



New South Wales

# Local Government (General) 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*.

Harry Woods MP

Minister for Local Government

## Explanatory note

The object of this Regulation is to repeal and remake, with minor modifications, the *Local Government (General) Regulation 1993*.

The new Regulation deals with the following matters:

- (a) the prescription of offences under the *Local Government Act 1993* that may be dealt with by the service of penalty notices and the prescription of penalties in respect of these offences (Part 2, clauses 5 and 6),
- (b) the prescription, for the purposes of section 145B of the *Justices Act 1902*, of short descriptions of offences (Part 2, clause 7),
- (c) the form of penalty notices (Part 2, clause 8),
- (d) the preparation and adoption by councils of draft plans of management for community land and the granting of leases, licences and other estates in respect of such land (includes guidelines for the categorisation of such land for the purpose of preparation or adoption of the plans) (Part 3),
- (e) the matters to be contained in the draft management plans that councils must prepare in respect of their planned activities (Part 4),
- (f) the matters to be contained in a council's annual report (including requirements for state of the environment reports) (Part 5),

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Explanatory note

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(g) other matters of a minor, consequential or ancillary nature (Parts 1 and 6).

The Regulation is made under the *Local Government Act 1993*, including section 748 (the general regulation-making power) and various other provisions referred to in the Regulation.

The Regulation refers to:

- (a) the document entitled *Pricing & Costing for Council Businesses—A Guide to Competitive Neutrality* (issued by the Department of Local Government) and *The Year 2000 Business Risk Analysis Handbook* (issued by the NSW Government) in relation to the matters to be contained in annual reports (clauses 3 and 31), and
- (b) Australian Standard AS 2416, entitled *Design and Application of Water Safety Signs*, in relation to notices to control bathing (clause 41).

Part 2 of the Regulation (penalty notice offences and short descriptions of offences) and clause 41 (bathing control notices) comprise or relate to matters of a machinery nature or to matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## Local Government (General) Regulation 1999

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Local Government (General) Regulation 1999*.

#### 2 Commencement

This Regulation commences on 1 September 1999.

#### 3 Definitions

In this Regulation:

***Category 1 business activity*** has the same meaning as in the Pricing and Costing Guidelines.

***Category 2 business activity*** has the same meaning as in the Pricing and Costing Guidelines.

***comprehensive state of the environment report*** means a council's comprehensive report as to the state of the environment referred to in section 403 of the Act.

***penalty notice*** means a notice served under section 679 of the Act.

***Pricing and Costing Guidelines*** means the document entitled *Pricing & Costing for Council Businesses—A Guide to Competitive Neutrality* issued by the Department in July 1997 as amended from time to time.

***principles of competitive neutrality*** has the same meaning as in the Pricing and Costing Guidelines.

***state of the environment report*** means a report as to the state of the environment referred to in section 428 (2) (c) of the Act.

***supplementary state of the environment report*** means a state of the environment report that is not a comprehensive state of the environment report.

***the Act*** means the *Local Government Act 1993*.

***Year 2000 computer problem*** means the computer programming problem identified in *The Year 2000 Business Risk Analysis Handbook* issued by the NSW Government on 3 February 1998.

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**4 Notes**

The explanatory note, table of contents and notes in the text of this Regulation do not form part of the Regulation.

## Part 2 Penalty notice offences and short descriptions

### 5 Offences in respect of which penalty notices may be served

For the purposes of section 679 (1) of the Act, an offence specified in Column 1 of Schedule 1 is a prescribed offence but only if a penalty is specified in Column 3 of that Schedule in relation to the offence.

### 6 Penalties for offences

For the purposes of section 679 (2) of the Act, the amount shown in Column 3 of Schedule 1 opposite an offence specified in Column 1 of that Schedule is the amount of penalty prescribed for the offence if dealt with under section 679.

### 7 Short descriptions of offences

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision of the Act specified in Column 1 of Schedule 1 is:
  - (a) the expression specified in Column 2 of that Schedule, or
  - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision of the Act specified in Column 1 of Schedule 1, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

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### **8 Form of penalty notices**

A penalty notice served under the Act is to be in the form in use by the Infringement Processing Bureau of the Police Service from time to time.



