



New South Wales

Local Government (General) Amendment (Community Land Management) Regulation 1999

under the
Local Government Act 1993

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

ERNIE PAGE, M.P.,
Minister for Local Government

Explanatory note

Section 36 of the *Local Government Act 1993* provides for the preparation by councils of draft plans of management for community land. Those plans of management categorise the community land as being within one or more of the categories specified in section 36 (4) and (5).

The objects of this Regulation are:

- (a) to prescribe guidelines for the categorisation of land under section 36 (4) and (5) of the Act, and
- (b) to make provision concerning the preparation and adoption of draft plans of management and the granting of leases, licences and other estates in respect of community land.

This Regulation is made under sections 36 (6), 46 (1) (b), 47A and 47C of the *Local Government Act 1993* (inserted by the *Local Government Amendment (Community Land Management) Act 1998*), section 748 (the general regulation-making power) and clause 1 (1) of Schedule 8 (the power to make regulations of a savings or transitional nature).

Local Government (General) Amendment (Community Land Management) Regulation 1999

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment (Community Land Management) Regulation 1999*.

2 Commencement

This Regulation commences on 1 January 1999.

3 Amendment of Local Government (General) Regulation 1993

The *Local Government (General) Regulation 1993* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendment

(Clause 3)

Part 2A

Insert after clause 6:

Part 2A Categorisation, use and management of community land

Division 1 Guidelines for the categorisation of community land

6A Application of this Division

- (1) This Division sets out guidelines for the categorisation of community land.
- (2) A council that is preparing a draft plan of management under section 36 of the Act must have regard to the guidelines set out in this Division.
- (3) Although this clause imposes a duty on councils, nothing in this clause gives rise to, or can be taken into account in, any civil cause of action.

6B Guidelines for categorisation of land as a natural area

Land should be categorised as a natural area under section 36 (4) of the Act if the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36 (5) of the Act.

Note. Section 36A of the Act provides that community land that has been declared a critical habitat under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* must be categorised as a natural area.

Section 36B of the Act provides that community land all or part of which is directly affected by a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* must be categorised as a natural area.

Section 36C of the Act provides that community land that is the site of a known natural, geological, geomorphological, scenic or other feature that is considered by the council to warrant protection or special management considerations, or that is the site of a wildlife corridor, must be categorised as a natural area.

6C Guidelines for categorisation of land as a sportsground

Land should be categorised as a sportsground under section 36 (4) of the Act if the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.

6D Guidelines for categorisation of land as a park

Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

6E Guidelines for categorisation of land as an area of cultural significance

Land should be categorised as an area of cultural significance under section 36 (4) of the Act if the land is:

- (a) an area of Aboriginal significance, because the land:
 - (i) has been declared an Aboriginal place under section 84 of the *National Parks and Wildlife Act 1974*, or
 - (ii) whether or not in an undisturbed state, is significant to Aboriginal people in terms of their traditional or contemporary cultures, or
 - (iii) is of significance or interest because of Aboriginal associations, or

- (iv) displays physical evidence of Aboriginal occupation (for example, items or artifacts such as stone tools, weapons, engraving sites, sacred trees, sharpening grooves or other deposits, and objects or materials that relate to the settlement of the land or place), or
- (v) is associated with Aboriginal stories, or
- (vi) contains heritage items dating after European settlement that help to explain the relationship between Aboriginal people and later settlers.

(b) an area of aesthetic significance, by virtue of:

- (i) having strong visual or sensory appeal or cohesion, or
- (ii) including a significant landmark, or
- (iii) having creative or technical qualities, such as architectural excellence, or

(c) an area of archaeological significance, because the area contains:

- (i) evidence of past human activity (for example, below-ground features such as building foundations, occupation deposits, features or artifacts or above-ground features such as buildings, works, industrial structures, and relics, whether intact or ruined), or
- (ii) any other deposit, object or material that relates to the settlement of the land, or

(d) an area of historical significance, because of the importance of an association or position of the land in the evolving pattern of Australian cultural history, or

(e) an area of technical or research significance, because of the area's contribution to an understanding of Australia's cultural history or environmental or

- (f) an area of social significance, because of the area's association with Aboriginal life after 1788 or the area's association with a contemporary community for social, spiritual or other reasons.

