



Aboriginal Land SEPP

Guideline





The artwork

The cover artwork by Nikita Ridgeway recognises that no matter where we're working, or what we're doing, we're always on Country. Always was, always will be Aboriginal land. It symbolises a journey, creating pathways, community, and being connected to Country. The footprints remind us that to stay grounded we must stay connected to the land. Our feet are always on Country and no matter where we go across the state we are always on Aboriginal land. The footprints also remind us that we're all on a cultural journey and there are paths yet to be travelled.

Published by NSW Department of Planning, Industry and Environment.

dpie.nsw.gov.au

Title: Aboriginal Land SEPP Guideline
– Department of Planning, Industry and Environment.

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer:

The information contained in this publication is based on knowledge and understanding at the time of writing (October 2020) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

The artwork	2
.....	
Foreword	4
.....	
Introduction	5
.....	
Aboriginal Land Rights in NSW	5
The Challenge	5
A new set of planning measures	5
Purpose	7
Key Concepts	7
Part 1 – Aboriginal Land Planning Framework	8
.....	
Aboriginal Land SEPP	8
Ministerial Direction	8
Planning Circular	8
Development Delivery Plans	8
Part 2 – Development Delivery Plans	10
.....	
The process	10
Information requirements	11
DDP Contents – Legal Requirements	14
Implementation and Operation	15
Selling Land	15
Part 3 – Working in the NSW Planning System	15
.....	
NSW Planning System Overview	15
Development pathways	18
Choosing the best pathway	19
Land Dealings under the ALR Act	21
Biodiversity	22
Part 4 – Planning Support for LALCs	23
.....	
Planning Support Services	23
Introduction to the NSW Planning System Training Package	23
Interactive mapping tool	24
Planning analysis reports	24

Foreword



The Department of Planning, Industry and Environment (the Department) is pleased to share the Aboriginal Land State Environmental Planning Policy Guideline, which outlines how Local Aboriginal Land Councils (LALCs) can engage with the suite of planning measures that make up the Aboriginal Land Planning Framework.

One of the most important challenges facing our State is fronting up to the historic injustices and disadvantages inflicted upon our first nations people, and we bear the responsibility to ensure planning and development processes are undertaken in partnership with and for the benefit of Aboriginal communities to promote greater self-determination and representation.

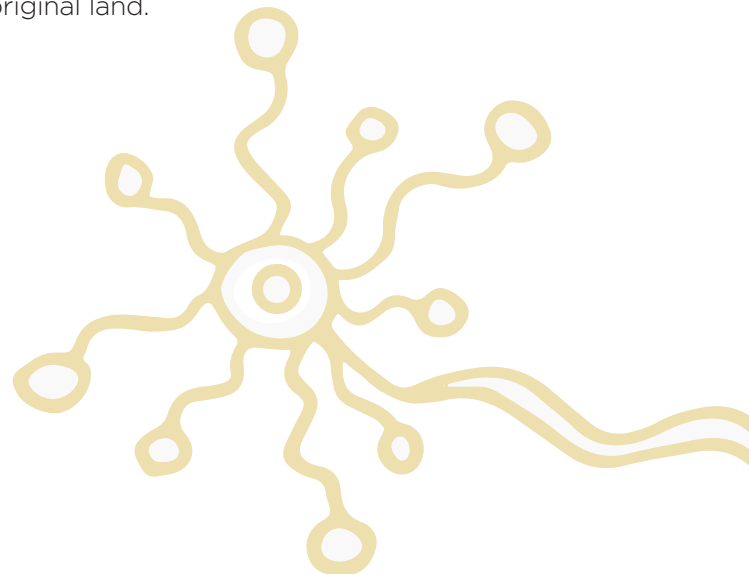
The NSW Government recognises that our planning systems can and should do more to support LALCs to achieve their aspirations and realise community benefits under the Aboriginal Land Rights Act. LALCs are well positioned to use their land to achieve strong economic, social and cultural outcomes to benefit Aboriginal people across NSW and our frameworks should be calibrated to best support them.

The extension of the Aboriginal Land Planning Framework is one of the key actions of the Department's Aboriginal Outcomes Strategy, and we are committed to collaborating with LALCs to identify development priorities and set up work programs to ensure the successful implementation of these projects.

This guideline is just one part of the work the Department is doing to enhance Aboriginal economic participation in NSW. Our goal is for this guideline is to improve the way Aboriginal communities engage with and benefit from the planning system, and to support the critical work of LALCs across NSW.

We'll achieve the best outcomes if we continue to work together and remember that NSW always was and always will be Aboriginal land.

Jim Betts - Secretary





Introduction

Aboriginal Land Rights in NSW

The *Aboriginal Land Rights Act 1983* (ALR Act) was passed by the NSW Parliament to transfer land rights to the Aboriginal people of NSW as compensation for the loss and dispossession of their land. The ALR Act recognises the traditional ownership and occupation of the land, and that land is of spiritual, social, cultural and economic importance to Aboriginal people.

The NSW Aboriginal Land Council and a network of 120 Local Aboriginal Land Councils (LALCs) were established to acquire and manage land as an economic base for Aboriginal people, laying the basis for a self-reliant and more secure economic future.

The Challenge

Since the establishment of the ALR Act, LALCs have faced difficulty in creating economic development opportunities from claimed land. In order to use successfully claimed land for economic purposes, LALCs are often required to navigate the planning system to have land zoning and planning controls reconsidered and to have development applications approved. This can be particularly challenging for LALCs when upfront investment and expertise is required to engage with the planning system.