## Part 3 Categorisation, use and management of community land

### Division 1 Guidelines for the categorisation of community land

#### 9 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.

#### 10 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.

#### 11 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.

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### 12 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.

### 13 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, or
- (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 environment, 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.

#### 14 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 clauses 10–13 for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

#### 15 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.

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(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.

### 16 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.

### 17 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.

### 18 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*.

### 19 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

### 20 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

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- (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 13 (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 13 (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.

### **21 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).

### **22 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.

**23 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) Without limiting the reasons for which a plan of management is invalid, 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**

**24 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) the playing of a lawful game or sport,
  - (d) delivering a public address,
  - (e) commercial photographic sessions,
  - (f) picnics and private celebrations such as weddings and family gatherings,
  - (g) filming for cinema or television,
  - (h) 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.

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Division 3           Other matters

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(3) For the purposes of section 46 (1) (b) (iii) of the Act, the use of the Deepwater Estate Access Trail to transport building materials and equipment required in relation to building work that is to be, or is being, carried out on the Deepwater Estate, and to remove waste that is consequential on such building work, between 1 September 1999 and 30 June 2000, is a prescribed short-term, casual purpose.

(4) In subclause (3):

*Deepwater Estate* refers to all those lots on the southern side of the Woronora River that are bounded by and include Lot 1 DP 9415 on the western extremity and Lot 18 DP 5989 on the eastern extremity.

*Deepwater Estate Access Trail* refers to the bushfire trail that runs through and forms part of the community land comprising Lot 1 DP 310448, Lot 2 DP 598391 and Lot 651 DP 740696, being Lots off Warrangaroo Drive, Woronora.

### 25 Exemptions from section 47A of the Act (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,
  - (vi) conducting a commercial photographic session,
  - (vii) picnics and private celebrations such as weddings and family gatherings,
  - (viii) filming for cinema or television,
- (d) the purpose referred to in clause 24 (3).



- (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.

## **26 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.

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Part 4                Draft management plans

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### Part 4 Draft management plans

#### 27 Guidelines

In preparing a draft management plan required under Part 2 of Chapter 13 of the Act, a council must have regard to any relevant guidelines or directions issued to the council by the Director-General.

#### 28 Additional matters to be included in draft management plans

- (1) For the purposes of the fifth dot point of section 403 (1) of the Act, any proposed council activity relating to the management of any of the following is prescribed:
  - (a) stormwater,
  - (b) coasts and estuaries,
  - (c) sewage,
  - (d) waste.
- (2) A draft management plan must contain the following particulars in relation to such of the proposed activities referred to in subclause (1) as are relevant to the council's area:
  - (a) particulars of the relevant characteristics of the area, catchment or region in which the proposed activity is to be conducted, with special reference to:
    - (i) any commercial pressures, and
    - (ii) any problems or issues identified in relation to the proposed activity in the council's state of the environment reports,
  - (b) particulars of the council's evaluation of possible methods of dealing with those pressures, problems and issues,
  - (c) particulars of the council's membership (or proposed membership) of any bodies relating to the proposed activity, including particulars of any significant variation in the way the activity is proposed to be carried out from any recommendation of such a body (together with the reasons for the variation),
  - (d) particulars of any action to be taken jointly with other councils or bodies, including particulars of any significant variation in the way the activity is proposed to be carried out from any recommendation of such a council or body (together with the reasons for the variation),

- (e) particulars of any significant variation in the council's plan from any guidelines or directions issued by the Director-General (together with the reasons for the variation).

**29 Draft management plan—activities relating to ecologically sustainable development**

- (1) When preparing the part of its draft management plan dealing with environmental protection activities, a council must do the following:
  - (a) it must apply the principles of ecologically sustainable development,
  - (b) it must consider its most recent comprehensive state of the environment report,
 

**Note.** Under clause 40, a comprehensive state of the environment report is taken to include any subsequent supplementary state of the environment reports relating to the same area.
  - (c) it must consult the community (including environmental groups),
  - (d) it must involve the community (including environmental groups) in the development of environmental management strategies.
- (2) In this clause, *environmental protection activities* means the principal activities that the council proposes to conduct in order to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development (as referred to in section 403 (2) of the Act).

