

[Act 1997 No 61]



New South Wales

Local Government Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are to amend the *Local Government Act 1993*:

- (a) to make further provision with respect to the following:
 - motions to rescind, alter or negative council resolutions,
 - delegation powers of councils and general managers,
 - waiver by councils of approved fees,
 - sale of land by councils for unpaid rates and charges, and
- (b) to enable councils, in certain circumstances, to make charges for domestic waste management services in respect of land that is exempt from rating, and
- (c) to enable councils to catch up income lost due to reductions in land valuations, and

* Amended in committee—see table at end of volume.

- (d) to exempt from rates land that is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*, and
- (e) to increase the penalties for offences relating to certain orders given by councils, and
- (f) to enable apportionment factors determined under the *Valuation of Land Act 1916* to be taken into account in determining rates and annual charges applicable to mixed land development (that is, land occupied or used solely as the site of one or more buildings comprising flats and offices), and
- (g) to make other miscellaneous amendments and minor amendments.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Local Government Act 1993*.

Clause 4 is a formal provision that gives effect to the Schedule containing amendments to other Acts.

Schedule 1 Amendment of Local Government Act 1993

Schedule 1 [1] amends section 9 to make it clear that councils can give additional notice of a council meeting or a meeting of certain committees of the council, or make available additional copies of business papers for such meetings, to the public in electronic form (for example, by electronic mail).

Schedule 1 [2]–[4] amend section 70 to make it clear that the technical provisions of the State's building laws that apply to a building erected by or on behalf of the Crown (or certain prescribed persons) if the erection of the building commences on or after 1 July 1993 are those provisions in force as at the date of the invitation for tenders to erect the building or, in the absence of tenders, the date on which the erection of the building commences.

Schedule 1 [5] amends section 71. That section provides that the use of a building or temporary structure by the Crown as a place of public entertainment requires the approval of the Minister for Local Government. The amendment makes it clear that the Crown does not use a building or temporary structure for the purposes of the section if the building or temporary structure is subject to a lease from the Crown to a person who is not or does not represent the Crown.

Schedule 1 [6]–[8] amend section 82 to omit the requirement for the concurrence of the Director-General of the Department of Local Government in respect of an objection made to a council by an applicant for an approval that all or part of a local policy should not apply to the activity for which the approval is sought. The amendments retain the requirement for the concurrence of the Director-General if the objection relates to the application of the regulations to the particular activity.

Schedule 1 [9] amends section 103 to make it clear that a variation of the duration of an approval means an increase or reduction in the duration of the approval.

Schedule 1 [10] amends section 106 to allow councils to amend an approval without renotifying any person who was required to be notified in respect of the original approval if

- the council is satisfied that the amended approval will be substantially the same as the original approval and that no prejudice will be caused to any such person, and
- the council has consulted with any person or authority whose concurrence was required to the original approval and that person or authority does not object to the amendment of the original approval.

Schedule 1 [11] and [12] amend section 124 which relates to the orders that a council may give. At present, councils are able to issue an order to require that an “unsightly” building be demolished or repaired (orders Nos 1 (c) and 3 (b)). The amendments omit the word “unsightly”.

Schedule 1 [13] inserts proposed section 131A which relates to orders that will or are likely to result in making residents homeless. If a council proposes to make such an order, the council must consider whether any resident concerned can arrange satisfactory alternative accommodation in the locality. If the resident is not able to do so, the council must provide the resident with information about the availability of satisfactory alternative accommodation in the locality and any other assistance that the council considers appropriate.

Schedule 1 [14] amends section 356 to omit the requirement for a council to give public notice of its intention to grant financial assistance to a person who acts for private gain. A council may dispense with such notice if the financial assistance is part of a specific program and the program’s details have been included in the council’s draft management plan for the year in which the financial assistance is proposed to be given, the program’s budget does not exceed 5% of the council’s income from ordinary rates levied for that year and the program is uniformly available to all persons within the council’s area or to a significant group of persons within the area.

Schedule 1 [15] amends section 367 to allow notice of a council meeting (and the business paper for the meeting) to be given to a councillor in electronic form if all the councillors have facilities to access the notice and the business paper in that form.