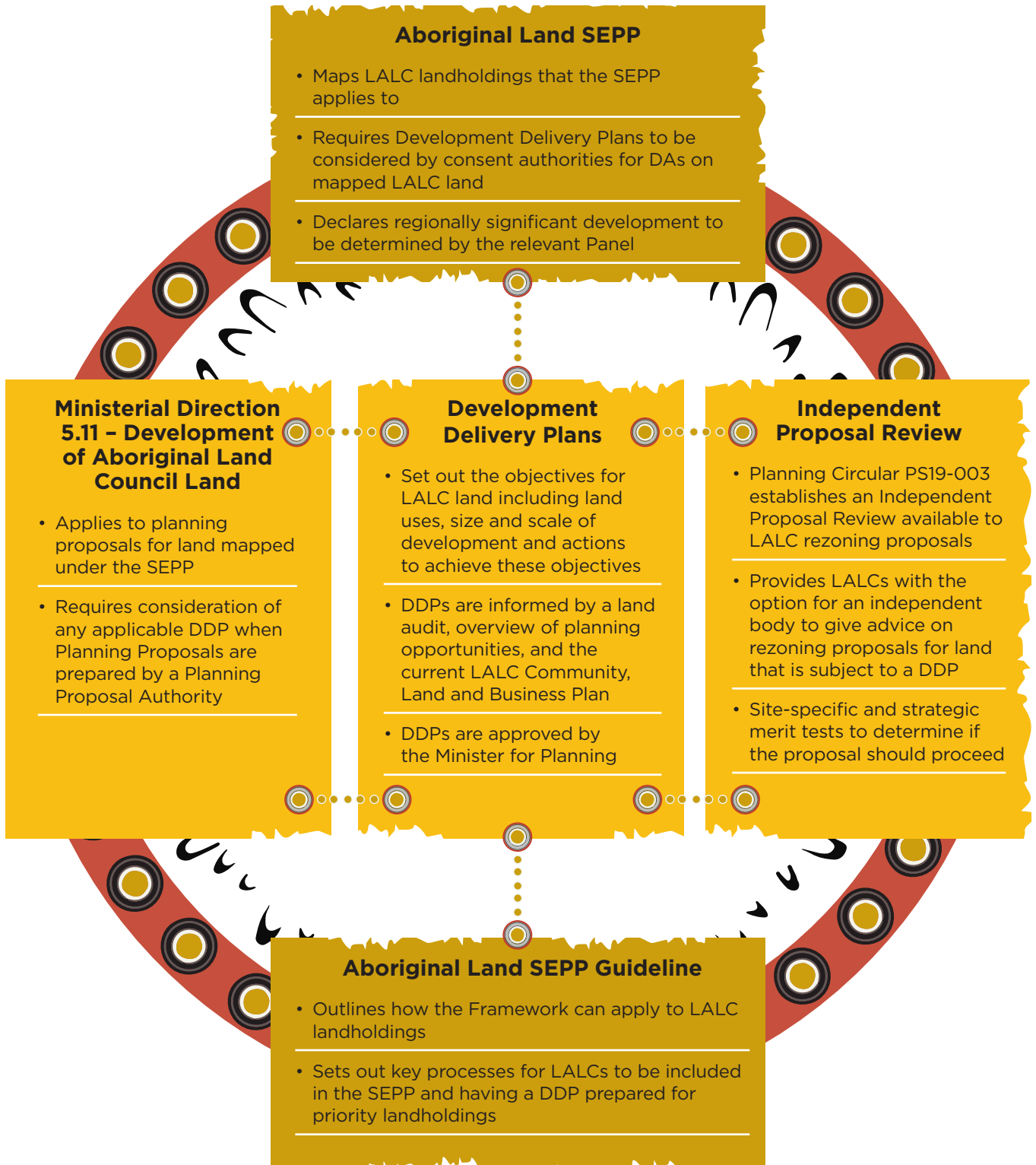
LALCs are unique and significant landowners with cultural, social and economic interests and responsibilities. They operate under different rules and have different responsibilities than others who seek to develop their land. Despite this, they are subject to the same planning processes and assessment criteria as any other landowner, in addition to processes required under the ALR Act. This magnifies difficulties, particularly for LALCs with limited resources and capacity to engage with the NSW planning system.

A new set of planning measures

In response to this challenge, the NSW Government has released the Aboriginal Land Planning Framework to help LALCs across NSW better utilise their land. The Framework aligns the NSW planning system with the ALR Act to support better governance, strategic planning and more efficient use of land.

The Framework is a comprehensive set of planning measures to strengthen the economic self-determination of Aboriginal communities and achieve better social and economic outcomes from their land.

Aboriginal Land Planning Framework



Purpose

This Guideline should be used by LALCs, local councils and people working in the broader planning and development industry. It provides an overview of the Aboriginal Land Planning Framework and outlines:

- 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

You should read the Guideline alongside the Aboriginal Land SEPP, the Ministerial direction, Planning Circular 19-003 and the relevant regional or district plan.

The Framework is not mandatory. Currently the Framework only applies to Darkinjung LALC but there is scope for other LALCs to opt-in to use it, however it is not the only way to optimise the development potential of their land. For some LALCs, it will not be the most appropriate approach and other planning pathways may be more suitable, as is discussed further in Part 3 of this Guideline.

We want the Guideline to inform decisions about the best planning pathway a LALC can choose to achieve their development aspirations. For LALCs who do wish to use the Framework, this Guideline offers advice and support for utilising the new planning measures.

Importantly, this Guideline is a complement to what we expect will be a strong collaboration between the Department and LALCs. As you read through the requirements of the Framework, you will see that there are new processes and requirements that allow for an upfront strategic assessment (through the DDP) that will save time in the long run and maximise the opportunities available. We intend to partner with LALCs throughout this process.

Key Concepts

We discuss several planning concepts in this Guideline:

- The ***Environmental Planning and Assessment Act 1979*** (EP&A Act) is the key legislation for the planning system in NSW. It establishes the planning framework for land use decisions in NSW. The EP&A Act also sets out the way that the community is informed of, and participates in, planning and development decisions. The EP&A Act establishes a hierarchy of planning instruments which control development and inform the assessment and decision-making process for development.
- A **State Environmental Planning Policy** (SEPP) is a planning instrument that applies to matters the Minister for Planning and Public Spaces determines are significant to State or regional environmental planning.
- A **Development Delivery Plan** (DDP) is a strategic plan that will set the objectives for priority LALC land. All DDPs are approved by the Minister for Planning and Public Spaces.
- A **planning proposal** or a rezoning is prepared by a council, landowner or developer to justify the making of or amendment to a proposed local environmental plan (LEP) – where the LEP is the principle planning instrument for an area.
- A **development application** (DA) is a formal application for development that requires consent under the EP&A Act. A DA is usually made to the relevant local council and includes standard application forms with supporting technical reports and plans.
- A **consent authority** is the organisation responsible for approving or refusing development applications. This could be a local council, a local or regional planning panel, or the Minister for Planning and Public Spaces.

Part 3 of this Guideline overviews other relevant components of the NSW planning system.

Part 1 – Aboriginal Land Planning Framework

The Aboriginal Land Planning Framework includes a suite of planning measures designed to better align the NSW planning system with the ALR Act and support LALCs to secure suitable uses for their landholdings.

Aboriginal Land SEPP

The *State Environmental Planning Policy (Aboriginal Land) 2019* came into force on 6 February 2019. The Aboriginal Land SEPP:

- Enables the making of DDPs for land owned by LALCs and identifies the process for approving and amending DDPs
- Maps LALC landholdings that the SEPP applies to
- Requires a consent authority to consider a DDP when assessing a development application made by a LALC for land mapped in the Aboriginal Land SEPP
- Makes certain development on land mapped under the Aboriginal Land SEPP and owned by a LALC regionally significant so that planning decisions will be made by the relevant planning panel rather than the local council

LALC development proposals will continue to be subject to the same environmental assessment criteria and legislative requirements as any other proposal at the planning proposal and development application stages.

Ministerial Direction

Ministerial directions outline planning policy directions that need to be followed when a planning proposal is being prepared.