6F Guidelines for categorisation of land as general community use

Land should be categorised as general community use under section 36 (4) of the Act if the land:

- (a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and
- (b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and does not satisfy the guidelines under clause 6B–6E for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

6G Guidelines for categorisation of land as bushland

- (1) Land that is categorised as a natural area should be further categorised as bushland under section 36 (5) of the Act if the land contains primarily native vegetation and that vegetation:
 - (a) is the natural vegetation or a remainder of the natural vegetation of the land, or
 - (b) although not the natural vegetation of the land, is still representative of the structure or floristics, or structure and floristics, of the natural vegetation in the locality.
- (2) Such land includes:
 - (a) bushland that is mostly undisturbed with a good mix of tree ages, and natural regeneration, where the understorey is comprised of native grasses and herbs or native shrubs, and which contains a range of habitats for native fauna (such as logs, shrubs, tree hollows and leaf litter), or

- (b) moderately disturbed bushland with some regeneration of trees and shrubs, where there may be a regrowth area with trees of even age, where native shrubs and grasses are present in the understorey even though there may be some weed invasion, or
- (c) highly disturbed bushland where the native understorey has been removed, where there may be significant weed invasion and where dead and dying trees are present, where there is no natural regeneration of trees or shrubs, but where the land is still capable of being rehabilitated.

6H Guidelines for categorisation of land as wetland

Land that is categorised as a natural area should be further categorised as wetland under section 36 (5) of the Act if the land includes marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a waterbody that is inundated cyclically, intermittently or permanently with fresh, brackish or salt water, whether slow moving or stationary.

6I Guidelines for categorisation of land as an escarpment

Land that is categorised as a natural area should be further categorised as an escarpment under section 36 (5) of the Act if:

- (a) the land includes such features as a long cliff-like ridge or rock, and
- (b) the land includes significant or unusual geological, geomorphological or scenic qualities.

6J Guidelines for categorisation of land as a watercourse

Land that is categorised as a natural area should be further categorised as a watercourse under section 36 (5) of the Act if the land includes:

- (a) any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel that has been artificially improved, or in an artificial channel that has changed the course of the stream of water, and any other stream of water into or from which the stream of water flows, and
- (b) associated riparian land or vegetation, including land that is protected land for the purposes of the *Rivers and Foreshores Improvement Act 1948* or State protected land identified in an order under section 7 of the *Native Vegetation Conservation Act 1997*.

6JA Guidelines for categorisation of land as foreshore

Land that is categorised as a natural area should be further categorised as foreshore under section 36 (5) of the Act if the land is situated on the water's edge and forms a transition zone between the aquatic and terrestrial environment.

Division 2 Preparation and adoption of draft plans of management

6JB Consultation concerning categorisation of land as an area of cultural significance

- (1) A council that is considering whether or not land is an area of Aboriginal significance must give notice of that consideration to Aboriginal people traditionally associated with the area in which the land is situated.
- (2) That notice must be given by:
 - (a) giving written notice to the Local Aboriginal Land Council for the area concerned, and
 - (b) placing an advertisement in a newspaper circulated across the State that is primarily concerned with issues of interest to Aboriginal people, and
 - (c) placing a written notice on the land in a position where the notice is visible to any person on adjacent public land.

(3) The notice:

- (a) must state that submissions may be made to the council, in relation to the council's consideration, by any Aboriginal person traditionally associated with the area in which the community land is situated, and
- (b) must specify a period of not less than 28 days after the date on which the notice is given during which submissions may be made to the council.

(4) A council that is considering whether or not land is an area of Aboriginal significance (within the meaning of clause 6E (a)) must not make a final determination on that matter unless the council has considered any submissions made under this clause by Aboriginal people traditionally associated with the area in which the community land is situated.

