NEW SOUTH WALES ABORIGINAL LAND COUNCIL

POLICY ON THE APPROVAL OF LOCAL ABORIGINAL LAND COUNCIL COMMUNITY BENEFITS SCHEMES

1. Introduction:

1.1 Local Aboriginal Land Councils **(LALCs)** may, in accordance with an approval of the New South Wales Aboriginal Land Council **(NSWALC)** directly or indirectly provide community benefits under a community benefits scheme. This policy seeks to detail the information that a LALC will need to provide to the NSWALC in order to obtain approval for the operation of a community benefits scheme **(CBS)**.

2. Purpose:

2.1 This policy identifies the statutory obligations of LALCs in relation to obtaining member and NSWALC approval for the operation of a CBS as required under Section 52A of New South Wales Aboriginal Land Rights Act 1983 **(ALRA)**.

2.2 Section 52A(1) of the ALRA states, inter alia, that a LALC may, in accordance with an approval of the NSWALC, directly or indirectly, provide community benefits under community benefits schemes.

2.3 Section 52A(2) states that NSWALC must not approve a community benefits scheme of a LALC unless it is satisfied that the requirements of S52A(2)(a to f) are satisfied.

2.4 This policy also identifies the level of detail and the type of information LALCs are required to include in applications to NSWALC for approval of a CBS. Regardless of the size of the scheme applications will be expected to include income and expenditure detail with specific line items for each area of expenditure. NSWALC will provide a template to assist and guide LALCs with the level of detail required when making an application. LALCs will also be expected to provide details about how the CBS will be operated e.g. policies and procedures.

3. Definition:

3.1 Community Benefits Scheme **(CBS):** A CBS is defined as a scheme for the provision of community benefits funded wholly or in part by an Aboriginal Land Council.[1]

3.3 Community benefit is defined in the ALRA to mean a benefit or service provided for the benefit of Aboriginal persons, and may include, but is not limited to, the following:

a) funeral funds,
b) residential accommodation
c) education and training,
d) scholarships and other assistance for education and training,

[1] Section 4(1) of Part 1 of the NSW Aboriginal Land Rights Act 1983.

e) cultural activities (excluding NAIDOC celebrations),
f) child care,
g) Aged care services;
h) LALC Sponsorship Programs

Note: Even though LALCs have a statutory function of protecting and promoting culture and heritage, this is not inconsistent with being able to provide community benefits for cultural activities.

3.4 For the avoidance of doubt, if a LALC proposes to establish a scheme to provide direct benefits to members in relation to other activities not listed in 3.3 above eg sporting activities, then the requirements of this policy will likely apply depending upon the specific characteristics of the proposed activity. If a LALC is in doubt as to whether a scheme is captured by this policy, they should seek advice from their relevant NSWALC Zone Office in the first instance. Also for the avoidance of doubt, any activities that a LALC undertakes in order to consult with its members will not fall within the definition, under this Policy, as to what constitutes a CBS.

3.5 Under this Policy, no funds from the annual NSWALC operational grant to LALCs are to be used directly towards the establishment and operation of a CBS.

3.6 NSWALC will also not approve a CBS where a LALC intends to use income generated from the operation of a residential accommodation scheme to provide housing to its members and others. NSWALC is of the view that funds generated from the operation of LALC housing needs to be quarantined for expenditure directly related to housing management.

3.7 NOTE: This policy does not apply to a CBS that concerns the provision of rental accommodation to Aboriginal people ("a CBS(RA)"). LALCs should refer to the *NSWALC Policy on the Approval of LALC Community Benefit Scheme (Residential Accommodation)* for information concerning the operation or approval of a CBS(RA). To avoid confusion, this policy relates to the operation of all CBS's except those relating to the provision of residential accommodation to LALC members and others.

4. Obligations:

4.1 Section 52A(1)(a) of the ALRA provides that a LALC may, in accordance with an approval of the NSWALC, provide community benefits under community benefits schemes.

4.2 Section 52A(3) of the ALRA also requires that LALCs must ensure that any community benefit scheme under which community benefits are provided by or on its behalf; complies with the ALRA and the *Aboriginal Land Rights Regulation 2014* (**Regulations**), is consistent with this policy and is consistent with the Community Land and Business Plan (**CLBP**) of the LALC.