Ministerial direction 5.11 – Development of Aboriginal Land Council Land applies to planning proposals for land mapped under the Aboriginal Land SEPP. The Direction ensures that the applicable DDP is considered when a planning proposal is prepared.

Planning Circular

Planning circulars are prepared and issued by the Department to provide additional information to key stakeholders about planning and policy. The circulars often relate to the practical application or interpretation of different components of the planning system.

Planning Circular PS 19-003 – *Independent review of planning proposals for identified Aboriginal land* details the independent proposal review process for planning proposals on land identified in the Aboriginal Land SEPP and subject to a DDP or interim DDP. It outlines an alternative review process that LALCs can use, whereby an independent planning body provides advice on planning proposals to determine the strategic and site-specific merit of a proposal, and whether it should be submitted for a Gateway determination.

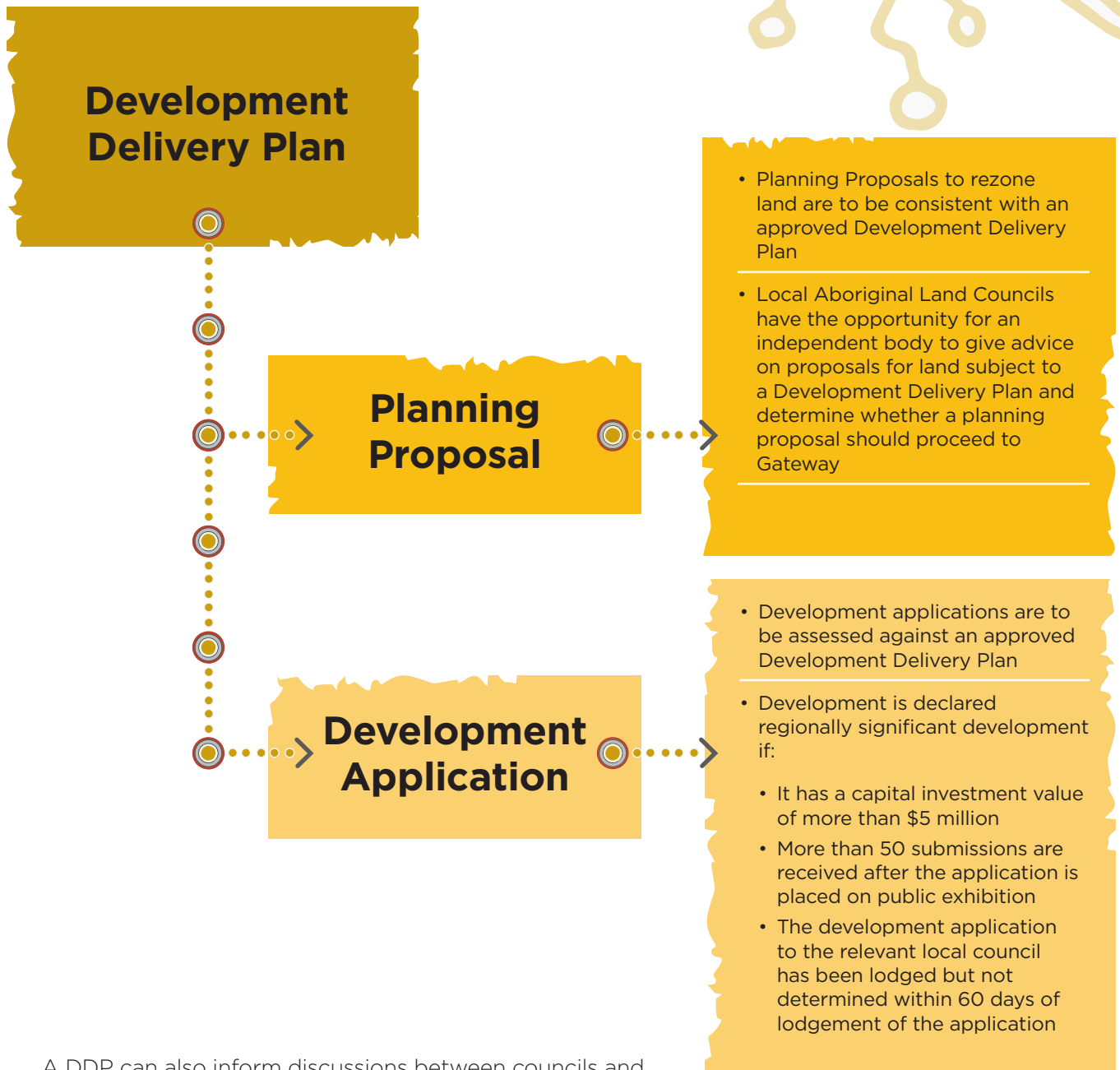
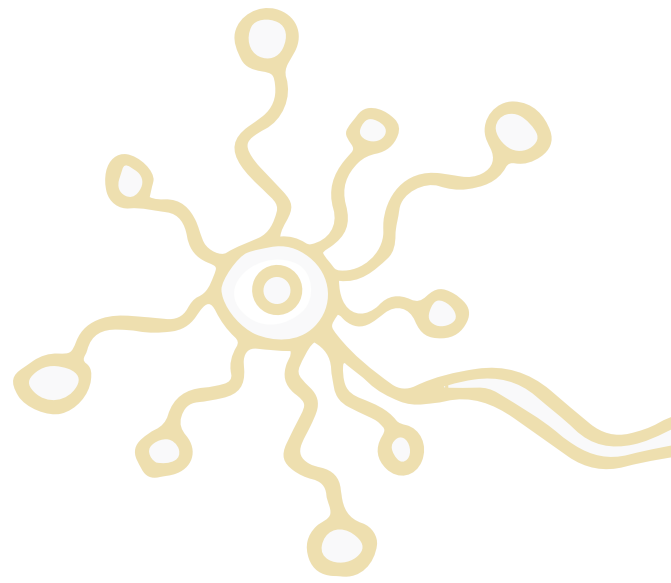
An independent review can be requested by a LALC before a planning proposal has been submitted for a Gateway determination as an alternative to initiating a planning proposal through a local council.

Development Delivery Plans

A DDP is a plan made under the Aboriginal Land SEPP and approved by the Minister for Planning and Public Spaces that sets out the development objectives for identified LALC land. DDPs will provide the ongoing link between the requirements of the ALR Act, such as preparation of community, land and business plans, and the planning and development decisions that occur under the provisions of the Environmental Planning and Assessment Act 1979.

A DDP formally recognises the development pipeline for a LALC and must be considered by planning authorities in key planning assessment processes including planning proposals and development applications.

DDP Consideration in Planning Assessment



A DDP can also inform discussions between councils and LALCs and be used to help set the context when local planning strategies and development proposals are placed on public exhibition.

