



**The Hon Paul Toole MP**  
Minister for Lands and Forestry  
Minister for Racing

6 JUL 2017

B17/3166

Mr David Rawlings  
General Manager  
Kempsey Shire Council  
PO Box 3078  
WEST KEMPSEY NSW 2440



Dear Mr Rawlings

**Expression of Interest for Crown Land Negotiation Program**

As you may be aware, the NSW Government has commenced a program of voluntary land negotiations with Local Councils and Aboriginal Land Councils. The program began in four Local Government Areas - Tweed, Tamworth, Northern Beaches and Federation.

I now write to invite you to consider submitting an Expression of Interest (EoI) on behalf of your organisation to participate in the next phase of the Land Negotiation Program.

*Expressions of Interest*

Expressions of Interest open on Friday 7 July 2017. The application form is available online at [www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au). All applications must be completed and submitted online by Friday 18 August 2017 at 5pm.

It is anticipated that applicants will be advised of results in September 2017.

Attached is an EoI Guidelines document to assist your consideration and application.

*Land Negotiation Program*

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 Local Aboriginal Land Council (LALC) and local government council.

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The Land Negotiation Program recognises the special importance of land to Aboriginal people and the aims of the *Aboriginal Land Rights Act 1983* (NSW) and recognises the benefits that local ownership of Crown land can bring to local communities. The negotiations will take a comprehensive approach to dealing with Crown land in the relevant area.

The Land Negotiation Program is proposed to expand to additional areas (based on local government area or LALC boundaries). It is anticipated that up to six new areas will be added each year (commencing 2017/18).

This Eol process will be used to identify, assess and determine the additional areas in to which the program expands.

*Joint applications*

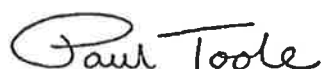
I have also written to Local Aboriginal Land Councils (LALC) inviting EOIs to participate in the program. The intention is that both the respective LALC and local government council in an area will want to participate in the program. As such, Eols can also be made jointly by a LALC and a local government council. I encourage you to consider submitting a joint application.

*Queries?*

More information about the Land Negotiation Program and the Eol process can be accessed through the Department of Industry – Lands & Forestry website [www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au).

If you have any queries, please contact [land.negotiation@industry.nsw.gov.au](mailto:land.negotiation@industry.nsw.gov.au).

Yours sincerely



Paul Toole MP  
**Minister**



## LAND NEGOTIATION PROGRAM

# Expressions of Interest from Local Aboriginal Land Councils to participate in the Land Negotiation Program 2017 - 2019 Guidelines

*(Comprehensive Aboriginal Land Agreement)*

Designed for the NSW Crown Land Negotiation Program

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Published by NSW Department of Industry – Lands & Forestry

## **EXPRESSIONS OF INTEREST FROM LOCAL ABORIGINAL LAND COUNCILS TO PARTICIPATE IN THE LAND NEGOTIATION PROGRAM 2017 - 2019 GUIDELINES**

First published May 2017.

### **More information**

Land Negotiation Unit

[www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au)

e: [land.negotiation@industry.nsw.gov.au](mailto:land.negotiation@industry.nsw.gov.au)

**Cover Image:** NSW Department of Industry – Lands & Forestry

### **Acknowledgments**

NSW Aboriginal Land Council

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**Disclaimer:** The information contained in this publication is based on knowledge and understanding at the time of writing May 2017. However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Industry, Skills and Regional Development or the user's independent advisor.

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## Commonly used acronyms

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

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## Introduction

### Purpose

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

The Government is also separately, but at the same time, inviting EoIs from local government councils who want to enter into the program. The intention is that both the respective LALC and local government council in an area 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 which 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 (2017/18 – 2019/20).

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 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 local communities.

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

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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.

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## 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 which 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), i.e. up to 18 areas over three years. A State-wide rollout of the Land Negotiation Program is not currently proposed, however, will be considered once the results of the initial negotiations from 2016-2020 are evaluated.

