



New South Wales

Aboriginal Land Rights Amendment (Gandangara Estate) Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Aboriginal Land Rights Act 1983* (the *Principal Act*) to validate the subdivision by the Gandangara Local Aboriginal Land Council (*Gandangara LALC*) of land known as the Gandangara Estate at Barden Ridge, Menai, and the subsequent sale (before the commencement of the amendment) of residential lots in the subdivision.

The Principal Act imposes procedural requirements on dealings with land vested in Local Aboriginal Land Councils. Certain irregularities in complying with those requirements may have resulted in the subdivision and subsequent sale of residential lots in the Gandangara Estate being in contravention of the Principal Act and invalid.

The Bill resolves any such irregularities by deeming there to have been compliance with the relevant requirements of the Principal Act in respect of the subdivision of the Gandangara Estate and in respect of the sale before the commencement of the amendment of lots created in the subdivision.

The Bill also validates the subdivision and lot sales and the exercise of functions by the Registrar-General.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendment to the Principal Act set out in Schedule 1.

Schedule 1 Amendment

Schedule 1 inserts a new Part 6 into the Schedule of savings, transitional and other provisions of the Principal Act to validate the subdivision by Gandangara LALC of the Gandangara Estate and the subsequent sale of lots in the subdivision.

The proposed new Part contains the following provisions:

- (a) Proposed clause 35 contains definitions. An important definition is that of *disposal* which includes sale and other land dealings that are regulated under sections 40B and 40D of the Principal Act.
- (b) Proposed clause 36 deems there to have been compliance with sections 40B and 40D of the Principal Act in respect of any disposal of Gandangara Estate land by Gandangara LALC before the commencement of the amendment, including the subdivision of that land, the creation of roads and easements by the subdivision and the sale of lots created in the subdivision. Sections 40B and 40D required the approval of the NSW Aboriginal Land Council to authorise subdivision of the land and required a special resolution of the Gandangara LALC and the approval of the NSW Aboriginal Land Council to authorise its disposal.
- (c) Proposed clause 37 validates the subdivision and sales of lots that have occurred before the commencement of the amendment, and action by the Registrar-General to give effect to the subdivision and sales. The clause validates not only sales by Gandangara LALC but also subsequent sales by purchasers from Gandangara LALC.
- (d) Proposed clause 38 makes it clear that a certificate under an existing provision certifying as to compliance with section 40D can (but need not) be issued and is not required as a precondition to the exercise of functions by the Registrar-General.
- (e) Proposed clause 39 provides that the operation of the new provisions is not affected by a person having notice of any contravention of section 40B or 40D of the Principal Act.

First print



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New South Wales

Aboriginal Land Rights Amendment (Gandangara Estate) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Aboriginal Land Rights Act 1983* to make provision for the validity of Gandangara Estate land dealings by the Gandangara Local Aboriginal Land Council.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Aboriginal Land Rights Amendment (Gandangara Estate) Act 2004*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Aboriginal Land Rights Act 1983 No 42

The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 1.

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Schedule 1 Amendment

(Section 3)

Schedule 4 Savings, transitional and other provisions

Insert after Part 5:

Part 6 Aboriginal Land Rights Amendment (Gandangara Estate) Act 2004

35 Definitions

In this Part:

disposal of land means sale, exchange, mortgage or other disposal of land, change of use of land and the grant of an easement over land, and includes purported disposal of land.

Gandangara Estate land means the land comprised in Deposited Plan 1061416, being the land formerly comprising lots 6081–6084 (inclusive) in Deposited Plan 1018026 and lot 2 in Deposited Plan 1041291.

Gandangara LALC means the Gandangara Local Aboriginal Land Council.

36 Gandangara Estate—deemed compliance with ss 40B and 40D

The requirements of sections 40B and 40D are deemed to have been complied with in respect of any disposal of Gandangara Estate land by Gandangara LALC before the commencement of this Part, and it is to be conclusively presumed for all purposes that any such disposal does not (and did not ever) contravene either of those sections.

37 Validation

- (1) Any disposal before the commencement of this Part of Gandangara Estate land by Gandangara LALC or by a person to whom Gandangara Estate land was disposed of before that commencement is validated to the extent of any invalidity that would otherwise have resulted from any contravention of section 40B or 40D in connection with the disposal.
- (2) Any act or omission by the Registrar-General in the exercise or purported exercise of a function under the *Real Property Act 1900* in connection with a disposal of Gandangara Estate land before the commencement of this Part is validated to the extent

of any invalidity that would otherwise have resulted from any
contravention of section 40B or 40D in connection with any such
disposal.

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38 Certificate evidence

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- (1) A certificate may be given under section 40D (2) certifying that
a disposal of Gandangara Estate land by Gandangara LALC
before the commencement of this Part does not contravene
section 40D.
- (2) The failure to give or obtain such a certificate does not limit or
otherwise affect the operation of this Part or prevent the exercise
of any function of the Registrar-General.
- (3) The Registrar-General is not required to obtain, and is not to
require any other person to obtain, such a certificate as a
condition of or as authority for the exercise of any function of the
Registrar-General with respect to any such disposal of land.

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39 Notice of contravention

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This Part has effect despite any notice that any person has or had
of any contravention of section 40B or 40D in connection with
any disposal of Gandangara Estate land. In particular any such
notice has no effect for the purposes of section 40D (2) and any
certificate issued under that subsection.

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