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fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

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

Recent amendments made to the ALRA stem from a review of the land dealing provisions of the ALRA. Under the new approval system for land dealings, a valuation of LALC land, prepared by a registered valuer within the preceding 12 months, is required when applying to NSWALC for land dealing approval (see clause 104 of the Regulations).

The valuation must be a current market valuation commissioned by the LALC and for the LALC and consistent with the transaction that is being proposed by the LALC.

What is the purpose of Valuation?

There are many purposes for obtaining a land valuation, including:

- Determining land value as part of a feasibility study for future development of the land
- Pre-sale and pre-dealing advice
- Pre-purchase advice
- Lease negotiations and negotiations for compensation
- Mortgages
- Re-development of land
- Government acquisitions, for example acquisition of part Lots due to RTA road widening etc

Valuation of LALC land assists with the decision making processes LALC members are asked to make.

The requirement for LALCs to obtain a current market value of their land as part of the NSWALC approval process is intended to make sure that the decisions that LALCs make regarding land dealings, are supported by a thorough analysis of land value. As a general principle adopted by NSWALC, land should not be sold for less than current market valuation, unless extenuating circumstances dictate otherwise.

Sale of LALC land: Should a LALC anticipate selling land, a current market valuation will guide the LALC in terms of what the minimum price should be when the LALC sells the land.

Potential Land Development: A current market valuation allows a LALC to establish the value of its land prior to selling it, prior to adding value to it via development processes and the likely value of the land at the end of the development process. These values can be used together with the anticipated costs of construction and other development costs to develop feasibility models and business plans which will assist a LALC to determine if the proposed land development transaction makes financial sense to proceed with, and will deliver benefits to LALC members, consistent with the LALC's Community Land and Business Plan.

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.

Granting of easements and sale of part of LALC land:

Should a LALC be asked to grant an easement in favour of another party, or sell a portion of land for road widening or other purposes, it is important for the LALC to determine, what compensation should be paid to the LALC and what affects the transaction may have on the value of the remaining land.

A valuation commissioned by the LALC with these considerations in mind, will assist the LALC in determining the level of compensation they might seek and whether or not to agree to the proposed transaction.

Why is a Real Estate Agent's market opinion or Valuer-General's Valuation not enough to satisfy the requirements of the ALRA?

Real Estate Agent's Market Opinion: Market opinions of land value made by licensed real estate agents are generally considered to be statements of "opinions" only and whilst real estate agents can be held legally liable for the opinions they provide regarding land value, they are not held to the same higher standard as those by which valuers are judged.

The training and licensing requirements for a valuer is far more stringent than that for real estate agents and the information that a valuer bases his assessment of value on generally involves far more research and formal analysis.

Real Estate Agents opinions of land value are therefore considered not to be as reliable as a valuation.

Valuer-General's Valuations: Consistent with the *Valuation of Land Act 1916* these valuations are completed for rating and taxing purposes only. The valuations are based on land value only and do not include any value of improvements to the land. Most land in NSW valued by the Valuer-General's Department is done on a mass valuation basis where properties are placed in groups and valued collectively, on an infrequent basis. These valuations are not considered to be reflective of current market value and as such are not considered to be appropriate for the purposes of the ALRA and specifically clause 104 of the Regulations.

Methods of Valuation

There are number of methods used by valuers to determine current market value of land. It is not unusual for a valuer to use several valuation methods when considering the value of a particular parcel of land with multiple methods being used to "check" the results obtained. Those methods include:

- Direct comparison – where sales of other similar properties are considered
- Hypothetical Development – where costs of a hypothetical development are used to establish land value before and after any proposed development
- Replacement cost (generally used for insurance purposes)

What do valuers take into consideration when preparing a valuation?

A valuer determines the value of property based on range of variables, including market conditions at a given time, and may take into consideration:

- Highest and best use for the land
- The location of the property
- Improvements on the land such as buildings, fences etc and their condition.
- Any registered interests in the land such as leases, caveats etc
- Planning restrictions such as Local Council Zoning
- Regional Plans for the area and possible future rezoning potential
- Prior development consent

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Instructing Valuers

There are certain things that should be included in a valuation and that will assist NSWALC to consider a LALC's application for a land dealing approval. NSWALC would suggest that a LALC discuss the type of valuation it might need for a land dealing transaction, ideally prior to instructions to the valuer being issued.

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