**30 Additional matters to be included in draft management plans—implementation of access and equity activities**

- (1) For the purposes of the fifth dot point in section 403 (1) of the Act, any proposed council activity relating to access and equity activities to meet the needs of residents in the council's area is prescribed as a matter with respect to which a draft management plan must contain a statement.
- (2) The statement in a draft management plan of a council relating to any proposed activity referred to in subclause (1) must contain particulars (in the form required by the Department) of the access and equity

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activities it proposes to undertake during the period covered by the draft management plan (including access and equity initiatives prioritised in the council's community or social plan prepared in accordance with guidelines issued from time to time by the Department for the period to which the draft management plan relates).

## **Part 5 Annual reports**

### **Division 1 Additional information—general**

#### **31 Additional information for inclusion in annual report**

- (1) For the purposes of section 428 (2) (r) of the Act, an annual report of a council is to include the following information:
- (a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),
  - (b) a statement of the total remuneration comprised in the remuneration package of each senior staff member employed during the year that is to include (but not separately indicate):
    - (i) the total value of the salary component of the package, and
    - (ii) the total amount payable by the council by way of the employer's contribution or salary sacrifice to any superannuation scheme to which the member may be a contributor, and
    - (iii) the total value of any non-cash benefits for which the member may elect under the package, and
    - (iv) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits,
  - (c) details of the activities undertaken by the council during the year to develop and promote services and programs that provide for the needs of children,
  - (d) for any year ending on or after 30 June 1999:
    - (i) a report (in the form required by the Department) on the council's performance in relation to access and equity activities to meet residents' needs outlined in the council's management plan relating to the year and undertaken by the council during the year, and
    - (ii) a list of the Category 1 business activities of the council, and
    - (iii) a list of the Category 2 business activities of the council, and

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Part 5                Annual reports

Division 1            Additional information—general

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- (iv) a statement of expenses, revenues and assets in relation to each Category 1 business activity, and
  - (v) a summary of the progress of the council in implementing the principles of competitive neutrality, and
  - (vi) a statement as to whether the competitive neutrality pricing requirements have or have not been applied to each Category 1 business activity of the council, and
  - (vii) a statement regarding the establishment of a complaints handling mechanism for competitive neutrality complaints, and as to the manner in which the council publicises and makes the mechanism known to the public, and
  - (viii) a comparison of the actual performance of each Category 1 business activity of the council (measured in accordance with the criteria set out in the relevant management plan) with its projected performance (outlined in the management plan relating to the year concerned), together with a statement of the reasons for any difference between them, and
  - (ix) a summary of competitive neutrality complaints that have been made against the council during the year (including details of the number of complaints received and the subject matter or nature of the complaints) and a statement as to the outcome of those complaints (including details as to the number of complaints disposed of during the year and the number still outstanding at the end of the year),
- (e) for the year ending 30 June 1999—a statement detailing:
- (i) the action taken to minimise the risk of the Year 2000 computer problem affecting council services and systems, and
  - (ii) the methodology used to complete any risk assessments of the Year 2000 computer problem undertaken by the council, and
  - (iii) the services and systems that have been included in any such risk assessments, and
  - (iv) the budget of any rectification process for the Year 2000 computer problem and any project milestones of such a process, and

- (v) a summary of any contingency plans developed by the council to deal with the Year 2000 computer problem.
- (2) An annual report of a council is to include the matter required by Division 2 (State of the environment reports).
- (3) In this clause:
- competitive neutrality pricing requirements* means the requirements, outlined in the Pricing and Costing Guidelines, that a council's business activities:
- (a) if the council has provided or intends to provide loan funds to the business activity, include the payment of debt guarantee fees to the council, and
  - (b) factor into costs an appropriate return on capital invested, and
  - (c) include Taxation Equivalent Regime payments to the council.
- Taxation Equivalent Regime payments* has the same meaning as in the Pricing and Costing Guidelines.