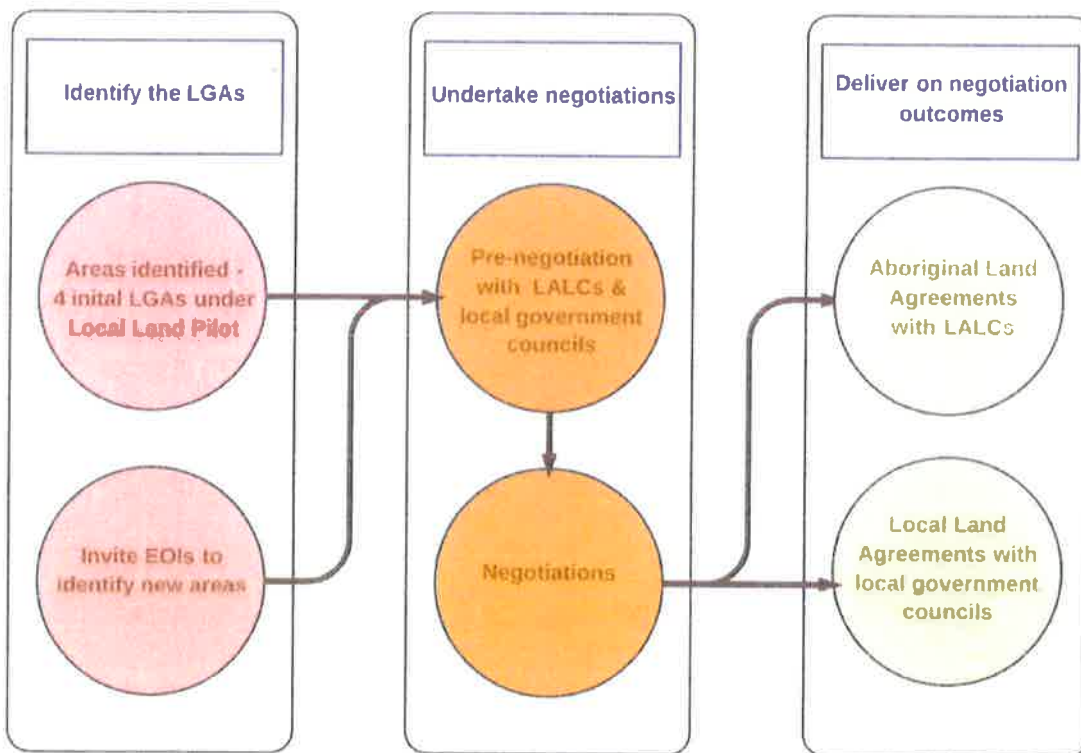


Figure 1: flow chart of activities under the Land Negotiation Program

The above diagram 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 2 and 3 of the flow chart.



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## 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; and
- 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 intention is that both the respective LALC and local government council in an area 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 (2017/18 – 2019/2020).

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## Expression of Interest process

The key steps for the Eol process are as follows:

Eol Application and Assessment Process	Stakeholder
<b>Application Stage</b>	
1. The NSW Government will call for Expressions of Interest from LALCs to participate in the Land Negotiation Program.	DoI 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)
<b>Assessment and Decision Stage</b>	
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 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.	DoI– 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.	DoI– 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>	DoI– Lands & Forestry LALCs NSWALC

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## 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 [2] months.

If 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 is 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, and/or
  - 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 – e.g. 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 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.

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.

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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 EoI 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 2017/18 and 2019/20.

## More Information

Land Negotiation Unit  
e: [land.negotiation@industry.nsw.gov.au](mailto:land.negotiation@industry.nsw.gov.au)  
[www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au)

## MANAGING CROWN LANDS

## An update for councils

JUNE 2017

*With the new legislation coming into effect next year, this update will provide information on how we will work with you to deliver improved management of the State's vast Crown land.*

## Overview

Following the passing of the *Crown Land Management Act 2016* (the Act) in November 2016 and the *Crown Land Legislation Amendment Act 2017* in May 2017, a consolidated, modern piece of legislation will govern the management of Crown land in NSW.

The legislation implements reforms identified through the comprehensive review of Crown land management and follows over four years of engagement with the community on the future of Crown land.

The new framework will ensure that the Crown Estate continues to support and generate significant social, environmental and cultural benefits to the people of NSW.

## What does it mean for councils?

The new Act will reduce red tape, duplication and the administrative burden on councils in their public land management role. It also provides councils with greater certainty about the legal requirements for managing Crown land.

It is anticipated that the majority of the Act will commence in early 2018.

