



New South Wales

Community Land Development Amendment Act 1996 No 80

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New South Wales

Community Land Development Amendment Act 1996 No 80

Act No 80, 1996

An Act to amend the *Community Land Development Act 1989* with respect to development contracts, public places, public reserves, access ways and other matters. [Assented to 6 November 1996]

See also *Strata Titles Amendment Act 1996*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Community Land Development Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation,

3 Amendment of Community Land Development Act 1989 No 201

The *Community Land Development Act 1989* is amended as set out in Schedules 1–5.

Schedule 1 Amendments relating to development contracts

(Section 3)

[1] Section 26 Development contract

Omit “development proposed” from section 26 (2).
Insert instead “subdivision to be effected”.

[2] Section 26 (3)

Omit “is”. Insert instead “may be, but is not required to be,”.

[3] Section 26 (5)

Insert “is required and” after “contract” where firstly occurring.

Schedule 2 Amendments relating to public roads and public reserves

(Section 3)

[1] Schedule 1 Plans

Omit clause 1. Insert instead:

1 Public roads and certain reserves

- (1) This clause applies to:
 - (a) a community plan, a precinct plan and a neighbourhood plan, and
 - (b) a community plan of subdivision, a precinct plan of subdivision and a neighbourhood plan of subdivision.
- (2) A plan to which this clause applies must define any land in the plan that is to be dedicated as a public road, a public reserve or a drainage reserve.
- (3) This clause is not to be taken as enabling a plan of subdivision of association property (other than neighbourhood property to which section 21 applies) to include any additional dedication, or proposed dedication, of land as a public road, public reserve or drainage reserve.

[2] Schedule 11 Initial unit entitlements

Insert after clause 6:

9 Severance of lot proposed as public road or public reserve

- (1) This clause applies to a lot in a community plan, a precinct plan or a neighbourhood plan:
 - (a) that has a unit entitlement, and
 - (b) the whole or part of which is to be dedicated as a public road or public reserve.

- (2) If the whole or part of a lot to which this clause applies is dedicated as a public road or public reserve, a replacement sheet for the schedule of unit entitlements for the relevant scheme:
- (a) must reduce the total of the unit entitlements for the scheme by:
 - (i) the unit entitlement of the lot, if the whole of the lot is dedicated as a public road or public reserve, or
 - (ii) if part of the lot is dedicated as a public road or public reserve, the unit entitlement that would have been attributable to that part if it had been created as a separate lot, and
 - (b) must comply with this Schedule as if it were an initial schedule of unit entitlements.

Schedule 3 Amendments relating to access ways

(Section 3)

[1] Section 3 Definitions

Insert after the definition of *public authority* in section 3 (1):

public place has the same meaning as it has in the *Local Government Act 1993*,

[2] Section 41 Open access way in community property

Omit “Part” from section 41 (1). Insert instead “All or part”.

[3] Section 41 (1)

Omit “a public road”. Insert instead “a public place”.

[4] Section 42 Open access way in precinct property

Omit section 42 (1). Insert instead:

- (1) All or part of the land comprising the precinct property in a precinct scheme may be set apart as a means of open access connecting part of the precinct parcel and a public place, whether or not the connection is partly by means of an open access way within the community parcel of which the precinct parcel forms part.

[5] Section 43 Open access way in neighbourhood property that is not part of a community scheme

Omit section 43 (1). Insert instead:

- (1) All or part of the land comprising the neighbourhood property in a neighbourhood scheme that is not part of a community scheme may be set apart as a means of open access connecting part of the neighbourhood parcel and a public place.

[6] Sections 43A, 43B

Insert after section 43:

43A Open access way in neighbourhood property that is part of a community scheme

- (1) All or part of the land comprising the neighbourhood property in a neighbourhood scheme that is part of a community scheme may be set apart as a means of open access connecting part of the neighbourhood parcel and a public place, whether or not the connection is partly by means of an open access way within the community parcel of which the neighbourhood parcel forms part.
- (2) A setting apart under subsection (1) is effected if the neighbourhood management statement includes a plan that:
 - (a) is in the approved form, and
 - (b) defines as an open access way the land to be set apart, and
 - (c) includes the prescribed information.

43B Unanimity required for closure of open access way

An open access way within a community parcel may not be closed unless the closure is authorised by a unanimous resolution of each of the associations whose members are entitled to use the access way.

[7] Section 44 Private access way in community property

Omit “Part” from section 44 (1). Insert instead “All or part”.

[8] Section 44 (1)

Omit “a public road”. Insert instead “a public place”.

