



New South Wales

Crown Lands Amendment (Multiple Land Use) Act 2013 No 101

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Crown Lands Amendment (Multiple Land Use) Act 2013 No 101

Act No 101, 2013

An Act to amend the *Crown Lands Act 1989* to make further provision for multiple uses of land reserved or dedicated under that Act for a public purpose. [Assented to 27 November 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crown Lands Amendment (Multiple Land Use) Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Crown Lands Act 1989 No 6

[1] Section 33A

Insert before section 34 (in Division 1 of Part 4):

33A Definitions

In this Part:

Crown reserve means land that is, or is part of, a reserve within the meaning of Part 5, and includes:

- (a) land within a travelling stock reserve, or
- (b) land within any other reserves for public purposes under the control of trustees or other authorities.

reserved purpose, in relation to land comprising a Crown reserve, means the public purpose for which the land has been dedicated or reserved under Part 5.

[2] Section 34AA

Insert after section 34:

34AA Secondary interests in Crown reserves

- (1) The power of the Minister under this Part to grant a lease, licence or permit in respect of, or an easement or right-of-way over, Crown land is not limited by the land being a Crown reserve or by the reserved purpose, except as provided by this section.
- (2) A lease, licence, permit, easement or right-of-way (a **secondary interest**) cannot be granted unless the Minister is of the opinion that the use or occupation of the Crown reserve pursuant to the secondary interest would be in the public interest and would not be likely to materially harm its use or occupation for the reserved purpose.
- (3) Without limitation, the following considerations are relevant to the question of whether the use or occupation of a Crown reserve pursuant to a secondary interest would not be likely to materially harm its use or occupation for the reserved purpose:
 - (a) the proportion of the area of the Crown reserve that may be affected by the secondary interest,
 - (b) if the activities to be conducted pursuant to the secondary interest will be intermittent, the frequency and duration of the impacts of those activities,
 - (c) the degree of permanence of likely harm and in particular whether that harm is irreversible,
 - (d) the current condition of the Crown reserve,
 - (e) the geographical, environmental and social context of the Crown reserve,
 - (f) such other considerations as may be prescribed by the regulations.
- (4) For the avoidance of doubt:
 - (a) the purpose for which a secondary interest is granted need not be a public purpose and need not be ancillary or incidental to the reserved purpose, and
 - (b) the fact that the use and occupation of the Crown reserve pursuant to the secondary interest may be inconsistent or incompatible with the

reserved purpose does not of itself mean that its use or occupation pursuant to the secondary interest will materially harm its use or occupation for the reserved purpose, and

- (c) the fact that the Crown reserve may be used or occupied for the grazing of animals pursuant to the secondary interest does not of itself mean that that use or occupation will materially harm its use or occupation for the reserved purpose of public recreation or of future public requirements.
- (5) If a secondary interest has not been validly granted because of this section, the Minister can validate the grant of the secondary interest by making such changes to the purpose for which the secondary interest was granted, or to the terms and conditions on which it was granted, as may be necessary to ensure that the secondary interest is valid.
- (6) When a secondary interest is validated under this section:
 - (a) the secondary interest is taken to have been validly granted from the date of original grant, and
 - (b) the use and occupation of Crown land in accordance with the secondary interest prior to its validation under this section is taken to be and always to have been valid.
- (7) In this section, *grant* includes purported grant.

Note. This section applies also to a lease, licence or easement granted by a reserve trust under Part 5. See section 102B.

[3] Section 34A Special provisions relating to Minister's powers over Crown reserves

Omit section 34A (7).

[4] Section 35A

Insert after section 35:

35A Challenge to validity of interest in Crown reserve

- (1) The validity of a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve cannot be questioned in legal proceedings unless a party to the proceedings has given the Minister not less than the prescribed period of notice of the alleged invalidity. Notice can be given before proceedings are commenced (by a prospective party to proceedings).
- (2) The prescribed period of notice under this section is 3 months or such shorter period as may be prescribed by the regulations.
- (3) The notice of alleged invalidity required by this section must be given in the form approved by the Minister and must provide the information required by the approved form.
- (4) The court before which proceedings are pending may adjourn the proceedings to enable notice of alleged invalidity to be given as required by this section.
- (5) The Minister may in a particular case, by instrument in writing, waive the requirement for the giving of notice under this section or reduce the prescribed period of notice under this section.

Note. This section applies also to a lease, licence or easement granted by a reserve trust under Part 5. See section 102B.

[5] **Section 102B**

Insert after section 102A:

102B Validity of interests in Crown reserves

Sections 34AA and 35A apply to and in respect of a lease, licence or easement granted in respect of a reserve by a reserve trust as if a reference in those sections to the Minister were a reference to the reserve trust.

[6] **Schedule 8 Savings, transitional and other provisions**

Insert at the end of clause 25 (1):

any Act that amends this Act

[7] **Schedule 8**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on Crown Lands
Amendment (Multiple Land Use) Act 2013**

Validation of existing secondary interests

- (1) Section 34AA extends to a secondary interest granted before the commencement of that section (an *existing secondary interest*), including any such secondary interest that is an existing interest under section 187 of the *National Parks and Wildlife Act 1974*.
- (2) It is to be conclusively presumed that when an existing secondary interest was granted the Minister was of the opinion that use or occupation of the Crown reserve pursuant to the secondary interest would be in the public interest and would not be likely to materially harm its use or occupation for the reserved purpose.
- (3) An existing secondary interest that would have been validly granted had section 34AA been in force at the time of the grant is taken to be and always to have been validly granted.
- (4) The power of the Minister under section 34AA to validate a secondary interest as referred to in that section extends to an existing secondary interest.
- (5) A reference in section 34AA to the use and occupation of Crown land in accordance with a secondary interest prior to its validation under that section extends to use and occupation before the commencement of that section.
- (6) This clause does not affect any decision of a court made before the commencement of section 34AA.
- (7) This clause does not affect any land claim (within the meaning of the *Aboriginal Land Rights Act 1983*) made before 9 November 2012 (the date of the decision in *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim)* [2012] NSWCA 358).
- (8) The validation of a secondary interest by operation of section 34AA and this clause is taken to be an act to which section 104A (Saving of native title rights and interests etc) of the *Native Title (New South Wales) Act 1994* applies.
- (9) This clause extends to the operation of section 34AA pursuant to section 102B.

Application of amendments to existing secondary interests

Section 35A (including in its operation under section 102B) extends to a lease, licence, permit, easement or right-of-way granted before the commencement of that section but not to proceedings pending on the commencement of that section.

Period of notice for challenge to existing secondary interests

The prescribed period of notice under section 35A in respect of a lease, licence, permit, easement or right-of-way in force immediately before the commencement of that section is 6 months (despite section 35A (2)).

[Second reading speech made in—
Legislative Assembly on 12 September 2013
Legislative Council on 30 October 2013]