

**LOCAL GOVERNMENT (AMENDMENT) ACT.**

**New South Wales**



ANNO OCTAVO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 39, 1969.**

An Act to make further provisions relating to the rating of certain classes of leases of lands of the Crown, the drainage of land in subdivisions and the opening of temporary roads; to enable councils to grant leases of land below the surface of, and the air space above, a public road; for these and other purposes to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 17th April, 1969.]

BE

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**No. 39, 1969** **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Local Government (Amendment) Act, 1969".

Amendment of Act No. 41, 1919. **2.** The Local Government Act, 1919, as subsequently amended, is amended—

Sec. 4.  
(Definitions.)

(a) by inserting in the definition of "Lease", next before the definition of "Lessee", in section four after the word "permit" the words "(other than a license issued pursuant to section twenty-six or twenty-eight of the Forestry Act, 1916, or a permit granted pursuant to paragraph (a), a permit to occupy land for bee farming purposes granted pursuant to paragraph (c), and a permit granted pursuant to paragraph (e) of subsection one of section thirty-one of that Act)";

New sec.  
160E.

(b) by inserting next after section 160D the following new section :—

Rating of certain classes of lease from the Crown.

160E. (1) In this section—

"rating and taxing basis" means a rating and taxing basis determined in accordance with section 61A of the Valuation of Land Act, 1916;

"valuer" has the meaning ascribed thereto by subsection nine of section 160C of this Act.

(2) This section applies to land—

(a) held under any of the following tenures under the Crown Lands Consolidation Act, 1913, that is to say, annual leases, snow

leases,

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leases, occupation licenses, preferential No. 39, 1969  
 occupation licenses, permissive occupancies,  
 special leases (not being special leases in  
 perpetuity) and permits to enclose a road  
 or watercourse;

- (b) held under any lease under the Forestry Act, 1916;
- (c) held under a lease under the Western Lands Act of 1901;
- (d) held under a lease under the Prickly-pear Act, 1924;
- (e) held under a lease under section six of the Irrigation Act, 1912; or
- (f) owned by or vested in the Crown or any person on behalf of the Crown and which is the subject of a lease of a prescribed class or description.

(3) Where, after the commencement of the Local Government (Amendment) Act, 1969, a valuation of land to which this section applies is furnished by a valuer under Schedule Three to this Act or the Valuer-General furnishes a general valuation list in which is included a valuation of any land to which this section applies or a supplementary valuation list in which is included a valuation of any such land, then, in addition to the valuation made under Schedule Three to this Act or to the valuation and any rating and taxing basis included in any such general valuation list or supplementary valuation list, there shall be furnished a statement of an unimproved rating factor and an improved rating factor determined in respect of any such land in accordance with subsection four of this section.

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(4) The rating factor in respect of any land to which this section applies shall be determined as follows :—

- (a) in the case of the unimproved rating factor, that factor shall be an amount equal to the unimproved capital value of the land to which this section applies or the rating and taxing basis applicable to that land; and
- (b) in the case of the improved rating factor, that factor shall be an amount equal to the improved capital value of the land to which this section applies,

reduced, in either case, by an amount, as determined by the valuer, that would, had the restrictions on the disposition or manner of use that apply to that land by reason of its being the subject of a lease referred to in subsection two of this section held by the ratable person applied to the land at the time when the valuation was made or to which it relates or to which the rating and taxing basis relates, have been attributable to those restrictions.

(5) Notwithstanding any other provision of this Act, a rating factor in respect of any land to which this section applies, after deducting therefrom, in the case of an unimproved rating factor, any allowance made under subsection two of section fifty-eight of the Valuation of Land Act, 1916, shall until the land is included in a subsequent valuation be used by the council to the exclusion of any other valuation as the basis of any rate levied or leviable—

- (a) except in a case to which paragraph (b) of this subsection applies, in respect of a year after the statement of the rating factor was furnished to the council; or

(b)

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(b) in a case to which subsection eight of section one hundred and thirty-nine of this Act applies, in respect of the year in which the statement of the rating factor was furnished to the council and in respect of each year thereafter,

upon the unimproved capital value or the improved capital value, as the case may be, of the land to which the rating factor relates.

(6) Any rating factor determined under this section shall be shown on the notice of valuation and objection may be made to a rating factor as if it were a valuation, but for the purpose of determining the objection where the valuation to which the rating factor relates is a valuation made under Schedule Three to this Act, the Valuation Court under section nineteen of that Schedule shall be ascertained according to the unimproved capital value of the land.

(7) Without limiting the generality of subsection six of this section, an objection may be made by a ratable person on the ground that no rating factor has been determined for the land in respect of which he is ratable.

(c) by inserting next after Division 15 of Part IX the following new Division :—

DIVISION 15A.—*Closing of Temporary Roads.*

276B. In this Division—

“isolated road” means a public road which when opened gives vehicular access to a main, secondary or residential road only by means of a temporary road;

“temporary road” means a road giving access from a main, secondary or residential road to an isolated road.

New  
Division  
15A.

Interpre-  
tation.

276c.