(5) A council must not prepare a draft plan of management that categorises community land as an area of cultural significance on the ground that the land is an area of Aboriginal significance (within the meaning of clause 6E (a)) unless the council has called for and considered any submissions made under this clause by Aboriginal people traditionally associated with the area in which the community land is situated.

6JC Preparation of draft plan of management where land is categorised in more than one category

A draft plan of management that categorises an area of community land, or parts of an area of community land, in more than one category must clearly identify the land or parts of the land and the separate categories (by a map or otherwise).

6JD Adoption of draft plan of management in relation to which certain submissions have been made

(1) This clause applies if:

- (a) a council prepares a draft plan of management.
- and

- (b) the council receives any submission, made in accordance with the Act, concerning that draft plan that makes any objection to a categorisation of land under the draft plan, and
- (c) the council adopts the plan of management without amending the categorisation that gave rise to the objection.

(2) If this clause applies, the resolution by which the council adopts the plan of management must state the council's reasons for categorising the relevant land in the manner that gave rise to the objection.

6JE Application of amendments made by Local Government Amendment (Community Land Management) Act 1998 to existing plans of management

- (1) A council is to review any plan of management in force for its area on 1 January 1999 to determine whether or not the plan of management complies with sections 36E–36N of the Act.
- (2) The review is to be undertaken and completed no later than 31 December 2000.
- (3) A plan of management that does not comply with sections 36E–36N of the Act on 31 December 2000 is invalid to the extent of the non-compliance.

Division 3 Other matters

6JF Leases, licences and other estates in respect of community land

- (1) For the purposes of section 46 (1) (b) (iii) of the Act, the use or occupation of community land for the following events is prescribed as a purpose in respect of which a council may grant a licence in respect of community land on a short-term casual basis:
 - (a) the playing of a musical instrument, or singing, for fee or reward.
 - (b) engaging in a trade or business.
 - (c) delivering a public address.
 - (d) commercial photographic sessions.

- (e) picnics and private celebrations such as weddings and family gatherings,
- (f) filming for cinema or television,
- (g) the agistment of stock.

(2) However, the use or occupation of community land for events listed in subclause (1) is prescribed only if the use or occupation does not involve the erection of any building or structure of a permanent nature.

6JG Exemptions from section 47A (Leases, licences and other estates in respect of community land—terms of 5 years or less)

- (1) Leases, licenses and other estates granted for the following purposes are exempt from the provisions of section 47A of the Act:
 - (a) residential purposes, where the relevant community land has been developed for the purposes of housing owned by the council,
 - (b) the provision of pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider that is situated on the community land.
 - (c) use and occupation of the community land for events such as:
 - (i) a public performance (that is, a theatrical, musical or other entertainment for the amusement of the public).
 - (ii) the playing of a musical instrument, or singing, for fee or reward.
 - (iii) engaging in a trade or business.
 - (iv) playing of any lawful game or sport.
 - (v) delivering a public address.

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- (vi) conducting a commercial photographic session.
- (vii) picnics and private celebrations such as weddings and family gatherings.
- (viii) filming for cinema or television.

(2) However, the use or occupation of community land for events listed in subclause (1) (c) is exempt only if:

- (a) the use or occupation does not involve the erection of any building or structure of a permanent nature, and
- (b) in the case of any use or occupation that occurs only once, it does not continue for more than 3 consecutive days, and
- (c) in the case of any use or occupation that occurs more than once, each occurrence is for no more than 3 consecutive days, not including Saturday and Sunday, and the period from the first occurrence until the last occurrence is not more than 12 months.

6JH Sublease of community land

For the purposes of section 47C (1) (b) of the Act:

- (a) refreshment kiosks, dances and private parties are prescribed as purposes for which community land that is leased for a surf life-saving club or a sporting club may be sublet, and
- (b) a croquet club is prescribed as a purpose for which community land that is used as a bowling club may be sublet.