## Division 2 State of the environment reports

### 32 Meaning of "environmental indicator"

For the purposes of this Division, an *environmental indicator* is an aspect of the natural world or built environment that can be monitored to provide information on environmental conditions and trends. Environmental indicators include physical, chemical, biological and socio-economic measures of the environment (such as measurements of contaminants in soil, of the health of fish species and of the number of motor vehicles per household) that can be used to assess natural resources and environmental quality.

**Note.** This elucidation of the term "environmental indicator" is based on the definition contained in the Glossary to the Report called *Australia: State of the Environment 1996* issued by the Commonwealth.

### 33 Requirements for state of the environment reports

- (1) All state of the environment reports must meet the requirements of clause 34.
- (2) In addition:
  - (a) a comprehensive state of the environment report must meet the requirements of clauses 35 and 36, and

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- (b) a supplementary state of the environment report must meet the requirements of clause 37.

### 34 Preparation of all state of the environment reports

A state of the environment report meets the requirements of this clause if the council, in preparing the report, does each of the following:

- (a) it considers the guidelines and directions (if any) relating to the preparation and content of state of the environment reports that are issued to councils from time to time by the Director-General,
- (b) it consults the community (including environmental groups),
- (c) it involves the community (including environmental groups) in monitoring changes to the environment over time,
- (d) it produces the report in a form that is readily understandable by the general community.

### 35 Preparation of comprehensive state of the environment reports

- (1) A state of the environment report meets the requirements of this clause if the council, in preparing the report, does each of the following in relation to each environmental sector specified in section 428 (2) (c) of the Act:

- (a) it draws on any environmental data held by other councils that is relevant to the sector,

**Note.** For example, in relation to the water environmental sector, the data might include information concerning water catchments and groundwater aquifers in nearby areas.

- (b) it identifies and applies appropriate environmental indicators for the sector,
- (c) it considers and applies the pressure-state-response model in:
  - (i) the analysis and interpretation of data, and
  - (ii) the identification of appropriate environmental indicators for the sector, and
  - (iii) the presentation of results in the report.

- (2) In this clause, the *pressure-state-response model* means a model for reporting on environmental sectors, in which:

- (a) the *pressure* component identifies and describes the pressure that human activities put on their immediate environment and their natural surroundings, and



- (b) the *state* component identifies and describes the current and projected state of the environment, and
- (c) the *response* component identifies and describes the response of councils, government agencies, industry and communities to the pressures on, and state of, the environment.

### 36 Content of comprehensive state of the environment reports

A state of the environment report meets the requirements of this clause if it does each of the following in relation to each environmental sector specified in section 428 (2) (c) of the Act:

- (a) it provides, as a basis for comparison in subsequent reports, a statement outlining the condition (as at the date of the report) of the sector,
- (b) it makes the relevant comparison with the equivalent statement contained in the last report,
- (c) it includes (or refers to) all relevant background information,
- (d) it specifies the relevant environmental indicators,
- (e) it reports on all major environmental impacts and related activities,
- (f) it identifies any gaps in relevant information and indicates the way in which the missing information is to be obtained (or, if it cannot be obtained, why it cannot be obtained).

### 37 Content of supplementary state of the environment reports

A state of the environment report meets the requirements of this clause if it does each of the following:

- (a) it identifies any new environmental impacts since the council's last state of the environment report,
- (b) it updates the trends in environmental indicators that are important to each environmental sector specified in section 428 (2) (c) of the Act.

### 38 Frequency of comprehensive and supplementary reports

- (1) The first state of the environment report of a council for the year ending after each election of the councillors for its area must be a comprehensive state of the environment report.

**Note.** Under section 287 of the *Local Government Act 1993*, such an election must be held every 4 years (in September). A council's year is defined in the

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Dictionary to that Act to end on 30 June, and its annual report (which includes its state of the environment report) must be prepared within 5 months after that date (section 428)—that is, by 30 November. Accordingly, clause 38 (1) requires the state of the environment report prepared by the November of the year *following* the year in which the September election is held to be a comprehensive state of the environment report.

