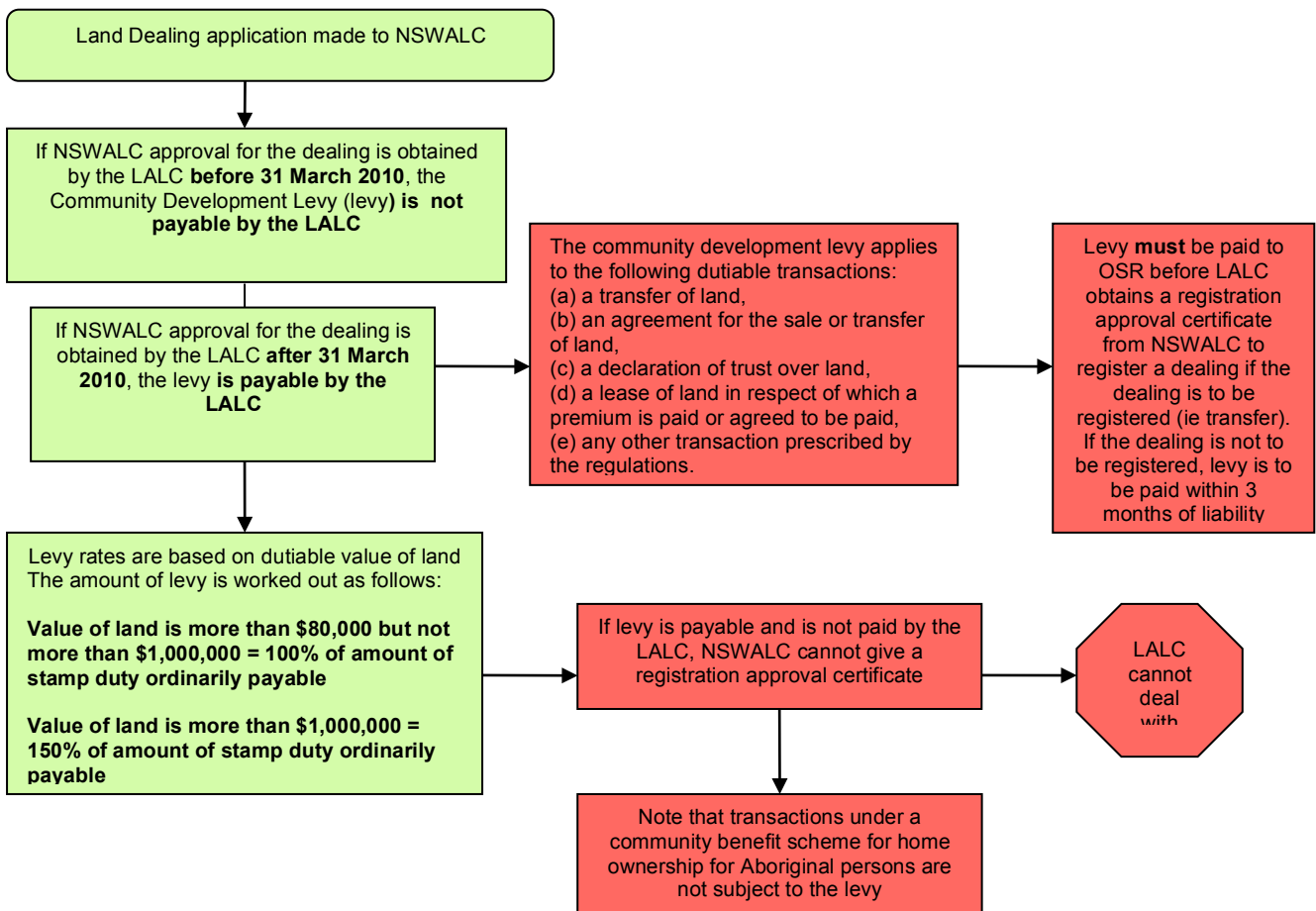
Before NSWALC can issue a RAC to allow a LALC land dealing to be registered, it will need to verify that the LALC has:

- satisfied any conditions imposed by NSWALC on the land dealing as set out in the Dealing Approval Certificate and;
- paid any community development levy payable in respect of the land dealing, or alternatively, if the LALC is exempt from payment of the community development levy for the transaction, that evidence of that exemption has been provided to the OSR and the instrument for the transaction has been stamped confirming that exemption;
- lodged a RAC application form with all necessary attachments with NSWALC.

Please note that a RAC application form can be found at NSWALC's website www.alc.org.au.

NSWALC will then process the RAC application and reconcile the application and attachments against the NSWALC approval. LALC's should be aware that this reconciliation may take some time and should provide this information to NSWALC with sufficient time before settlement so that there are no delays to settlement.

Flow diagram – payment of the Community Development Levy



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