4.3 Section 52A(2) of the ALRA provides that the NSWALC must not approve a proposed CBS of a LALC unless it is satisfied that:

a) the scheme complies with the ALRA and Regulations;
b) the scheme is consistent with this policy;
c) the scheme is consistent with the CLBP of the LALC;
d) the scheme is fair and equitable and will be administered in a way that is responsible and transparent;
e) the scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due;
f) the need for the proposed benefits is not otherwise being adequately met.

4.4 This policy requires that LALCs provide NSWALC with the following information in relation to a proposed CBS to enable NSWALC to determine whether it can approve the CBS in accordance with the ALRA:

4.4.1 The proposed scheme complies with the ALRA and Regulations: The LALC will need to provide sufficient evidence to NSWALC that will enable assessment as to whether the proposed scheme complies with the ALRA and the Regulations;

4.4.2 The proposed scheme is consistent with any applicable policy of the NSWALC: The LALC will need to provide sufficient evidence to NSWALC that will enable assessment as to whether the proposed scheme complies with this policy;

4.4.3 The proposed scheme is consistent with the CLBP of the LALC: The LALC will need to provide sufficient evidence to NSWALC that will enable assessment as to whether the proposed scheme is consistent with the CLBP of the LALC. LALCs can demonstrate that the proposed scheme is consistent with the CLBP of the LALC by providing an extract from the CLBP which shows provision of the proposed benefit(s) by, or on behalf of, the LALC has been considered by members and approved for inclusion in the CLBP of the LALC. If the proposed scheme is not consistent with the CLBP of the LALC, consideration may need to be given by the LALC to amending their CLBP to ensure consistency.

4.4.4 The proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent: The LALC will need to provide sufficient evidence to NSWALC that will enable assessment as to whether the manner in which the scheme is proposed to be operated complies with this legislative requirement. One way for a LALC to demonstrate compliance with this legislative requirement is by the provision of related policy and procedures that includes, but is not limited to, information in relation to who is eligible to participate in the scheme, the application process, how applications will be assessed, who has authority for making decisions on applications for the scheme and what rights of appeal applicants may have.

4.4.5 The proposed scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due: The LALC will need to provide sufficient evidence to NSWALC about how the proposed scheme will be funded and financially sustainable. LALCs will need to provide information in relation to funds allocated to the scheme on an ongoing basis and how those funds will be spent. Ideally a CBS will be cash flow neutral i.e. expenditure does not exceed funds allocated, but if not, the LALC will need to provide evidence to NSWALC in relation to how any expenditure in excess of the funds allocated to the scheme will be funded. As an example, if a LALC has income from leasing a parcel of land to a third party and a component of that lease income is dedicated to the funding of the CBS.

4.4.6 The need for the proposed benefits is not otherwise being adequately met: The LALC will need to provide sufficient evidence to NSWALC that adequately demonstrates there is a need for the proposed benefit(s) **AND** the need is not currently being met. Evidence to support the relevant need for the benefit(s) may include an extract from the LALCs member approved CLBP that substantiates demand for the proposed benefit(s).

4.5 It is the obligation of the LALC seeking approval of a CBS to provide the information required under this policy to enable NSWALC to make an assessment as to whether the proposed scheme, and the way in which the scheme will be operated, meets the requirements of Section 52A(2) of the ALRA. NSWALC and its delegated staff may require the applicant LALC to provide additional

information concerning the proposed scheme at its or their discretion and it is likely that NSWALC requests for additional information will relate to schemes that propose a significant annual expenditure.

4.6 If applying LALCs do not provide sufficient information or requested information, it is likely that NSWALC staff would recommend to the NSWALC Council or Delegate that the application for CBS is unable to be approved.

4.7 Annexure A of this policy contains a template application form to assist and guide LALCs in relation to the information that NSWALC will require in order to assess whether the proposed scheme meets the requirements of Section 52A(2).

5. Compliance:

5.1 It is the responsibility of the LALC to ensure that it complies with the ALRA and this policy in accordance with Section 52A(3).

5.2 Failure to comply with the obligations identified in this policy, including the provision of information and evidence as set out in this policy, may be grounds for NSWALC not approving the operation of the CBS applied for. If NSWALC does not approve the operation of the CBS, it will be unlawful for the LALC to operate the proposed scheme or provide the proposed benefit(s).

5.3 The operation of a non-approved CBS by a LALC may lead to the imposition of a range of sanctions including, but not limited to, cessation of operational funding by NSWALC and/or the appointment of an Advisor, Investigator or Administrator, to the LALC under Part 11 of the ALRA.