- (2) The other state of the environment reports may each be either a comprehensive state of the environment report or a supplementary state of the environment report, as the council chooses.

### 39 Report may contain information relating to region

- (1) A council must include in each of its state of the environment reports information relating to the general region in which the council's area is located if the requirements of section 428 (2) (c) of the Act in relation to the area cannot be met solely by reference to that area.
- (2) Such information may, in any case, be included in any state of the environment report.
- (3) A report that includes information relating to the general region in which the council's area is located:
- (a) must clearly indicate the parts of the report that relate solely to the council's own area, and
  - (b) must meet all the requirements of the Act and this Division in relation to that area.

### 40 Comprehensive report taken to include supplementary report

A council's comprehensive state of the environment report is taken to include any subsequent supplementary state of the environment report prepared (before the preparation of the next comprehensive state of the environment report) in relation to the same area.

## Part 6 Miscellaneous

### 41 Bathing control notices

- (1) Notices that are used by a council to control bathing must comply with the requirements of AS 2416.
- (2) A council that uses flags to designate an area for bathing must ensure that the flags are removed from the area whenever the area is closed for bathing.
- (3) In this clause:

*AS 2416* means the Australian Standard entitled *Design and Application of Water Safety Signs* and numbered AS 2416–1985, as published by Standards Australia on 7 June 1985.

*bathing* includes surfing and any other similar form of recreation.

### 42 Circumstances in which councillors' annual fees may be reduced or not paid

For the purposes of section 254A of the Act, a prescribed circumstance for the non-payment or reduction of a councillor's annual fee is the circumstance where both of the following conditions are satisfied:

- (a) the payment of the annual fee adversely affects the councillor's entitlement to a pension, benefit or allowance under any legislation of the Commonwealth, a Territory or a State (including New South Wales),
- (b) the councillor agrees to the non-payment or reduction.

### 43 Meaning of "diligent inquiry"

- (1) For the purposes of section 188 (2) (b) of the Act, a *diligent inquiry* for the owner of land that a council intends to acquire by compulsory process for the purpose of resale is the taking of all the actions named and described in this clause.
- (2) **Searching of registers**, being the searching of:
  - (a) the Register kept under the *Real Property Act 1900*, and
  - (b) the General Register of Deeds kept under the *Conveyancing Act 1919*, and
  - (c) the National Native Title Register kept under the *Native Title Act 1993* of the Commonwealth,

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to identify every person who has a legal or equitable estate or interest in the land, or an easement, right, charge, power or privilege over, or in connection with, the land.

- (3) **Fixing a notice to the land**, being the placing, on a board or other structure in a conspicuous place on the land, of a notice:
  - (a) stating that the council intends to acquire the land specified in the notice by compulsory process for the purpose of resale, and
  - (b) inviting the owner of the land to contact the council at an address specified in the notice.
- (4) **Publishing a notice**, being the publishing, in a newspaper circulating in the area in which the land is situated and in a newspaper circulating generally in New South Wales, of a notice referred to in subclause (3).
- (5) **Giving notice to representatives of persons who may hold native title**, being the giving of notice in the following ways:
  - (a) the giving, to the New South Wales Aboriginal Land Council and to the relevant Local Aboriginal Land Council, of a notice:
    - (i) stating that the council intends to acquire the land specified in the notice by compulsory process for the purpose of resale, and
    - (ii) inviting any person who considers that he or she may hold native title to the land to contact the council at an address specified in the notice,
  - (b) if a relevant procedure under the *Native Title Act 1993* of the Commonwealth applies—the giving of notice as required under that procedure,
  - (c) if a relevant procedure under that Act does not apply—the giving of notice (as set out in paragraph (a)) to any registered native title claimant (within the meaning of that Act) in relation to the land concerned by post or in such other manner to which the notified claimant agrees.
- (6) For the purposes of subclause (5), a **relevant procedure** is the procedure under Subdivision P of Division 3 of Part 2 of the *Native Title Act 1993* of the Commonwealth or the procedure under section 24MD (6B) of that Act, or the procedure prescribed by a registered indigenous land use agreement.
- (7) Despite subclause (1), if an action referred to in subclause (5) (b) or (c) is substantially the same as an action referred to in subclause (3), (4) or (5) (a), the action concerned need be taken only once.

