

November 2020

A new Guideline to Support Planning for Aboriginal Land

The department is continuing its work with Local Aboriginal Land Councils (LALCs) to help achieve better planning outcomes for their landholdings. The Aboriginal Land Planning Framework brings together elements of the NSW planning system and NSW Aboriginal Lands Right legislation to support better governance, strategic planning and more efficient use of land.

We've developed a guideline to support the implementation of the framework and planning for Aboriginal land more generally.

What is the purpose of the Guideline?

The Aboriginal Land SEPP Guideline provides important information to LALCs who are seeking to engage with the Aboriginal Land Planning Framework and the NSW planning system more generally. It provides tools and assistance to LALCs seeking to undertake development and secure economic uses for their land by outlining:

- The process for having land included in the Aboriginal Land SEPP
- The process for having a Development Delivery Plan prepared
- Guidance to assist LALCs to determine whether the Aboriginal Land SEPP is the most appropriate development pathway
- Planning support to help LALCs to navigate the planning system

The guideline will also help to introduce planners and other development practitioners to the key concepts and processes under NSW Aboriginal Land Rights legislation that LALCs are also required to undertake and engage with when developing their land.

What is the Aboriginal Land Planning Framework?

The Aboriginal Land Planning Framework is a comprehensive set of planning measures to assist LALCs across NSW achieve better economic outcomes from their land and strengthen the economic self-determination of Aboriginal communities. It consists of:

- State Environmental Planning Policy (Aboriginal Land) 2019
- Ministerial Direction 5.11 – Development of Aboriginal Land Council Land
- Independent Proposal Reviews (as outlined in Planning Circular PS 19-003)
- Development Delivery Plans
- Aboriginal Land SEPP Guideline

Why has an Aboriginal Land Planning Framework been developed?

The NSW Government has recognised a need to better align the NSW planning system with the Aboriginal Land Rights Act 1983 (ALR Act). Local Aboriginal Land Councils have faced difficulty in converting successfully claimed land into economic development opportunities to benefit local Aboriginal communities.

The Aboriginal Land Planning Framework includes measures that align the NSW planning system more sympathetically with the ALR Act, helping LALCs to have land zoning and planning controls reconsidered and to have development applications approved.

What is a Development Delivery Plan?

A Development Delivery Plan (DDP) is a strategic plan made under the Aboriginal Land SEPP which sets out the objectives for priority LALC land. A DDP must be considered by planning authorities in key planning assessment processes including planning proposals and development applications on land where a DDP applies.

What is an Independent Proposal Review?

Planning Circular PS19-003 establishes an Independent Proposal Review available to LALC led Planning Proposals. An independent proposal review provides LALCs with the option for an independent body to give advice on Planning Proposals for land subject to a DDP.

How can the framework be extended to other LALCs?

The extension of the planning measures to additional LALC owned land will be considered at the request of the relevant LALC on an opt-in basis.

To include land in the framework, a DDP must be prepared and approved, and the land application map of the Aboriginal Land SEPP amended.

Is the Aboriginal Land SEPP the right option for my LALC?

Using the framework is not compulsory. LALCs can choose to opt in if it suits their needs or utilise other planning pathways depending on their circumstances and development aspirations. We will work with LALCs who are considering inclusion of land in the Aboriginal Land SEPP to understand whether this is a suitable approach for them.

To determine if the framework is the right option for your LALC, consider whether:

- Your LALC owns land in freehold title
- The subject landholdings are constrained or whether they offer some development potential
- The proposed development is consistent with the relevant regional or district plan, and local strategic planning statement
- A planning analysis report or an equivalent land audit has been prepared
- Your LALC has the capacity to carry out an overview of planning opportunities or should engage an independent planning consultant to assist
- Your LALC has engaged with the NSW planning system to develop its land in the past

If the framework is not the right option for your LALC, the Guideline outlines information about the other planning pathways available under the NSW planning system.

What does your LALC have to do to in order to have land included in the Aboriginal Land SEPP?

LALCs seeking to be considered for inclusion in the Aboriginal Land SEPP will need to write to the Minister for Planning and Public Spaces requesting inclusion of LALC owned land in the SEPP's Land Application Map and a DDP to be prepared. In making a request, the LALC will need to provide the necessary information to facilitate the preparation of a DDP including:

- Proof of land ownership for the relevant LALC landholdings
- An audit of LALC landholdings (such as a Planning Analysis Report)
- An overview of planning opportunities
- A copy of the LALC's current Community, Land and Business Plan

The preparation of a DDP will be a collaborative process between the department and the relevant LALC underpinned by the information provided by the LALC in the request for inclusion of land in the SEPP. The process of having land included in the framework is not designed to create additional work; rather, it is about undertaking the right strategic planning processes upfront to save time and resources in the long run.

What planning support services does the Department of Planning Industry and Environment offer to LALCs?

The department offers the following planning support services to LALCs on an opt-in basis:

- LALC Training Package – Introduction to the NSW Planning System
- Mapping of LALC landholdings through the NSW Planning Portal
- Planning Analysis Reports

Will planning and development proposed by LALCs be subject to the same environmental assessment as other proposals?

Yes, the same environmental assessment requirements will apply to development applications and planning proposals made by LALCs as any other landowner. The framework will allow LALC development proposals to be determined by the relevant independent planning panel and DDPs to be considered as part of the assessment of LALC development.

What is a Local Aboriginal Land Council?

The ALR Act establishes a network of 120 Local Aboriginal Land Councils to facilitate the return of land in NSW to Aboriginal people through claims over Crown land. Each LALC has an elected board and a broader membership.

The roles of LALCs include:

- Improving and protecting the best interests of all Aboriginal persons within their area
- Acquiring and managing land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities
- Preparing and implementing community, land and business plans which are a requirement under the ALR Act

Where can I find out more?

More information is [available on our website](#).

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