6. Reporting:

6.1 As per the NSWALC Annual Reports policy, any LALC who operates an approved CBS must include information in relation to the operation of that scheme in the LALC Annual Report. The NSWALC Annual Reports Policy requires the following level of detail to be reported to members via the Annual Report:

- The purpose of the scheme;
- The number of beneficiaries of the scheme during the reporting year;
- The expenditure of the scheme during the reporting year, including the number and amount of any grants made; and
- Any associated income generated by the scheme during the reporting year.

7. Approval:

7.1 Approval of a CBS will be considered and determined by the NSWALC Council or its Delegate.

7.2 The NSWALC may impose conditions on an approval given under the ALRA and this policy. A NSWALC approval may also impose a time within which a condition of approval must be complied with. A LALC must comply with conditions of approval given to the LALC by the NSWALC.

7.3 The NSWALC may revoke an approval given under the ALRA and this policy. NSWALC may revoke its approval if it considers that the CBS is being operated in a manner contrary to the approval, including any conditions of approval. NSWALC will not revoke an approval without first discussing its concerns with the LALC and giving the LALC notice of its intentions.

7.4 Approvals to operate CBS schemes will be time limited. Any approval given by NSWALC remains in force for the period specified in the approval unless it is revoked, amended or a new approval is provided. If a LALC intends to continue to operate a CBS after the period of approval has lapsed, the LALC will need to seek a new approval from NSWALC.

8. Material Changes to a CBS:

8.1 If the operation of an approved CBS changes in any "material" way, it may no longer be covered by the approval. In such a case, the LALC will need a new approval or an amendment to an existing approval.

8.2 It may not always be straightforward however to know whether a change to an approved CBS is so "material" that a new or amended approval is required. A change will be "material" if it affects the statutory basis on which the CBS was approval or its viability. Some examples of a "material" change to an approved CBS requiring a new or amended approval may include, but is not limited to:

- Changes to the income and expenditure of the CBS that impact on the LALCs ability to pay its debts as and when they fall due;
- Changes to the manner in which the CBS is operated e.g. who is eligible to access the scheme.

9. Review of NSWALC Decision:

9.2 Pursuant to section 116 of the ALRA, NSWALC may delegate its function of approving a CBS to the CEO. Further, the CEO may delegate this function to another staff member of NSWALC. The NSWALC Procedures on the approval of a LALC Community Benefit Scheme will set out any delegations in place.

9.3 If a decision is made by the CEO, or a delegate of the CEO, and a LALC considers that the decision is not in accordance with this Policy, the LALC may seek a review of the decision by the Council (if the decision was made by the CEO) or by the CEO (if the decision was made by the CEO's delegate). Any request for a review from a LALC must set out on what basis it believes the NSWALC delegate has made a determination that contravenes this Policy and must be made within 30 days of the LALC being notified of NSWALC's decision. Any review decision made by the Council itself will be final.

10. NSWALC to maintain a Register of Approved CBS:

10.1 In accordance with S108(1)(g) of the ALRA, NSWALC is required to maintain a register of approvals by the Council of community benefits schemes and to notify the Minister of any such approvals.

Annexure A – Community Benefits Scheme Application & Budget Template

As received by the NSWALC pursuant to section 158(1) of the *Aboriginal Land Rights Act 1983 and NSWALC's LALC Community Benefits Scheme Policy*

Name of Scheme:	
Objective: *(What outcomes or benefits does the scheme aim to achieve?)*	
Requirements of S52A	
a) The proposed scheme complies with the ALRA and Regulations; *(Does the scheme comply with S52A, S158 etc.?)*	
b) The proposed scheme is consistent with any applicable policy of the NSWALC;	*(Does the application meet all requirements outlined in this policy? Confirm the scheme isn't covered by another policy?)*
c) The proposed scheme is consistent with the community land and business plan (CLBP) of the LALC;	*(Include reference to the LALCs current/revised CL&BP. Including or attaching an excerpt relevant to the CBS is all that required.)*
d) The proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent; (attach copies of related LALC CBS policies and or procedures)	Have policies and procedures been developed? (If ***Yes*** include as an attachment) **Yes / No** Confirm proposed operation of the scheme complies with legislative requirements? Who is eligible to participate in the scheme? What is the application process? How will applications be assessed? Who has authority for making decisions on applications?