**44 Repeal**

- (1) The *Local Government (General) Regulation 1993* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Local Government (General) Regulation 1993*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Penalty notice offences and short descriptions

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**Schedule 1 Penalty notice offences and short descriptions**

(Clauses 5, 6 and 7)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Offence under Local Government Act 1993</b>	<b>Prescribed expression</b>	<b>Penalty</b>
Section 626 (3)—carry out without prior approval of council an activity specified in item 1 of Part D (Community Land) of the Table to section 68 (Engage in a trade or business)	engage in trade/business without approval	\$220
Section 626 (3)—carry out without prior approval of council an activity specified in item 2 of Part D (Community Land) of the Table to section 68 (Direct or procure a theatrical, musical or other entertainment for the public)	direct/procure entertainment without approval	\$220
Section 626 (3)—carry out without prior approval of council an activity specified in item 3 of Part D (Community Land) of the Table to section 68 (Construct a temporary enclosure for the purpose of entertainment)	construct enclosure without approval	\$220
Section 626 (3)—carry out without prior approval of council an activity specified in item 4 of Part D (Community Land) of the Table to section 68 (For fee or reward, play a musical instrument or sing)	play instrument/sing for fee/reward without approval	\$220
Section 626 (3)—carry out without prior approval of council an activity specified in item 5 of Part D (Community Land) of the Table to section 68 (Set up, operate or use a loudspeaker or sound amplifying device)	set up/operate/use loudspeaker/amplifier without approval	\$220

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<p>Section 626 (3)—carry out without prior approval of council an activity specified in item 6 of Part D (Community Land) of the Table to section 68 (Deliver a public address or hold a religious service or public meeting)</p>	<p>deliver address/hold religious service/meeting without approval</p>	<p>\$220</p>
<p>Section 626 (3)—carry out without prior approval of council an activity specified in item 1 of Part E (Public Roads) of the Table to section 68 (Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway)</p>	<p>swing/hoist goods across/over road by lift/hoist/tackle without approval</p>	<p>\$330</p>
<p>Section 626 (3)—carry out without prior approval of council an activity specified in item 2 of Part E (Public Roads) of the Table to section 68 (Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road)</p>	<p>expose article/let article be exposed in/on/over road/at window/door/hang article under awning without approval</p>	<p>\$330</p>
<p>Section 626 (3)—carry out without prior approval of council an activity specified in item 7 of Part F (Other Activities) of the Table to section 68 (Use a standing vehicle or any article for the purpose of selling any article in a public place)</p>	<p>use vehicle/article for selling without approval</p>	<p>\$220</p>
<p>Section 627 (3)—having obtained the council's approval to the carrying out of an activity specified in item 1 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Engage in a trade or business)</p>	<p>engage in trade/business otherwise than as approved</p>	<p>\$110</p>

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Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 2 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Direct or procure a theatrical, musical or other entertainment for the public)	direct/procure entertainment otherwise than as approved	\$110
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 3 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Construct a temporary enclosure for the purpose of entertainment)	construct enclosure otherwise than as approved	\$110
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 4 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (For fee or reward, play a musical instrument or sing)	play instrument/sing for fee/reward otherwise than as approved	\$110
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 5 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Set up, operate or use a loudspeaker or sound amplifying device)	set up/operate/use loudspeaker/amplifier otherwise than as approved	\$110
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 6 of Part D (Community Land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Deliver a public address or hold a religious service or public meeting)	deliver address/hold religious service/meeting otherwise than as approved	\$110



