



LAND NEGOTIATION PROGRAM

# Guidelines for expressions of interest

**Local Aboriginal Land Council participation in the Land  
Negotiation Program 2017-19**

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**Guidelines for expressions of interest—Local Aboriginal Land Council participation in the Land Negotiation Program 2017–19**

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**More information**

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**Acknowledgments**

NSW Aboriginal Land Council

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## Commonly used abbreviations

ALAs	Aboriginal Land Agreements
ALCs	Aboriginal Land Councils (includes both the NSW Aboriginal Land Council and Local Aboriginal Land Councils)
ALRA	<i>Aboriginal Land Rights Act 1983</i> (NSW)
LALCs	Local Aboriginal Land Councils
NSWALC	NSW Aboriginal Land Council

# Introduction

## Purpose

The NSW Government is inviting expressions of interest (Eoi) from Local Aboriginal Land Councils (LALCs) that wish to participate in the Crown Land Negotiation Program.

At the same time, the government is also separately inviting Eois from local government councils that want to enter into the program. The assumption is that both the respective LALC and local government council in an area will want to participate in the program. As such, Eois can also be made jointly by a LALC and a local government council.

The Eoi process outlined in this document will be used to invite applications from LALCs, and to guide the assessment of those applications.

All Eois received from LALCs and local government councils will be assessed by a governance committee that will make its recommendation to the Department of Industry—Lands & Forestry. Successful applicants will be invited to join the program and participate in negotiations at a mutually satisfactory time over the next three to four years (2017–20).

Depending on the number of applications received and approved, it may be necessary to undertake further expressions of interest.

Negotiations undertaken through the program will be in accordance with the Aboriginal Land Agreement Negotiation Framework (2016), and negotiations will aim to result in a comprehensive Aboriginal Land Agreement.

## Land Negotiation Program

The Land Negotiation Program is a new initiative of the NSW Government. The program's goal is to ensure NSW Crown land is held by the most appropriate landholder to achieve the most positive social, economic, cultural and environmental benefit for the people of NSW, whilst retaining land of state significance.

The program involves a voluntary, multi-party land assessment and negotiation in discrete areas within NSW between the NSW Government, the NSW Aboriginal Land Council (NSWALC), the relevant LALC and local government council. If appropriate, with the consent of all parties, native title parties may also be invited to participate.

The Land Negotiation Program recognises the special importance of land to Aboriginal people and the aims of the *Aboriginal Land Rights Act 1983* (NSW).

The Land Negotiation Program recognises the benefits that local ownership of Crown land can bring to communities.

The assessment and negotiation will take a comprehensive approach to dealing with Crown land in the relevant area.

The objectives of the program are to:

1. recognise the importance of land to Aboriginal people and support sustainable spiritual, cultural, environmental and economic benefits for Aboriginal people by transferring appropriate Crown land to Local Aboriginal Land Councils through Aboriginal Land Agreements (ALA) under the *Aboriginal Land Rights Act 1983* (NSW) (ALRA)
2. recognise the best use of Crown land by local communities by transferring appropriate locally significant land to Local Councils under the *Crown Lands Act 1989* (NSW) for its ownership and management under the *Local Government Act 1993* (NSW)

3. support the continuing beneficial use of state significant Crown land by all people of NSW by identifying and retaining ownership and management of appropriate Crown land under the *Crown Lands Act 1989* (NSW)
4. Deliver greater certainty to the NSW Government about Crown land in NSW.

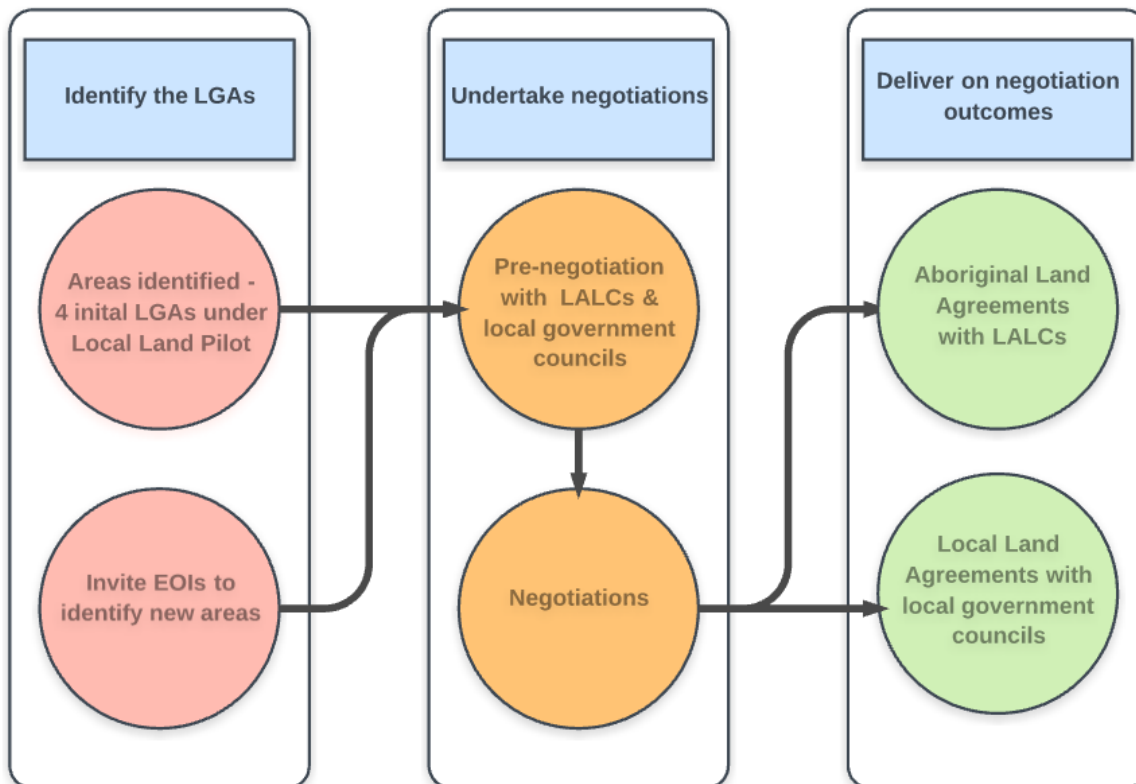
## Operation of the Land Negotiation Program