Part 2 - Development Delivery Plans

Under Part 2 of the Aboriginal Land SEPP, a DDP must be prepared by or on behalf of either:

- the responsible LALC who owns the relevant land, or
- the Minister for Planning and Public Spaces

In practice, the preparation of a DDP will be a collaborative process between the Department and the LALC based on the information provided by the relevant LALC. The Minister for Planning and Public Spaces is responsible for approving or refusing to approve a DDP.

The process

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, your LALC will need to provide the necessary information to facilitate the preparation of a DDP (detailed in the sections below).

The process for inclusion of land in the Aboriginal Land SEPP is outlined in the diagram (right).

Before commencing the process for inclusion of land in the Aboriginal Land Planning Framework, consider if it will be worthwhile for your LALC to take part in the Department's *Introduction to the NSW planning system* training package delivered through the Aboriginal Community Land and Infrastructure Program (ACLIP) - see part 4 for more details.

While the development of the DDP will be a collaborative process between the Department and LALCs, the advice of the relevant local council would also be a valuable input.

Process for Inclusion of land in the Aboriginal Land SEPP

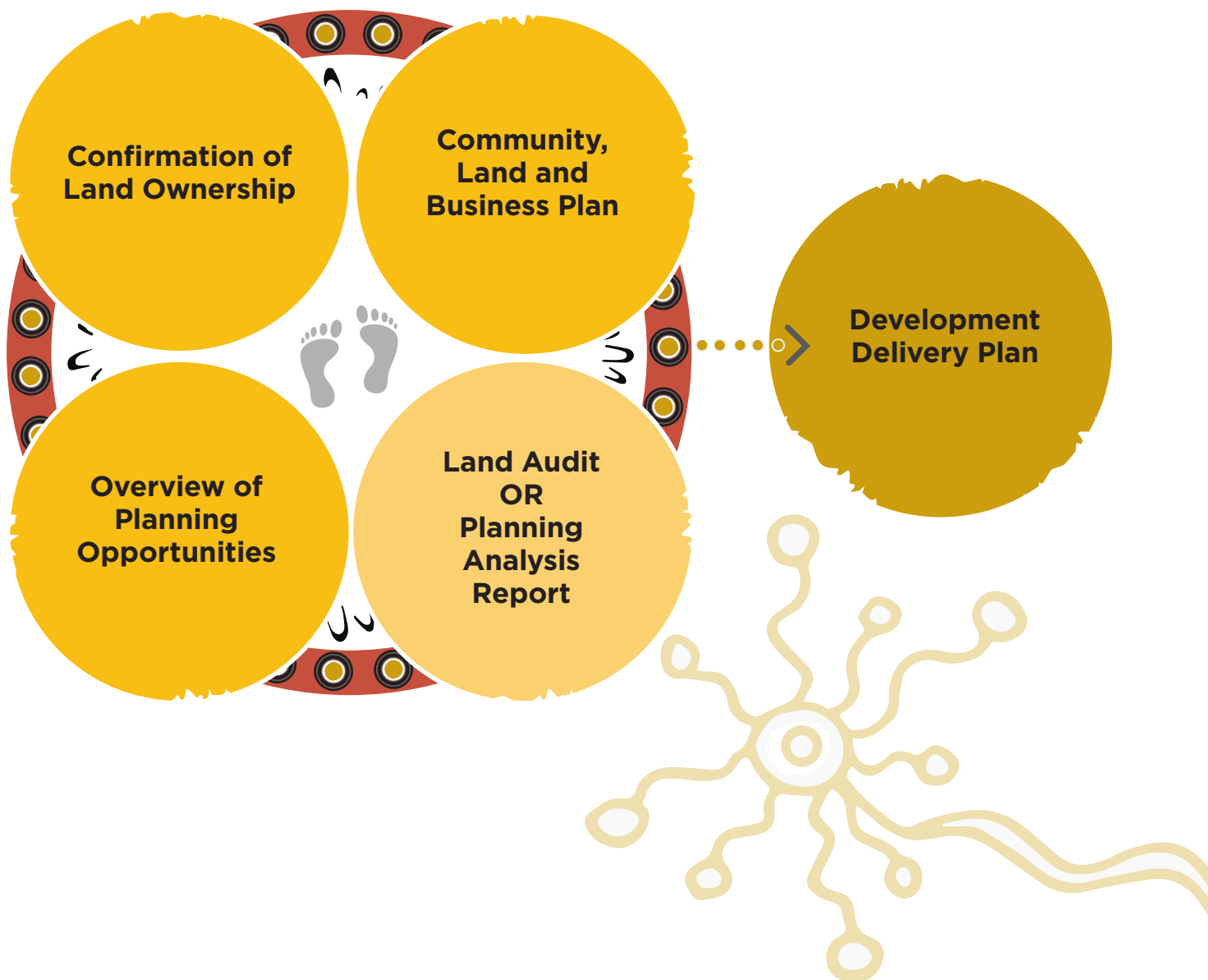


Information requirements

To begin the process to have land included in the Framework, LALCs will need to prepare and provide information to explain what their development aspirations are for priority landholdings. This information will help the Department to prepare a DDP in collaboration with your LALC.

As you read through the requirements of the Framework, you will see that there are new elements and requirements that allow for an upfront strategic assessment (the DDP) that will save time in the long run and maximise the opportunities available. We intend to partner with LALCs throughout this process.

Development Delivery Plan Components




Requirement	Description of Information
Confirmation of Land Ownership	<p>Lot and DP information.</p> <p>In order for land to be to be considered for inclusion in the Aboriginal Land SEPP, it must be held in freehold title by your LALC. Land agreements and claims under the Native Title Act 1993 and the Aboriginal Land Rights Act 1983 operate under a different system to the NSW planning system which is governed by the Environmental Planning and Assessment Act 1979. For this reason, the outcome of Native Title and Land Claims proceedings has no bearing on the planning measures of the Aboriginal Land Planning Framework. Claimed land that is held in freehold title by your LALC can be considered for inclusion in the Framework.</p>
Audit of LALC Landholdings OR Planning Analysis Report (See Part 4 for more details)	<p>Identifying the following information for each land holding proposed to be included in the DDP:</p> <ul style="list-style-type: none"> • Location and size of each land holding • Surrounding land uses and location of nearby urban areas and other landscape features • Status of existing development activity (or history of previous development applications) • Land use zone(s), permissible land uses and applicable development standards applying to each property under the relevant LEP (or other planning instrument) • Environmental constraints applying to each property such as: <ul style="list-style-type: none"> • Areas of biodiversity significance • Heritage items or conservation areas • Flooding • Bushfire risk <p>As is outlined in Part 4, LALCs can request the Department to provide a planning analysis report which is sufficient to satisfy this information requirement.</p>