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Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 1 of Part E (Public Roads) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway)	swing/hoist goods across/over road by lift/hoist/tackle otherwise than as approved	\$220
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 2 of Part E (Public Roads) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road)	expose article/let article be exposed in/on/over road/at window/door/hang article under awning otherwise than as approved	\$220
Section 627 (3)—having obtained the council’s approval to the carrying out of an activity specified in item 7 of Part F (Other Activities) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval (Use a standing vehicle or any article for the purpose of selling any article in a public place)	use vehicle/article for selling otherwise than as approved	\$110
Section 628 (1)—fail to comply with an order given in terms of order No 7 in the Table to section 124 (To fence land)	fail to comply with order to fence land	\$330
Section 628 (1)—fail to comply with an order given in terms of order No 8 in the Table to section 124 (To identify premises with such numbers or other identification in such manner as is specified in the order)	fail to comply with order to identify premises	\$110

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Section 628 (1)—fail to comply with an order given in terms of order No 10 in the Table to section 124 (To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees)	fail to comply with order to remove/stack/cover articles/matter/erect fences/screens/plant trees	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 18 in the Table to section 124 (Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order)	fail to comply with order as to keeping of birds/animals	\$220
Section 628 (2)—fail to comply with an order given in terms of order No 19 in the Table to section 124 (To use or not to use a tennis court as specified)	fail to comply with order as to use of tennis court	\$220
Section 628 (2)—fail to comply with an order given in terms of order No 20 in the Table to section 124 (To do such things as are specified in the order to put premises, vehicles or articles used for the manufacture, preparation, storage, sale, transportation or other handling or use of or in relation to food into a clean or sanitary condition)	fail to comply with order as to clean/sanitary conditions for food	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 21 in the Table to section 124 (To do or refrain from doing such things as are specified in the order to ensure that the land is, or premises are, placed or kept in a safe or healthy condition)	fail to comply with order as to safety/health of land/premises	\$330

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Section 628 (2)—fail to comply with an order given in terms of order No 22 in the Table to section 124 (To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order, provided that it is not inconsistent with the regulations made under the <i>Waste Minimisation and Management Act 1995</i> or the <i>Protection of the Environment Operations Act 1997</i> )	fail to comply with order as to waste	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 23 in the Table to section 124 (To connect premises to the council's water supply by a specified date)	fail to comply with order as to water connection	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 24 in the Table to section 124 (To connect premises with a sewerage system by a specified date)	fail to comply with order as to sewerage connection	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 25 in the Table to section 124 (Not to use or permit the use of a human waste storage facility on premises after a specified date)	fail to comply with order as to human waste storage facility	\$330
Section 628 (2)—fail to comply with an order given in terms of order No 27 in the Table to section 124 (To remove an object or matter from a public place or prevent any object or matter being deposited there)	fail to comply with order to remove object/matter from public place/prevent deposit of object/matter in public place	\$220
Section 628 (3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in Part D (Community Land) of the Table to section 68)	fail to comply with order to comply with approval (land)	\$110

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Section 628 (3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in Part E (Public Roads) of the Table to section 68)	fail to comply with order to comply with approval (roads)	\$220
Section 628 (3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in item 7 of Part F (Other Activities) of the Table to section 68: Use a standing vehicle or any article for the purpose of selling any article in a public place)	fail to comply with order to comply with approval (selling)	\$110
Section 629 (2)—remove any plant or animal from a public place	remove plant/animal	\$220
Section 630 (1)—without lawful excuse, break a bottle, glass, glass receptacle or syringe in a public place	break bottle/glass/syringe/glass receptacle in public place	\$220
Section 630 (2)—throw, place, leave in a public place any bottle, glass, glass receptacle, syringe, broken glass or other matter or thing likely to endanger the safety of or cause injury to any person or animal or damage to any vehicle or property	throw/place/leave in public place matter/thing likely to endanger/injure person/animal/likely to damage vehicle/property	\$220
Section 630 (3)—break a bottle, glass, syringe or glass receptacle in a public bathing place under the control of the council, and not collect and remove all portions of the bottle, glass, syringe or glass receptacle either to a receptacle (if any) provided by the council for that purpose, or to a place beyond the public bathing place	break bottle/glass/syringe/glass receptacle in bathing place and not remove it	\$220