Schedule 1 [16] replaces existing section 372, and inserts proposed sections 372A and 372B, to restate (with certain modifications) the existing provisions relating to the rescission, alteration and negating of council resolutions.

The modifications provide as follows:

- notice of motion to rescind a resolution must be given at the meeting at which the resolution is passed,
- a motion to rescind a resolution may only be moved at the meeting following the meeting at which the notice of the motion is given (the motion may however be adjourned at the following meeting for consideration at a subsequent meeting),
- the person presiding at a meeting:
 - (a) before the close of the meeting:
 - (i) must call for notice to be given of any motions to rescind a resolution passed at the meeting, and
 - (ii) must announce to those present at the meeting that if such notice is given, the resolution concerned will not be carried into effect until the motion of rescission has been dealt with, and
 - (iii) must allow a reasonable time for such notice to be given before the close of the meeting, and
 - (b) if such notice is given, must announce that fact to those present at the meeting and must do so when the meeting is open to the public (whether or not the meeting (or part of the meeting) has been closed to the public),
- a motion to alter a resolution that has the same effect as a motion to rescind the resolution must comply with the requirements relating to motions to rescind a resolution,
- the provisions relating to motions to rescind or alter a resolution or certain motions that are negated apply to resolutions passed by a council as well as a committee of the council of which all the members are councillors,
- the requirements for motions to alter a resolution and for certain motions that are negated must not be circumvented by a report of a council committee to a subsequent council meeting.

Schedule 1 [17] amends section 377 to enable a council to sub-delegate any function delegated to the council by the Director-General.

Schedule 1 [18] amends section 378 to enable the general manager to sub-delegate any function sub-delegated to the general manager by the council that was delegated to the council by the Director-General.

Schedule 1 [19] amends section 496 to enable a council to make an annual charge for the provision of a domestic waste management service to land that is exempt from rating if the service is available for that land and the owner of the land requests or agrees to the service being provided. The amount of the annual charge is to be limited to recovering the cost of providing the service to the land.

Schedule 1 [20] amends section 505 to provide that an annual charge made by a council under section 611 (that is, an annual charge on a person in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure that is on, under or over a public place) is not to be included in a council's calculation of its general income. **Schedule 1 [31]** makes a consequential amendment.

Schedule 1 [22] inserts proposed section 511A to enable a council to catch up part of the maximum permissible general income determined for a year that is lost to the council (referred to in the proposed section as the *unrecovered amount*) because, after the determination is made, a valuation used in making a rate is reduced as a result of a valuation objection or appeal.

Under the proposed section, the council may increase the maximum permissible general income for a year by any unrecovered amount for a previous year. **Schedule 1 [21]** and **[23]** make consequential amendments.

Schedule 1 [24] amends section 513 to enable a council to request the Valuer-General to provide estimates of increases and decreases in the value of parcels of rateable land for which supplementary valuations have been furnished but which have a different base date from those used for rating for that rating year because of a general revaluation of land in the council's area occurring in that rating year. The amendment will enable the estimates to be used in the calculation of the council's notional general income under section 509.

Schedule 1 [25] amends section 516 to include a definition of *boarding house* or *lodging house* for the purposes of the section. *Boarding house* or *lodging house* is defined to mean a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

- the tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette, and
- there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year.

The definition includes a vacant building that was so let immediately before becoming vacant, but does not include a residential flat building, licensed premises, a residential centre for handicapped persons licensed under the *Youth and Community Services Act 1973*, a private hotel, a building containing serviced apartments or a backpacker hostel or other tourist establishment.

Schedule 1 [26] inserts proposed sections 5 18A and 5 18B. Proposed section 5 18B enables rates and charges that are made and levied according to categories or sub-categories of land to be applied to a parcel of mixed development land according to the percentages represented by the apportionment factor for the parcel determined under the *Valuation of Land Act 1916*.

Proposed section 5 18A makes a related amendment. It provides that a strata lot, a company title dwelling or a portion of a company title building is taken to be a separate parcel of land for the purposes of categorisation.

Schedule 1 [27] and **[28]** amend section 555 to exempt from all rates land that is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*. If the land concerned comprises part of a single parcel of land for rating purposes, that part will be exempt, however, rates may be made and levied on the other part of that parcel proportionately.