Requirement	Description of Information
Overview of Planning Opportunities	<p>In comparison to the land audit, the overview of planning opportunities will need to provide an additional layer of detail relating to your LALC's development aspirations and should set out the following:</p> <ul style="list-style-type: none"> • Potential types of land uses for priority sites (i.e. residential, commercial, environmental conservation) • The scale of development and built form envisaged for development sites • Any key infrastructure that would be required to support new or additional development • Details of the economic, social and cultural objectives or aspirations for your land as informed by the land audit. • Any actions or directions outlined in the relevant Regional Plan, District Plan or Local Strategic Planning Statement that support the identified planning opportunities • Key considerations include: <ul style="list-style-type: none"> • The cultural significance of any properties • Any social outcomes to benefit local communities • Economic development, such as employment or business developments • Financial benefits that can range from short-term returns to long-term assets • Measures to support strategic biodiversity conservation relating to the land
Community, Land and Business Plan	<p>A copy of your LALC's current Community, Land and Business Plan.</p> <p>Under the ALR Act, LALCs are required to prepare and implement a community, land and business plan that outlines the overarching aims and strategies for the LALC, as determined by its members. These plans include objectives for the acquisition, management and development of land and other assets and reflect the development aspirations of LALCs.</p>

This information will allow for an upfront strategic assessment to be undertaken and for the contents of the plan to be prepared in accordance with the requirements for DDPs outlined in the Aboriginal Land SEPP.

DDP Contents – Legal Requirements

The requirements for the form and contents of a DDP are outlined in Part 2 of the Aboriginal Land SEPP. The requirements include mandatory contents, optional contents and matters which must be considered when a DDP is being prepared.

Mandatory Contents	Optional Contents	Ensuring Consistency with Regional Strategic Planning
 <p>Clause 9(1) of the Aboriginal Land SEPP outlines matters that must be addressed in a DDP:</p> <ul style="list-style-type: none"> • Apply to all land identified in the SEPP that is owned by the same LALC • Set out the general objectives of the LALC for the land • Set out the nature of development proposed for the land • Set out the basis on which the development is proposed, having regard to applicable economic, social and environmental factors • Set out strategies, actions and a program for achieving the objectives for the land 	<p>Clause 9(2) of the Aboriginal Land SEPP outlines a number of optional matters that can also be included in a DDP, including:</p> <ul style="list-style-type: none"> • The bulk, scale and size of development proposed • Measures to support Aboriginal cultural heritage that may be affected by development • Measures to support strategic biodiversity conservation relating to the land • Proposals for the provision of public utility infrastructure and roads <p>There may also be other matters that LALCs deem relevant for inclusion in a DDP which fall outside the above criteria.</p>	<p>Clause 9(3) of the Aboriginal Land SEPP outlines other matters that must be considered when preparing a DDP, including:</p> <ul style="list-style-type: none"> • The applicable regional strategic plan including any relevant actions or directions • The community, land and business plan adopted by the responsible LALC under the ALR Act <p>A DDP should outline how these matters have been considered and incorporated to ensure consistency with broader strategic planning objectives for the region.</p>

Unless otherwise agreed to by your LALC, the property information provided to the Department will be used only for the purposes of preparing a DDP in accordance with the Aboriginal Land SEPP (and any associated amendments to its land application map).

Implementation and Operation

Once a DPP has been prepared and approved, the Department will amend the Aboriginal Land SEPP to include the relevant land in its application area. As part of this process, the Department may be required to publicly exhibit an explanation of intended effects for the proposed amendments to the Aboriginal Land SEPP.

An approved DDP may be amended or replaced by the Minister at the request of the responsible LALC or at the Minister's discretion. LALCs seeking to amend an approved or proposed DDP should contact the Department to discuss the proposed amendment and any additional information that may need to be provided.

A DDP will usually include a work program of recommended actions and responsibilities to guide its implementation. The work program will

outline priority tasks, indicative timeframes and responsibilities so that you can sequence works appropriately once the DDP is approved.

Selling Land

If a LALC sells land mapped under the Aboriginal Land SEPP, the new landowner cannot benefit from the Aboriginal Land SEPP when submitting a development application or a planning proposal for that land. A DDP can only apply to land that is owned by the responsible LALC, and once the land is sold, the DDP no longer applies. This includes development applications for subsequent stages in an approved concept development.

Part 3 – Working in the NSW Planning System

NSW Planning System Overview

The NSW planning system determines how land can be used and developed in NSW. The NSW planning system is governed by planning legislation, regulation, supporting strategic plans and environmental planning instruments. These guide the zoning, approval processes and community participation in the system.

Part 3 sets out the key elements of the NSW planning system and the development pathways available to LALCs seeking to develop their land.

NSW Planning System Overview



The NSW planning system includes a number of strategic and statutory components that affect the way that areas are planned, and how planning decisions are made in relation to specific development proposals. The key components of the NSW planning system are outlined in the following table.



Legislation and Regulation

Environmental Planning and Assessment Act 1979



The Act is the primary legislation covering land use planning and development assessment in NSW. It establishes a framework of land use plans, strategic plans and environmental planning instruments that provide the context and rules for decision-making about development.

Under the EP&A Act, councils and the NSW Government are both responsible for preparing plans and assessing development. The Act sets out assessment processes to suit the type and significance of development — from small-scale works to regionally and State significant development. It also ensures construction can be certified against set building standards.

Environmental Planning and Assessment Regulation 2000



The Regulation supports the EP&A Act with key operational provisions relating to environmental planning instruments, procedures around DAs and other development types, environmental impact statements, building regulation and subdivision certification, fees and charges, development contributions, planning certificates which provide information about land and other operational matters.

Strategic Plans

Regional Plans and District Plans



Nine regional plans for NSW provide an overarching strategic land use planning direction for each region over the next 20 years. They inform planning for future housing needs, jobs, infrastructure and the environment, and guide strategic planning within each local government area.

District plans are similar and are used for five districts in Greater Sydney as a link between the Greater Sydney Region Plan and local planning. District plans also inform local strategic planning statements and local environmental plans, the assessment of planning proposals as well as community strategic plans and policies.

Local Strategic Planning Statements



Every local council in NSW will prepare a local strategic planning statement that sets a 20-year vision for land use in each local government area. The statements will reflect regional and district plans, and each council's community strategic plan. LALCs should get involved in any engagement or consultation undertaken by local councils as the local strategic planning statements are prepared.

Environmental Planning Instruments

State Environmental Planning Policies



State Environmental Planning Policies (SEPPs) are planning instruments made for the purpose of environmental planning by the State in respect of matters that, in the opinion of the Minister for Planning and Public Spaces, are of State or regional environmental planning significance. SEPPs can specify development standards for certain areas and/or development types across the State.

Local Environmental Plans



Local Environmental Plans (LEPs) are the principal environmental planning instruments for how land can be used and developed in a local government area. They set out land use zones and development standards to ensure local development is appropriate.



Development Control Plans

Development Control Plans



These are prepared by local councils and contain detailed planning and design guidance for consideration when preparing a development application. Development Control Plans (DCPs) provide more detailed guidance than the land use zones and development standards contained in LEPs.