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Closing of  
temporary  
road and  
transfer  
to person  
entitled.

276c. (1) Where, by reason of the opening under any Act of a public road, other than a pathway or a public road that gives direct access only to an isolated road, an isolated road has vehicular access to that public road the council shall—

- (a) cause to be published in the Gazette a notice to the effect that the temporary road provided to give access to that isolated road may, in accordance with this section, be closed; and
- (b) by registered letter sent to the address last known to the council, notify the subdivider, personal representative, successor or assign of the subdivider (if known to the council) to the like effect.

(2) Where the form of a notice referred to in subsection one of this section has been prescribed, that notice shall be in or to the effect of the prescribed form.

(3) Subject to subsection eleven of this section, at any time after the publication of the notice referred to in paragraph (a) of subsection one of this section, the subdivider or the personal representative, successor or assign of the subdivider may apply to the Minister—

- (a) if the temporary road has not been closed under subsection ten of this section, for the closing, pursuant to subsection four of this section, of the temporary road and for an order directing the council in which the lot or lots comprised in the temporary road is or are vested to convey or transfer the lot or lots to the applicant; or

(b)

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- (b) if the temporary road has been closed under subsection ten of this section for an order directing the council in which the lot or lots comprised in the temporary road is or are vested to convey or transfer the lot or lots to the applicant. No. 39, 1969

The application shall be accompanied by evidence that the applicant is the person entitled to that order.

(4) On receipt of the application referred to in subsection three of this section, the Minister, if he is satisfied from evidence referred to in that subsection that the applicant is the person entitled to any order referred to in that subsection, may, by notification published in the Gazette—

- (a) declare that the temporary road is closed, and direct the council in which the lot or lots comprised in the temporary road is or are vested to convey or transfer the lot or lots to the person named in the notification ;  
or
- (b) direct the council in which the lot or lots comprised in the temporary road is or are vested to convey or transfer the lot or lots to the person named in the notification,  
as the case may require.

(5) On and from the date specified in any notification under subsection four of this section, or if no date is so specified, on and from the date of the notification the temporary road shall be closed and the lands comprised in the temporary road shall be freed and discharged from any rights of the public or any person to the use of the land comprised therein as a public road.

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(6) The council shall, at the request of the person referred to in a notification under subsection four of this section—

- (a) in the case where a certificate of title has, pursuant to section 327B of this Act, been issued in the name of the council, deliver the certificate of title with a duly completed transfer to that person; or
- (b) in any other case, deliver to that person a duly executed conveyance of the lot or lots referred to in the notification.

(7) The Registrar-General, on production of a transfer referred to in subsection six of this section, together with a copy of the notification referred to in subsection four of this section, shall register the transfer.

(8) If a conveyance or transfer referred to in subsection six of this section is—

- (a) to the subdivider;
- (b) to the personal representative of the subdivider or to a person entitled under the will or on the intestacy of the subdivider, and the value of the rights of the subdivider in the lot or lots comprised in the temporary road has been included in the dutiable estate of the subdivider and duty, if any, has been paid thereon; or
- (c) to a person claiming under or through an assignment of those rights made by the subdivider and that assignment and any instrument through which that person so claims has been duly stamped,

the Commissioner of Stamp Duties shall at the request of the conveyee or transferee mark the conveyance or transfer, as the case may be, to the effect



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effect that no stamp duty is payable and duty within the meaning of the Stamp Duties Act, 1920, shall not be payable in respect of a conveyance or transfer so marked. No. 39, 1969

(9) Where an application referred to in paragraph (a) of subsection three of this section is not made to the Minister within two months of the publication of the notice referred to in paragraph (a) of subsection one of this section, the council, if it is of opinion that the temporary road should be closed, may apply to the Minister for the closing, pursuant to this section, of the temporary road.

(10) On receipt of an application referred to in subsection nine of this section, the Minister may, by notification published in the Gazette, declare that the temporary road is closed, and on and from the date specified in the notification, or if no date is so specified on and from the date of the notification, the temporary road shall be closed and the lands comprised in the temporary road shall be freed and discharged from any rights of the public or any person to the use of the land comprised therein as a public road.

(11) Where an application referred to in paragraph (a) or (b) of subsection three of this section is not made within five years after the date of publication in the Gazette of the notice referred to in paragraph (a) of subsection one of this section, the rights of the subdivider, or the personal representative, successor or assign of the subdivider, as the case may be, under this section shall absolutely cease and determine.

(12) Where a temporary road has been closed in accordance with this section and, pursuant to subsection eleven of this section, the rights of the subdivider, or the personal representative,

successor

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successor or assign of the subdivider, as the case may be, in respect of the lot or lots comprised in the temporary road under this section have ceased and determined, the land comprised in that lot or those lots may be disposed of or dealt with by the council in accordance with this Act in the same way as any other land vested in the council and not subject to any trusts, dedications or rights of the public may be disposed of or dealt with.

Sec. 327.  
(Conditions to be observed before opening new roads or subdivisions.)