	What rights of appeal will applicants have?
e) The proposed scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due;	Provide evidence of how the proposed scheme will be funded and is financially sustainable. ***Insert figures in Budget Template below.*** Is the scheme cash flow neutral? ***Yes / No*** If scheme expenditure exceeds income how will shortfall be funded?
f) The need for the proposed benefit is not otherwise being met.	Include an excerpt from the LALCs current/revised CL&BP that substantiates demand for the proposed benefit may be sufficient.
CBS Budget	
Use Budget Template below to input budget items	

Budget template:

Complete this template for each scheme applied for.

Income	
NSWALC Allocation/LALC Funding Contribution	
External Funding	
Projected Earnings (if any)	
Total Income	**$ -**
Expenses	
Sub Category 1: Capital Expenditure;	
List proposed capital expenditure Items	
Total Expenditure Sub Category 1	**$**
Sub Category 2: Salaries and on costs:	
List proposed salaries/wages and on costs i.e. superannuation and workers comp.	
Total Expenditure Sub Category 2	**$**
Sub Category 3: Other Administration costs	
Advertising	
Catering	
Transport/Motor Vehicle	
Other Office and Admin	
Other: *(Provide Details of anticipated CBS activity expenditure by line item))*	
Total Sub Category 3	**$**
Sub Category 4: Travel Accommodation and Meals	
Total Sub Category 4	**$**
Total Expenditure (Sub Cat 1+2+3+4)	

	$

Annexure B

Excerpt from ALRA 1983

52A Community benefits schemes

(1) A Local Aboriginal Land Council may, in accordance with an approval of the New South Wales Aboriginal Land Council:

(a) Directly or indirectly, provide community benefits under community benefits schemes, and

(b) Without limiting paragraph (a), provide, acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in its area.

(1A) Despite subsection (1), the approval of the New South Wales Aboriginal Land Council is not required for a community benefits scheme for the provision or acquisition of residential accommodation for Aboriginal persons in its area, or for constructing, upgrading or extending any such accommodation, if the Local Aboriginal Land Council is:

(a) A registered Aboriginal housing organisation (within the meaning of the *Aboriginal Housing Act 1998*), or

(b) A registered community housing provider (within the meaning of the *Community Housing Providers National Law (NSW)*.

(2) The New South Wales Aboriginal Land Council must not approve a community benefits scheme of a Local Aboriginal Land Council unless it is satisfied that:

(a) The proposed scheme complies with this Act and the regulations, and

(b) The proposed scheme is consistent with any applicable policy of the New South Wales Aboriginal Land Council, and

(c) The proposed scheme is consistent with the community, land and business plan of the Local Aboriginal Land Council, and

(d) The proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent, and

(e) The proposed scheme is not likely to prevent the Local Aboriginal Land Council from being able to meet its debts as and when they fall due, and

(f) The need for the proposed benefits is not otherwise being adequately met.

(3) A Local Aboriginal Land Council must ensure that any community benefits scheme under which community benefits are provided by it or on its behalf:

(a) Complies with this Act and the regulations, and

(B) is consistent with any applicable policy of the New South Wales Aboriginal Land Council, and

(C) is consistent with the community, land and business plan of the Local Aboriginal Land Council.

(4) A Local Aboriginal Land Council may provide community benefits under a community benefits scheme to persons within the areas of other Local Aboriginal Land Councils

and may provide community benefits in conjunction with one or more other Aboriginal Land Councils.

Excerpt NSWALC LALC Budget Policy

6. This policy requires LALC budgets to be prepared so that:

...

d. Income & expenditure for all Community Benefit Schemes, including those schemes providing residential accommodation is separately identified

e. All other income & expenditure for the LALC (i.e. activities) is separately identified.

f. Provision has been made for all statutory obligations, including rates.

...

i. The budget does not contain expenditure for activities beyond the authority conferred on the LALC by its Community Land and Business Plan and the ALRA.

j. The budget is realistic (e.g. the income and expenditure assumptions have a sound basis), responsible (e.g. the budget will enable the LALC to pay its

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operating costs for the year and enable a reduction of any debt) and achievable (e.g. rental income projections are in line with those achieved in the recent past).

k. The budget meets the requirements of any further written direction of NSWALC made pursuant to section 160 of the ALRA.

Compliance

12. It is the responsibility of the LALC to ensure it complies with the ALRA and this policy.

13. Failure to comply with this policy may be grounds for the cessation of funding, or ineligibility for future funding agreements, under the NSWALC Funding Policy and agreement.

14. Failure to comply with the obligations of section 158 of the ALRA, including the obligations of this policy in relation to the preparation of LALC budgets, may result in a LALC being required to resubmit a budget to NSWALC.