The Department of Industry—Lands & Forestry is responsible for managing the voluntary negotiations with LALCs, NSWALC, local government councils and, where relevant, native title parties through the Land Negotiation Program.

The Land Negotiation Program commenced in 2016 in the four local government areas that participated in the NSW Government’s Local Land Pilot in 2015: namely Tweed, Tamworth, Corowa (now part of Federation Council) and Warringah (now part of Northern Beaches Council). Negotiations in these areas are expected to formally commence in 2017 and be completed by mid-2018.

The Land Negotiation Program is proposed to expand in 2017–18 to additional areas (based on LGA boundaries or LALC boundaries).

This EoI process will be used to identify, assess and determine the areas in to which the program expands. At this stage it is anticipated that up to six new areas could be added each year (commencing 2017–18), that is up to 18 areas over three years. A statewide rollout of the Land Negotiation Program is not currently proposed, however, it will be considered once the results of the initial negotiations from 2016–20 are evaluated.



**Figure 1. Flow chart of activities under the Land Negotiation Program**

The diagram in Figure 1 outlines activities under the Land Negotiation Program. This EoI document relates to the first part, with the process of identifying new areas to participate. Once an area is identified for inclusion in the program, the negotiations will proceed as outlined above in parts two and three of the flow chart.

# Aboriginal Land Agreement Negotiation Framework

On 1 July 2015, the NSW Government enacted section 36AA of the ALRA, which provides for Aboriginal Land Agreements (ALAs). ALAs were introduced as a new and additional option to the existing land claim mechanism under section 36 of the ALRA. ALAs allow for the strategic settlement of multiple land claims and for flexibility in providing social, cultural and economic outcomes intended by the ALRA.

The NSW Government, in partnership with NSWALC, developed an Aboriginal Land Agreement Negotiation Framework (ALANF), which was released in August 2016. The ALANF aims to ensure negotiations are fair and likely to succeed in the shared objectives of:

- speeding up the processing of land claims
- providing more sustainable social, cultural and economic outcomes for Local Aboriginal Land Councils (LALCs) and Aboriginal communities from the return of land
- providing greater certainty to all parties over Crown land.

The Land Negotiation Program uses ALAs as the mechanism to achieve the outcomes negotiated through the program with a LALC, including the transfer of land.

## Expressions of interest

### Who can apply?

The NSW Government is inviting expressions of interest (EoI) from Local Aboriginal Land Councils (LALCs) who wish to participate in the Land Negotiation Program.

The government is also separately inviting EoIs from local government councils who want to enter into the program.

The assumption is that both the respective LALC and local government council in an area will want to participate in the program. As such, a joint application lodged with the relevant local government council should be considered if possible.

### Governance arrangements

A governance committee, consisting of representatives from NSWALC, Department of Premier and Cabinet, the Office of Aboriginal Affairs, and the Department of Industry—Lands & Forestry, has been established.

The governance committee will assess all applications, and will make recommendations to the Department of Industry—Lands & Forestry. Successful applicants will be invited to join the program and will participate in negotiations at a mutually satisfactory time over the three years (2017–20).