There are no immediate changes. All current legislation remains in place until the new Act commences. Crown land and all Crown reserves will continue to be

administered in accordance with current legislation.

The Department of Industry, Lands & Forestry Division will regularly communicate with councils prior to the commencement of the Act.



Figure 1. Council Crown land managers will be authorised to manage land in accordance with the *Local Government Act 1993*

## Council management of Crown land

In response to concerns from councils about inconsistencies between management of Crown land and council owned land, the new Act allows councils to manage Crown land under the provisions of the *Local Government Act 1993* (LGA) for public land.

This will reduce the duplication and drain on resources experienced by councils resulting from the current dual legislative frameworks.

## Categorising land use

Crown reserves managed by councils will generally be classified as community land under the LGA and categorised under the LGA, with the Minister for Lands' approval.

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With the Minister's consent councils may seek to classify Crown land which they manage as operational, where the land does fall within the categories of community land under the LGA or where classification as operational is required to allow the current land use to continue. This may be required in circumstances such as where Crown land is being used for long term residential accommodation or cemeteries.

Generally, councils will not need the Minister for Lands and Forestry's approval for dealings on Crown reserves. Instead, in most cases local councils will manage these reserves under the requirements for community land under the LGA.

### Plans of management

The requirement under the LGA to have plans of management for each reserve will be phased in over time. Additionally, financial assistance will be available to assist with the costs of preparing plans of management. Further information about the funding assistance will be provided in the coming months.

### Ministerial powers

Although local councils will generally be managing land under the LGA, the Minister for Lands and Forestry will retain important rights and powers including the ability to:

- make rules with which local councils must comply
- put conditions in local councils' appointment instruments, when appointing them as reserve managers
- remove local council managers.

### Funding

To support the management and up-keep of reserves, councils will continue to be eligible to apply for grants from the Crown Reserves Improvement Fund (formerly the Public Reserve Management Fund Program).

### Local ownership of Crown land

A key finding of the Crown Lands Management Review was that the NSW Government should continue to manage land of State significance. However, land of local importance should be subject to local level decision-making and this is best achieved by transferring these lands to local councils.

The new legislation allows land that is identified as being primarily land of local community value, for example local parks and sporting grounds, to be vested in councils.

The identification of land of local significance will be guided by local land criteria which is available on the website. It will also be detailed in regulations published later this year.

There are a number of safeguards associated with these legislative provisions.

- The Act explicitly requires council consent to any transfers. There will be no forced transfers of Crown land to council ownership – it will be entirely voluntary and by agreement. Councils will have the opportunity to consider the values of the land, including any resourcing implications, before agreeing to any voluntary land transfers.



Figure 2. Crown land that is considered likely to be local land includes land used mainly by the local community, such as parks, local sports fields and recreation centres.

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- Any land subject to an undetermined Aboriginal land claim may only be vested in a local council with the consent of the claimant (either Local Aboriginal Land Council or the NSW Aboriginal Land Council).
- The Act allows for covenants to be placed on title to land. There may be circumstances where it is appropriate to put covenants on title to land that is vested in councils to restrict how the land is used and managed into the future. This will be considered on a case by case basis, as land is put forward for transfer of ownership, and will be subject to council agreement.

Once land is transferred, it is no longer Crown land and is held by council in freehold. Any income generated by that land will then be retained by the council.

### Land negotiation program

In practice, vesting of local land to councils will be progressed through voluntary three-way negotiations involving the state, local councils and Aboriginal land councils under the Land Negotiation Program. This program is built on the findings of a Local Land Pilot program conducted in 2015.

Under the Land Negotiation Program, local councils and Aboriginal land councils will be invited to participate through an expression of interest process. Further details regarding the Land Negotiation Program will be provided as the program develops.

### Upcoming updates

Our next update will include information on:

- native title
- provisions in the *Roads Act 1993* for Crown roads and council roads
- engaging the community on key decisions
- how we will engage with councils on implementation arrangements.

### More information

For more information contact the Department of Industry, Lands & Forestry Division on 1300 886 235 or email [legislation@crowmland.nsw.gov.au](mailto:legislation@crowmland.nsw.gov.au).

The Lands & Forestry Division website [www.crowmland.nsw.gov.au](http://www.crowmland.nsw.gov.au) also has updated information on the legislation.

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