Land Use Zones and Development Standards

Land Use Zones



These are usually outlined in LEPs and identify the type of development allowed on a parcel of land. A land use zone includes zone objectives which sets out the purpose of the zone and identifies land use types that are permissible without the need for development consent, permissible with development consent, and land use types which are prohibited on a parcel of land.

Development Standards



These are usually outlined in LEPs and identify the type of development allowed on a parcel of land. A land use zone includes zone objectives which sets out the purpose of the zone and identifies land use types that are permissible without the need for development consent, permissible with development consent, and land use types which are prohibited on a parcel of land.

Development pathways

Before deciding whether you want to use the Aboriginal Land Planning Framework, you may want to consider other development options. Which option is the most appropriate pathway will depend on the size and scale of the development.

- **Exempt development** includes minor renovations and low impact works that do not require planning or construction approval. [Find out more](#)
- **Complying development** is a fast-track approval process for straightforward residential, commercial and industrial development that can be determined by the relevant council or a private accredited certifier without a full development application. [Find out more](#)
- **Development applications** are used for most local development in NSW, with projects ranging from home extensions to medium-sized commercial, retail and industrial developments. Local development is usually assessed by the relevant council, but can also be determined by District and Regional Planning Panels. [Find out more](#)
- **State significant development** includes development deemed to have State significance due to its size, economic value or potential impacts State significant development is assessed by the Department.
- **Rezoning** land through a **planning proposal** can be pursued to change the land use zone, the range of permissible land uses, development standards applying to land. Further details of the rezoning process are provided on [the Department's website](#)

Community consultation processes are required for development applications (local development), regional development, state significant development and rezonings.

Choosing the best pathway

LALCs across NSW are at different stages of securing suitable uses for their land. Depending on the nature and extent of each LALC's development aspirations, the process of opting into the Aboriginal Land SEPP and the preparation of a DDP may not be the best planning pathway.

The Aboriginal Land SEPP and DDP process is not compulsory and LALCs can still use the existing planning pathways, which are separate to the Framework. In some cases, this may be a simpler and more cost-effective option for your LALC. Your LALC may also decide to opt into the Framework at a later stage, when it is more suitable.

The following considerations can be used to help determine if the Framework is the right option for your LALC:

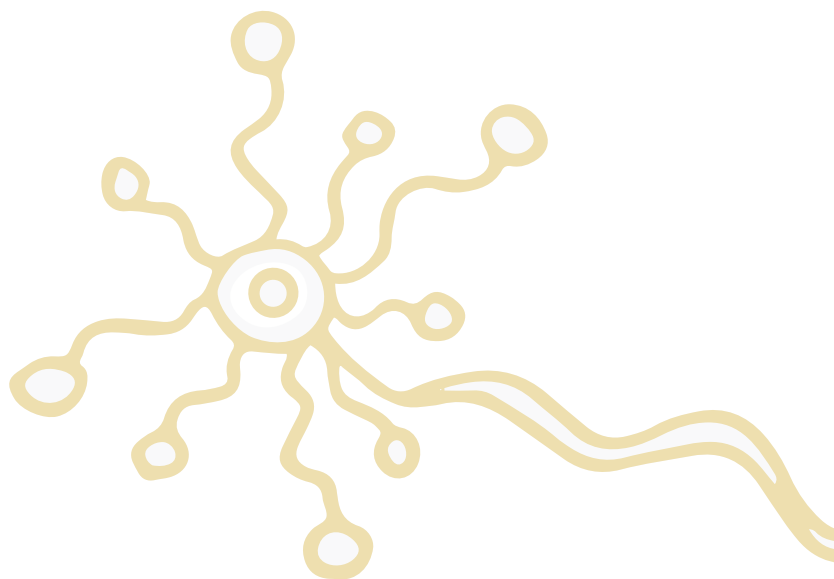
- Whether your LALC owns land in freehold title
- If the landholdings are constrained or whether they offer some development potential
- Whether the proposed development is consistent with the relevant regional or district plan, and local strategic planning statement
- If a planning analysis report or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

Taking part in our planning support services will also help to guide decisions about which pathway to choose (see Part 4).

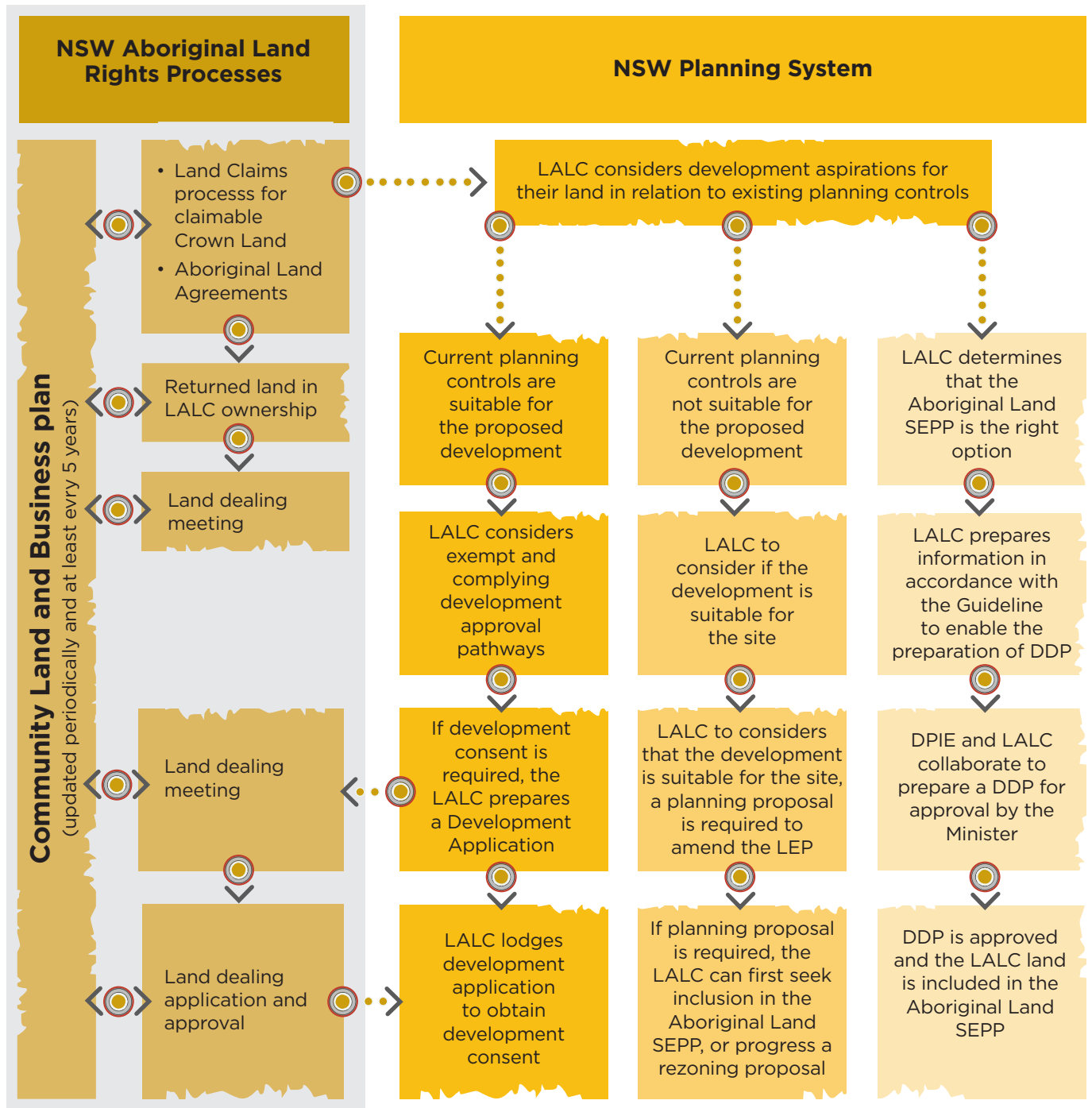
Prior to opting into the Aboriginal Land SEPP and DDP process, LALCs should also consider:

- Staffing, resources and capacity
- Funding for an independent planning consultant or any development fees that will be required in the planning and development process
- The staging, sequencing and prioritisation of development projects
- Economic risks and opportunities associated with any development proposal
- The roles and responsibilities for consultation and land dealing meetings under the ALR Act.

The DDP process will require LALCs to consider how different projects can be prioritised to create a sustainable pipeline of development opportunities – for example, choosing to work first on projects with less risk or that require less upfront investment. This may take longer than was initially planned; also, more complex development proposals will require LALCs to think about their development aspirations over many years.



NSW Planning and Aboriginal Land Rights



Land Dealings under the ALR Act

LALCs must obtain approval of a land dealing application from the NSWALC before undertaking development. A land dealing means an action in relation to land, such as:

- To sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal interest in, land
- To grant an easement or covenant over land or release an easement or covenant benefiting land
- To enter into a biobanking agreement relating to land under the Biodiversity Conservation Act 2016 or a Conservation agreement under the National Parks and Wildlife Act 1974
- To enter into a wilderness protection agreement relating to land under the Wilderness Act 1987 or a property vegetation plan under the Native Vegetation Act 2003
- To subdivide or consolidate land to affect, or consent to a plan of subdivision or consolidation of land that affects, the interests of an Aboriginal Land Council in that land
- To make a development application in relation to land
- Any other action relating to land that is prescribed by the regulations

Further information on the processes and requirements for land dealing applications is available from the NSW Aboriginal Land Council at: <http://alc.org.au/land-councils/lalc-land-dealings.aspx>



Biodiversity

LALCs often own land with high biodiversity values due to the land claims process and outcomes to date. Development proposals on land that contains high biodiversity values must consider the impact of the development on biodiversity. This may include requirements for additional studies or supporting information to be prepared to determine whether impacts can be avoided, minimised, mitigated or offset.

LALC landholding with low development potential but high biodiversity and ecological values may potentially be utilised under the Biodiversity Offset Scheme under the Biodiversity Conservation Act 2016. The Biodiversity Offset Scheme provides an opportunity for LALCs to benefit from the land holdings while positively impacting environmental outcomes.

The process for preparing a Development Delivery Plans will provide opportunities for the Department to work with LALCs to consider the biodiversity values of their landholdings and navigate the intersection of the Biodiversity Conservation Act 2016 and the planning system. Early consideration of these values will assist LALCs to understand the potential costs and benefits involved with biodiversity conservation processes prior to investing resources into any particular option.

There are two key elements to the Biodiversity Offsets Scheme:

- Developers and landholders who undertake development or clearing, generating a credit obligation which must be retired to offset their activity
- Landholders who establish a biodiversity stewardship site on their land, generating credits to sell to developers or landholders who require those credits, to securely offset activities at other sites

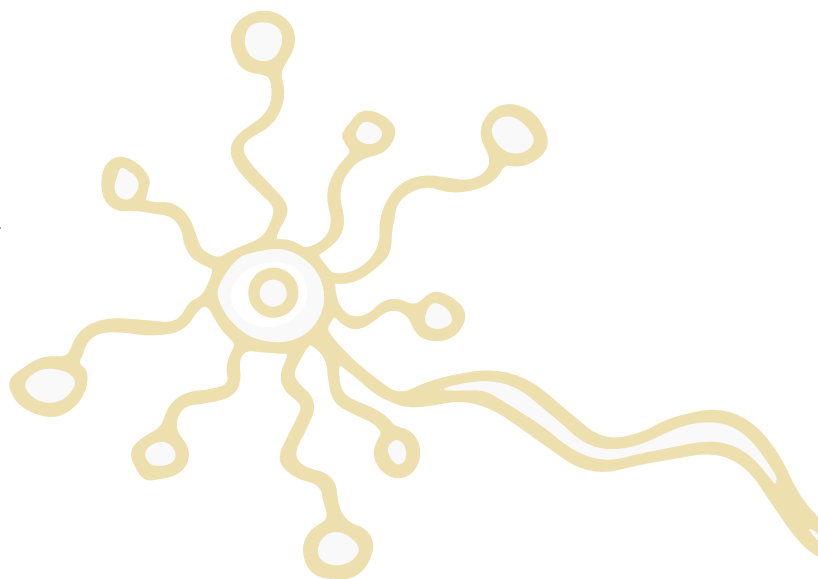
There are two main potential opportunities for LALCs under the Biodiversity Offsets Scheme:

- Support the development of other LALC land holdings by providing the biodiversity offsets credit required to offset the clearing and/or development of the land holding.
- Create a biodiversity stewardship site to generate offset credits that could be sold to another land holder who requires credits to facilitate development on their site.

Any biodiversity stewardship site must meet eligibility requirements and your LALC would need to pay fees associated with this process.

If the land meets the eligibility criteria, your LALC is responsible for preparing a Biodiversity Stewardship Site Assessment report that includes a Biodiversity Stewardship Agreement and proposed management plan for the site. This is lodged to the Biodiversity Conservation Trust for approval. The agreement remains on the site in perpetuity and is registered on the land title. LALCs should seek advice from a Biodiversity Assessment Method Accredited Assessor if it wishes to pursue either option.

More information is available at: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-assessment-method>



Part 4 – Planning Support for LALCs

We want to work with LALCs across NSW to achieve better planning outcomes from your landholdings to benefit Aboriginal communities.

The NSW planning system and associated legislation can be complex and some LALCs have historically faced difficulty in navigating the various planning processes. The Department offers a range of support services to help your LALC understand key planning concepts and provide the necessary information to help choose the right planning pathway to achieve your LALC's development aspirations.