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Section 631—in a public bathing place under the control of the council, do any act which damages, defaces or pollutes the public bathing place or which is likely to damage, deface or pollute the public bathing place or anything relating to the public bathing place	damage/deface/pollute bathing place/do act likely to damage/deface/pollute bathing place/thing relating to bathing place	\$220
Section 632 (1)—in a public place within the area of a council, fail to comply with the terms of a notice erected by the council	fail to comply with notice in public place	\$110
Section 633 (1)—in a place being:		
(a) a public bathing place under the control of a council,	fail to comply with notice in bathing place	\$110
(b) a river, watercourse or tidal or non-tidal water,	fail to comply with notice in river/watercourse/tidal/non-tidal water	\$110
(c) the sea adjacent to (although outside) an area,	fail to comply with notice in sea	\$110
(d) a public place adjacent to any of those places,	fail to comply with notice near bathing place/river/watercourse/tidal/non-tidal water/sea	\$110
fail to comply with the terms of a notice erected by the council		
Section 633 (2)—be in the nude in public view in a place (unless a notice erected by the council allows the use of the place (or part of the place) for the purposes of nude bathing) being:		
(a) a public bathing place under the control of a council,	nude in bathing place	\$110
(b) a river, watercourse or tidal or non-tidal water,	n u d e i n r i v e r / watercourse/tidal/non-tidal water	\$110
(c) the sea adjacent to (although outside) an area,	nude in sea	\$110

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(d) a public place adjacent to any of those places	nude near bathing place/ river/watercourse/tidal/ non-tidal water/sea	\$110
Section 637 (1)—wilfully or negligently wasting or misusing water from a public water supply	wilful/negligent waste or misuse of water	\$220
Section 642 (2)—after receiving a warning under section 642 (1), commence to drink alcohol in an alcohol-free zone	commence to drink alcohol after warning	—
Section 642 (2)—after receiving a warning under section 642 (1), fail to stop drinking alcohol in an alcohol-free zone	fail to stop drinking alcohol after warning	—
Section 642 (2)—after receiving a warning under section 642 (1), resume drinking alcohol in an alcohol-free zone	resume drinking alcohol after warning	—
Section 650 (1), (2) (a)—park vehicle in a free parking area otherwise than as permitted by a notice or sign relating to the time during which the public may use the free parking area	stand vehicle in area when area closed to public	—
Section 650 (1), (2) (b)—park vehicle in a free parking area otherwise than as permitted by a notice or sign relating to the maximum period for which a vehicle may be parked in the free parking area (or in any part of the free parking area)	stand vehicle in area longer than allowed	—
Section 650 (1), (3)—park vehicle in a free parking area otherwise than as permitted by a notice or sign relating to the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities	stand vehicle in disabled persons parking space without authority	—
Section 650 (4) (a)—cause vehicle to be parked in a free parking area otherwise than in a marked parking space	not stand vehicle in marked parking space	—

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Section 650 (4) (b)—cause vehicle to be parked in a free parking area in a marked parking space in which another vehicle is parked	stand vehicle in occupied marked parking space	—
Section 650 (4) (c)—cause vehicle to be parked in a free parking area in a marked parking space so that it is not wholly within that space	not stand vehicle wholly in marked parking space	—
Section 650 (5)—fail to comply with direction of authorised person regarding parking of vehicle within a free parking area	fail to comply with parking direction	—
Section 650 (5)—fail to comply with direction of authorised person regarding movement of vehicle within a free parking area	fail to comply with vehicle movement direction	—
<b>Note.</b> The offences created by section 650 of the Act are prescribed as penalty notice offences under the <i>Motor Traffic Regulations 1935</i> (see Regulation 130A and Part 7 of Schedule K to those Regulations).		
Section 651B (1)—immobilise a vehicle owned by another person by means of wheel clamps, or a prescribed device, except with the consent of the owner	immobilise vehicle by means of wheel clamps/prescribed device	\$300
Section 651C (1) (a)—fail to release a vehicle on demand to any person having a lawful right to the possession or control of the vehicle	fail to release vehicle on demand	\$300
Section 651C (1) (b)—demand payment for or in relation to the release of a vehicle	demand payment for release of vehicle	\$300

BY AUTHORITY