(d) (i) by inserting next after paragraph (b) of subsection one of section three hundred and twenty-seven the following new paragraph :—

(bi) where the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection, in respect of the subdivision—that requirement has been complied with; and

(ii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—

(ai) where the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection, in respect of the subdivision—that requirement has been complied with; and

New secs.  
327A-327C.

(e) by inserting next after section three hundred and twenty-seven the following new sections :—

Temporary roads in subdivisions.

327A. (1) In this section, the expressions “isolated road” and “temporary road” have the meanings respectively ascribed thereto in section 276B of this Act.

(2)

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(2) Notwithstanding any other provision No. 39, 1969 of this Act, where a subdivision of land involves the opening of a road (in this subsection referred to as a "planned road") and that road, when provided in conformity with the requirements of any town or country planning scheme prescribed or in course of preparation under Part XIIA of this Act or with the requirements of an interim development order made under Division 7 of that Part or of a council imposed under such an order—

- (a) will be an isolated road, the plan of that subdivision shall not be approved by the council; or
- (b) will give direct access only to an isolated road, approval of that plan of subdivision may be refused by the council,

unless the plan also provides for the opening of a public road as a temporary road, to give access to the planned road.

(3) A temporary road shall comprise one or more lots in the subdivision of the land in which the temporary road is to be provided.

(4) Nothing in this section prevents the creation on the registration of a plan of subdivision in accordance with section 88B of the Conveyancing Act, 1919, of an easement or restriction as to user in respect of a lot or lots comprised in a temporary road.

(5) Any covenant that immediately before the opening of a public road as a temporary road applied to any lot comprised in the temporary road and any restriction as to user referred to in subsection four of this section in respect of any such lot shall until the temporary road is closed be suspended in its operation in respect of that lot.

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(6) The provisions of—

- (a) Divisions 3, 9, 10, 11 and 15 of Part IX of this Act;
- (b) where the lot or lots comprised in the temporary road is or are not under the provisions of the Real Property Act, 1900, subsection one of section two hundred and thirty-two of this Act, in so far as they entitle the council to be registered as the proprietor of a road under the provisions of that Act;
- (c) paragraph (c) of subsection three of section two hundred and thirty-two of this Act;
- (d) subsections four and five of section two hundred and thirty-three and section two hundred and forty-three of this Act;
- (e) section 519B of this Act; and
- (f) any Act, ordinance or regulation relating to the placing of permanent marks,

shall not apply to a public road that is a temporary road.

Certificate  
of title  
for  
temporary  
road.

327B. Upon the registration of a plan of subdivision which provides for the opening of a temporary road referred to in section 327A of this Act over land under the provisions of the Real Property Act, 1900, or upon bringing under the provisions of that Act land over which such a temporary road has been opened, the Registrar-General shall, notwithstanding anything contained in any Act, issue in the name of the council a certificate of title for each lot comprising the temporary road and shall enter thereon a caveat forbidding the registration of any dealings not consistent with the provisions of this Act relating to temporary roads.

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327c. (1) Where the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection, in respect of any subdivision and that requirement has been complied with, the council shall, within twelve months after the requirement has been complied with or within such further time as that Board may on the application of the council allow, acquire in accordance with section five hundred and thirty-two of this Act the easement specified in the Board's award and construct the works, so specified, within that easement.

Council to carry out certain drainage works.

(2) The provisions of subsection two of section four hundred and three of this Act do not apply to or in respect of the cost of the acquisition of any easement acquired by a council under subsection one of this section or the cost of any works referred to in that subsection.

- (f) by inserting next after subsection one of section 341L the following new subsection : —

Sec. 341L.  
(Powers of Board.)

(1A) (a) Where, on any appeal under this Part, the Board is satisfied that it is necessary, for the drainage of the land to which the appeal relates or the disposal of that drainage, that a drainage easement should be provided over land other than that of the applicant for approval, the Board may, by its award, in addition to exercising any of the powers conferred by subsection one of this section, require the applicant to pay to the council, or to give to the council security to its satisfaction for, such sum as may be determined by the Board as being the cost of acquisition by the council of such an easement specified by the Board in its award and the cost of any works, so specified, within the easement.

(b)

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(b) Before making an award under paragraph (a) of this subsection, the Board shall notify the owner of any land over which it appears to the Board that it may be necessary for an easement to be provided, or on which it may be necessary for any works to be constructed, as referred to in paragraph (a) of this subsection, and that the owner may object to the provision of the easement and the construction of the works.

The Board shall afford each objector an opportunity to appear personally or by counsel, solicitor or agent, before the Board in support of his objection, and the Board shall consider all such objections.

New sec.  
519B.

(g) by inserting next after section 519A the following new section :—

Lease of  
lands under,  
or of air  
space  
above roads  
vested in  
the council.

519B. (1) Notwithstanding anything contained in this Act the council may, subject to this section and with the approval in writing of the Minister, lease for any term not exceeding ninety-nine years the land below the surface of, or the air space above, any public road vested in the council.

(2) The Minister shall not approve of any lease under this section except after consideration of a report and recommendation by the State Planning Authority of New South Wales.

(3) The provisions of section five hundred and nineteen of this Act do not apply to or in respect of any lease granted by the council under this section.