Planning Support Services

The Department's Planning and Assessment Group offers a number of planning services for LALCs. The services aim to build capacity in Aboriginal Communities, unlock their economic potential and build cultural competency in the planning sector by:

- Helping LALCs to more readily derive economic, social and cultural outcomes from land acquired through the ALR Act.
- Providing key planning information to LALCs in an accessible and user-friendly format.
- Providing strategic planning support to LALCs who are seeking to engage with the NSW planning system.

The Department offers these services to all LALCs to assist and enhance their engagement with the planning system.

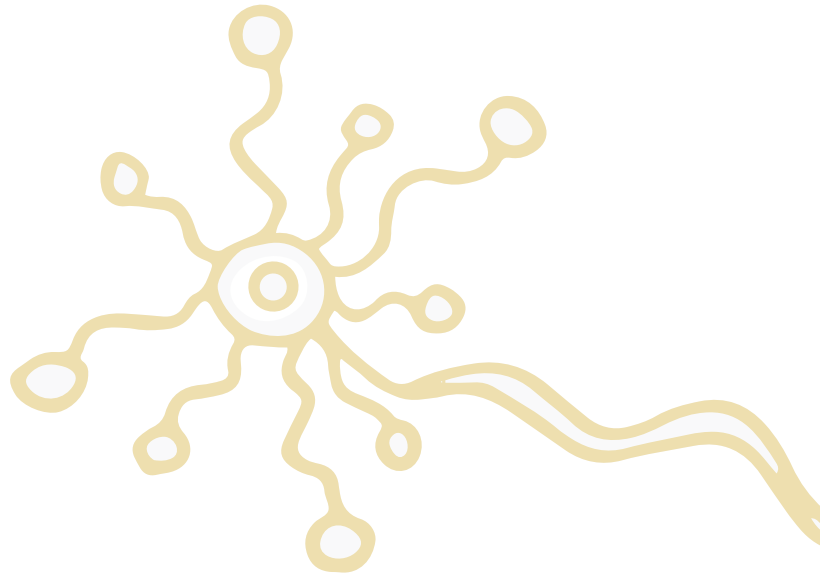
Introduction to the NSW Planning System Training Package

The purpose of the Department's training package is to introduce the NSW planning system to LALCs and other Aboriginal organisations. The training package is available to all LALCs and will help Aboriginal communities to begin to unlock the economic benefit from their land.

The training directly benefits Aboriginal communities by providing the necessary skills and knowledge to actively participate in the planning process. The training will give LALCs the tools they need to make economic decisions regarding their land.

Specifically, the training aims to:

- Improve the understanding of the NSW planning system for the members and staff of LALCs
- Support participants to have a greater knowledge of the NSW planning system
- Improve the understanding of the relationship between local government and the NSW planning system and land use management systems
- Provide the participants with a basic appreciation of the NSW planning system for application in their jobs, culture and community



Interactive mapping tool

The Department is working to establish an interactive mapping tool. The spatial viewer is a mapping tool available via the Department's planning portal that will enable LALCs to view their landholding information together with relevant planning controls. This function will help LALCs to better engage with the planning system through the Department's website.

Planning analysis reports

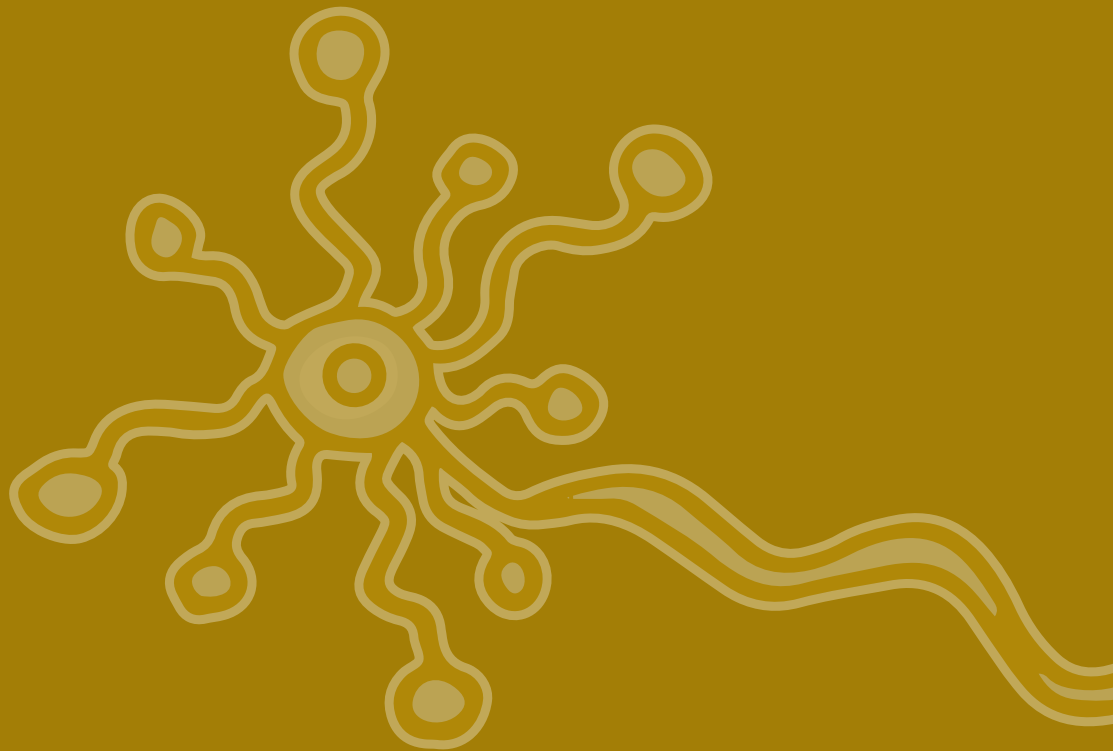
A planning analysis report provides an overview of the land use planning framework applying to a LALC's land holdings, including details of the key planning and environmental constraints for the development of land holdings. This information can inform your LALC about how the NSW planning system influences opportunities to manage and develop land holdings and inform future updates to your LALCs community, land and business plan.

A planning analysis report is prepared for a LALC by the Department and includes the following information:

- Summary of the NSW Planning System
- Key planning concepts and an overview of the planning pathways for different types of development
- Identification of your LALC's landholdings
- Land use planning information including zoning and key development standards that apply to your landholdings
- Identification of planning and environmental constraints applying to each of your landholdings
- Links to other government programs and resources that may be of assistance to your LALC such as biodiversity, native title, Aboriginal cultural heritage and funding opportunities
- The strategic vision which underpins your LALC's landholdings, outlined in regional and district plans

A planning analysis report can inform the next steps for your LALC which include:

- Determining cultural, social, economic and financial objectives
- Obtaining development advice or an overview of planning opportunities
- Prioritising and sequencing development opportunities
- Commencing delivery of development opportunities.



dpi.e.nsw.gov.au