## Expression of interest process

The key steps for the Eol process are as follows:

### Application stage

Eol Application and assessment process	Stakeholder
1. The NSW Government will call for expressions of interest from LALCs to participate in the Land Negotiation Program.	Department of Industry—Lands & Forestry
2. Relevant parties prepare an Eol application seeking to join the Land Negotiation Program. A joint application lodged with the relevant local government council should be considered if possible. NSWALC can assist or prepare the application on behalf of the LALC, if LALC chooses.	LALC, NSWALC, Local Government Council (for joint application)
3. Application submitted by closing date.	LALC, NSWALC, Local Government Council (for joint application)

### Assessment and decision stage

Eol Application and assessment process	Stakeholder
4. The Department of Industry—Lands & Forestry will undertake an administrative assessment of the Eol to ensure relevant information is included. This might include, where required, contacting the relevant local government council for the area to explore if they are potentially willing to participate in negotiation process (if the application is for the LALC only). NSWALC and/or LGNSW may be consulted, if required, regarding an application.	Department of Industry—Lands & Forestry NSWALC LGNSW representative (if joint application with Local Government Council)
5. The governance committee will assess all Eols and make recommendations to the Department of Industry—Lands & Forestry.	Governance committee
6. The Department of Industry—Lands & Forestry will make final recommendation to the Minister for Lands and Forestry, who will invite successful applicants to join the program, and advise unsuccessful applicants of the decision.	Department of Industry—Lands & Forestry Minister for Lands and Forestry
7. The Department of Industry—Lands & Forestry will progress the negotiation process with the relevant successful parties, which will include confirming: <ul style="list-style-type: none"> <li>relevant parties are willing to participate in the negotiation process</li> <li>timing for commencement of the negotiation process</li> <li>capacity requirements for the LALC (in liaison with NSWALC where appropriate, see the Capacity Building Funding Guidelines).</li> </ul>	Department of Industry—Lands & Forestry LALCs NSWALC



## The Eol application

The Department of Industry—Lands & Forestry will write to NSWALC, all LALCs and all local government councils to call for expressions of interest to participate in the Land Negotiation Program. The applications will be open for two months.

If it is interested in participating, the LALC can liaise with NSWALC and/or the Department of Industry—Lands & Forestry to find out more information.

Before the closing date, the LALC must prepare and submit an Eol application. NSWALC can assist in this process or prepare the application on behalf of the LALC, if the LALC chooses.

The application should be in the pro-forma distributed with the invitation to participate. It should address the following, and include any other relevant supporting information:

- The area that would form the basis for the negotiation. For example this could be a LALC area(s) or a local government area, or a combination of both.
- Identification of the relevant parties that would be part of the negotiation process, including, if available, an indication of the local council(s)' willingness to participate in the process.
- Whether or not there are any native title parties in the area and if the proposed negotiation has the potential to consider native title issues. Also note the potential for native title parties to participate in the negotiation process.
- How a successful ALA negotiation process will result in:
  - economic, social and cultural benefits for the local Aboriginal community
  - resolution of multiple and/or longstanding land claims.
- Any supporting information outlining short-term, medium-term and long-term priorities and objectives for the LALC, and how they are likely to be achieved through participation in the land negotiation program.
- The capacity of the LALC to participate in the negotiation process, and any identified capacity needs to be undertaken to prepare for negotiation.
- Preferred timing for engagement in the program (for example, 2017–18, 2018–19, or 2019–20).

## Assessing Eol Applications

The Department of Industry—Lands & Forestry will undertake an administrative assessment of the Eol to ensure relevant information is included. This might include, where required, contacting the relevant local government council for the area to explore if they are potentially willing to participate in the negotiation process (if the application is for the LALC only). NSWALC and/or LGNSW may be consulted, if required, regarding an application.

The Eol Application will then be forwarded to the governance committee for its consideration against the following assessment criteria.

## Eol assessment criteria

1. The proposed economic, social and cultural benefits for the local Aboriginal community and/or the number of existing land claims and time since lodgement, and if the proposed negotiation has the potential to resolve these
2. Potential fit with the Land Negotiation Program in terms of the practicalities of timing, geographical spread/representation, overall number of negotiations being undertaken, and resource capacity
3. The equitable distribution of negotiations and potential benefits from undertaking the negotiations across the state
4. The location of the proposed area is linked to one of the existing negotiation areas currently being undertaken, and ability to readily build on existing and available resources and information
5. The existence of any native title parties in the area, their willingness to participate in the negotiation process, and if the proposed negotiation has the potential to consider native title issues
6. The likelihood of all essential parties (local government council, and LALCs) agreeing to participate in the negotiation process.

## Decision

The governance committee will undertake an assessment of the Eol and make recommendations to the Department of Industry—Lands & Forestry.

The Department of Industry—Lands & Forestry will make final recommendation to the Minister for Lands and Forestry, who will invite successful applicants to join the program, and advise unsuccessful applicants of the decision.

The Department of Industry—Lands & Forestry will then progress the negotiation process with the relevant successful parties which will include confirming:

- relevant parties are willing to participate in the negotiation process
- timing for commencement of the negotiation process
- capacity requirements for the LALC (in liaison with NSWALC where appropriate, see the Capacity building funding guidelines).

Negotiations will begin at a mutually satisfactory time between 2017 and 2020.

## More information

Contact the Department of Industry - Lands and Forestry:

- Web: [www.crownland.nsw.gov.au/crown\\_land/land-negotiation-program](http://www.crownland.nsw.gov.au/crown_land/land-negotiation-program)
- Email: [land.negotiation@industry.nsw.gov.au](mailto:land.negotiation@industry.nsw.gov.au)
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