Schedule 1 [29] amends section 608 to enable a council to recover an approved fee charged in connection with a service provided at an airport established and maintained by the council from the holder of the certificate of registration issued under the *Civil Aviation Regulations* of the Commonwealth for the aircraft in respect of which the service was provided whether or not the holder is the person to whom the service is actually provided.

Schedule 1 [30] inserts proposed section 610A to enable a council to waive payment of, or reduce, an approved fee in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.

A council must not determine a category of cases until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed approved fee under section 612 (Public notice of approved fees).

Schedule 1 [32] and [33] amend section 628 to increase the maximum penalty to 100 penalty units (\$10,000) for individuals and 200 penalty units (\$20,000) for corporations for failure to comply with the following orders given by a council under section 124:

- fire safety upgrading (order No 4), and
- cease hazardous activity (order No 15), and
- cease use of or evacuate premises (order No 16), and
- leave or not enter premises (order No 17).

(The current maximum penalty for these orders is 50 penalty units (\$5,000) for individuals and 100 penalty units (\$10,000) for corporations.)

Schedule 1 [34] amends section 713 to limit the sale of vacant land on which any rate or charge is unpaid for 12 months to circumstances where:

- the council obtains a valuation of land from the Valuer-General, and
- the amount of unpaid rates or charges on the land exceeds that valuation, and
- the council sells the land within 6 months after the date when the council received the valuation.

Schedule 1 [35] amends section 732 to extend the circumstances in which a council, a councillor or an employee of a council is exempt from any liability in respect of accreditation and certification matters to the situation where the council receives a certificate issued in accordance with the certificate procedure under section 653B as to the maintenance of essential fire or other safety measures applicable to a building. (Section 653B and related provisions are to be inserted by Schedule 1 to the *Local Government Amendment Act 1996*.)

Schedule 1 [36] inserts proposed section 735A to enable a person, on payment of the approved fee, to apply to a council for a certificate as to whether there are any outstanding notices (which include any notifications, orders, directions or demands) issued by the council under the Act in respect of the land concerned. The production of the certificate is taken to be conclusive proof of the existence or otherwise of any outstanding notices.

Schedule 1 [37] amends Schedule 7 by inserting proposed clause 33 to provide that the number of councillors for the Maitland City Council is to be 13 for the term of office commencing next after the Council's ordinary election in September 1999.

Schedule 1 [38] and **[39]** insert provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

The *Bush Fires Act 1949* is amended to prevent the appointment of councillors as fire control officers or deputy fire control officers and requires a fire control officer or deputy fire control officer who becomes a councillor to cease to be such an officer within a specified period. Provision is also made in respect of existing councillors who hold such positions (**Schedule 2.1 [1]** and **[2]**).

The *Defamation Act 1974* is amended in respect of the Local Government Pecuniary Interest Tribunal constituted under Chapter 14 of the *Local Government Act 1993* to provide:

- (a) a defence of absolute privilege for a publication to or by the Tribunal if the publication is made for the purpose of the execution or administration of the *Local Government Act 1993* (**Schedule 2.2 [1]**), and
- (b) a defence for the publication of a fair protected report of proceedings of the Tribunal and (in some cases) for the later publication by another person of the protected report (or material purporting to be the protected report) or a copy of the protected report or the material, or a fair extract or fair abstract from, or fair summary of, the protected report or the material (**Schedule 2.2 [2]**), and
- (c) a defence for the publication of a decision, or a copy of a decision, of the Tribunal or a fair extract or fair abstract from, or fair summary of, any such decision (**Schedule 2.2 [3]**), and
- (d) that the amendments extend to a publication made before the commencement of the amendments (**Schedule 2.2 [4]**).

The *Valuation of Land Act 1916* is amended:

- (a) as a consequence of the exemption from rates under the *Local Government Act 1993* of land that is subject to a conservation agreement under the *National Parks and Wildlife Act 1974* (**Schedule 2.3 [1]–[3]**), and

- (b) to make consistent land that is covered by the definition of *residential land* in the Act with land that is categorised as residential under the *Local Government Act 1993* (**Schedule 23 [4]–[7]**), and
- (c) to exclude company title dwellings, or portions of a company title building, from the definitions of *flat* and *office* in the Act (**Schedule 23 [8]** and **[9]**).