[9] Section 45 Private access way in precinct property

Omit section 45 (1). Insert instead:

- (1) All or part of the land that comprises the precinct property in a precinct scheme and is not set apart as an open access way may be set apart as a means of private access connecting part of the precinct parcel and:
 - (a) an open access way that is within the community parcel, or
 - (b) a public place.

[10] Section 46 Private access way in neighbourhood property

Omit section 46 (1). Insert instead:

- (1) All or part of the land that comprises the neighbourhood property in a neighbourhood scheme and is not an open access way may be set apart as a means of private access connecting part of the neighbourhood parcel and:
 - (a) an open access way that is within the neighbourhood parcel, or
 - (b) if the neighbourhood scheme is part of a community scheme—an open access way within the community parcel, or
 - (c) a public place.

Schedule 4 Amendments relating to statutory easements

(Section 3)

[1] Section 36 Statutory easement

Omit paragraph (c) of the definition of *statutory easement* in section 36 (1). Insert instead:

- (c) to enter:
 - (i) land within the scheme that would include, or includes, the service line, or
 - (ii) land within the scheme that is contiguous to the land referred to in subparagraph (i),and do all such things as may be reasonably necessary to exercise the rights referred to in paragraphs (a) and (b).

[2] Section 36 (3A)

Insert after section 36 (3):

- (3A) The Registrar-General is to be notified in the approved form when the installation of a proposed service line is completed. The notification is to be given:
 - (a) by the developer if installation of the service line is completed during the initial period, or
 - (b) by the relevant association if installation of the service line is completed after the initial period.

[3] Section 36 (4)

Omit section 36 (4). Insert instead:

- (4) If, after registration of a prescribed diagram for a proposed service line as part of the management statement for a scheme:
- (a) the service line is installed in a different position from that shown in the prescribed diagram for the service line, and
 - (b) the later prescribed diagram is signed by the proprietors of the lots that would be burdened by the statutory easement for the service line shown in the diagram,

the later prescribed diagram must be lodged for registration and may be registered as an amendment of the management statement duly made under the *Community Land Management Act 1989*.

[4] Section 36 (8)

Omit “a reasonable time”.

Insert instead “1 month after installation of the service line”.

[5] Section 36 (9)

Omit section 36 (9). Insert instead:

- (9) A proprietor of land, or a public authority, that has the benefit of a statutory easement is subject to the following covenants:
- (a) that the rights under the easement will not be exercised in a manner that would unreasonably interfere with the use and enjoyment by any other proprietor of land burdened by the easement and, in particular, that in exercising the rights, any interference with the use and enjoyment of community, precinct or neighbourhood property by proprietors or occupiers of lots will be kept to a minimum,

- (b) that any damage to, or interference with, the parts of the scheme affected by exercise of the rights conferred by the easement will, at the expense of the person exercising the rights, be made good:
 - (i) in the case of land within the scheme that would include, or includes, the service line—by restoring the land to a basic standard not including the repair or restoration of unusual or expensive landscaping or other works erected over the land, and
 - (ii) in the case of land within the scheme that is contiguous to the land referred to in subparagraph (i)—by restoring the land to its former state,
 - (c) that the person exercising the rights will leave the land on which they are exercised in a clean and tidy condition on completion of the installation, maintenance or repair of any service the subject of the easement.
- (9A) The Registrar-General may make in the Register such recordings as the Registrar-General thinks fit in respect of any action taken under this section.

Schedule 5 Other amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *public authority* from section 3 (1).

Insert instead:

public authority includes:

- (a) the council of a local government area, and
- (b) a corporation prescribed by the regulations as a public authority.

[2] Section 70 Variation or termination of scheme

Insert “varying or” after “Supreme Court” in section 70 (3).

[3] Schedule 1, clause 2 Requirements for all plans

Omit clause 2 (2) (b).

[4] Schedule 1, clause 2 (3)

Omit “*Survey Practice Regulation 1990*”.

Insert instead “*Surveyors (Practice) Regulation 1996*”.

[5] Schedule 1, clause 2 (4)

Omit “*Survey Co-ordination Act 1949*”.

Insert instead “*Surveyors (Practice) Regulation 1996*”.

[6] Schedule 12 Transitional provisions

Insert after clause 8 of Schedule 12:

Part 3 Community Land Development Amendment Act 1996

9 Validation

Anything done before a provision of this Act was amended by the *Community Land Development Amendment Act 1996* that would have been valid if that provision as so amended had been in force when it was done is taken to have been validly done.

[Minister's second reading speech made in—
Legislative Assembly on 15 October 1996
Legislative Council on 29 October 1996]