

[Act 1998 No 140]



New South Wales

# Local Government Amendment (Community Land Management) Bill 1998

## Explanatory note

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

### Overview of Bill

This Bill amends Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*, which governs the use and management of community land. The objects of the Bill are:

- (a) to require plans of management for community land that is of particular significance for environmental reasons to regulate the use and management of the land in a manner that takes account of that significance, and
- (h) to impose further restrictions with respect to the grant of leases, licences and other estates or interests in respect of community land.

---

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

---

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

### **Schedule 1 Amendment of Local Government Act 1993**

**Schedule 1 [1]** makes a minor amendment to section 36 of the Act as a consequence of the amendments made by Schedule 1 [5].

**Schedule 1 [2]** amends section 36 of the Act so as to require a plan of management drawn up in respect of a particular area of community land to specify the purposes for which the land may lawfully be developed or used. (As a consequence, to change those permitted purposes would require amendment of the plan of management, necessitating community involvement in the manner prescribed by section 38 of the Act.)

**Schedule 1 [3]** amends section 36 of the Act so as to introduce a new category of community land, namely, land that constitutes an area of cultural significance. (Prescribed requirements for a plan of management applying to an area of cultural significance are set out in proposed section 36D, inserted by Schedule 1 [5].)

**Schedule 1 [4]** amends section 36 of the Act so as to allow provision to be made by regulation with respect to the categorisation of community land generally, and in particular to prescribe the core objectives of any particular categorisation. The significance of the prescribed core objectives is that a lease, licence or other estate or interest cannot be granted in respect of the land if it would defeat those objectives. (See proposed section 46, inserted by Schedule 1 [10].)

**Schedule 1 [5]** inserts new sections 36A–36D into the Act, the effect of which is as follows:

Proposed section 36A deals with community land that is protected under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* because of its being the habitat of an endangered species. If the land is so protected before a plan of management is drawn up for it, a plan applying only to the land concerned must be drawn up for it, and the plan must reflect that protection in terms of its objects and its categorisation of the land, and

Explanatory note

---

must meet any requirements of the Director-General of National Parks and Wildlife or the Director of NSW Fisheries. If a plan of management is in force with respect to the land, and to other areas of land as well, before the time it becomes protected under either of those Acts, the plan ceases to apply to the land in question and a new plan must be drawn up for it. If an existing plan applies only to an area that includes the land in question, the plan is taken to be amended to categorise the area as a natural area. An amendment of the plan will be required before any further use or development of the land can be undertaken and before any lease, licence or other estate or interest can be granted in respect of it.

Proposed section 36B is similar in effect to proposed section 36A, and deals with community land that is the subject of a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*. If the land is affected by that Act before a plan of management is drawn up for it, a plan applying only to the land concerned must be drawn up for it, and the plan must reflect that protection in terms of its objects and its categorisation of the land, and must meet any requirements of the Director-General of National Parks and Wildlife or the Director of NSW Fisheries. If a plan of management is in force with respect to the land, and to other areas of land as well, before the time it becomes affected by a recovery plan or threat abatement plan, the plan ceases to apply to the land in question and a new plan must be drawn up for it. If an existing plan applies only to an area that includes the land in question, the plan is taken to be amended to categorise the area as a natural area. An amendment of the plan will be required before any further use or development of the land can be undertaken and before any lease, licence or other estate or interest can be granted in respect of it.

Proposed section 36C deals with community land that the council considers (and declares by resolution) to be land that contains significant natural features. If the relevant resolution is passed before a plan of management is drawn up for the area, the objects of the plan of management and its categorisation of the land must be directed to the conservation of the land's natural features. If a plan of management is in force with respect to the land, and to other areas of land as well, before the time it becomes the subject of a resolution under the section, the plan ceases to apply to the land in question and a new plan must be drawn up for it. If an existing plan applies only to an area that includes the land in question, the plan is taken to be amended to categorise the area as a natural area. An amendment of the plan will be required before any further use or development of the land can be undertaken and before any lease, licence, or other estate or interest can be granted in respect of it.

Proposed section 36D deals with community land that the council considers (and declares by resolution) to be land that comprises an area of cultural significance because of the presence on the land of one or more items of Aboriginal, historical or cultural significance. If the relevant resolution is passed before a plan of management is drawn up for it, the objects of the plan of management and its categorisation of the land must be directed to the conservation of the relevant items of cultural significance on the land, and the plan must meet any requirements of the Director-General of National Parks and Wildlife. If a plan of management is in force with respect to the land, and to other areas of land as well, before the time it becomes the subject of a resolution under the section, the plan ceases to apply to the land in question and a new plan must be drawn up for it. If an existing plan applies only to an area that includes the land in question, the plan is taken to be amended to categorise the area as an area of cultural significance. An amendment of the plan will be required before any further use or development of the land can be undertaken and before any lease, licence or other estate or interest can be granted in respect of it.

**Schedule 1 [6]** amends section 40 of the Act so as to require all amendments to a draft plan of management for community land to be publicly exhibited. (The section currently does not require re-exhibition for amendments that are, in the council's opinion, "not substantial".)

**Schedule 1 [7]** inserts a new section 40A, which provides that a proposal to amend a plan of management for community land in order to re-categorise community land that is for the time being categorised as a natural area or as an area of cultural significance must be made the subject of a public hearing conducted in accordance with section 734 of the Act.

**Schedule 1 [8]** and **[9]** make amendments consequential on the amendments made by the Schedule in relation to leases, licences and other estates or interests granted in respect of community land.

**Schedule 1 [10]** repeals section 46 of the Act, which currently deals with leases and licences of community land, and replaces it with a new section that deals with leases, licences and other estates or interests in respect of such land. Under the new section:

- (a) a lease, licence or other estate or interest in respect of community land may be granted for the provision of public utilities and associated or ancillary work or for any purpose expressly authorised by the plan of management relating to the land, and

- (b) the purposes of the grant for which such a lease, licence or other estate or interest may be granted are limited to purposes prescribed by the section or by regulations, and
- (c) such a lease, licence or other estate or interest may not be granted if to do so would defeat the prescribed core objectives of the land's categorisation in terms of section 36.

**Schedule 1 [10]** also inserts a new section 46A, which requires a plan of management for community land to identify which (if any) leases, licences or other estates or interests cannot be granted in respect of the land except by tender.

**Schedule 1 [11]–[17]** amend section 47 of the Act, which currently imposes particular requirements in relation to leases or licences of community land for tenures of more than 5 years (including a requirement for Ministerial approval of any proposal to which persons have objected). The effect of the amendments is:

- (a) to extend the operation of the section to estates and interests other than leases or licences, and
- (b) in addition to current notice requirements, to require persons in the neighbourhood of community land to be notified of any proposal to grant a lease, licence or other estate or interest that would affect the land, and
- (c) to require the Minister, before approving of the grant of a lease, licence or other estate or interest in respect of community land, to be satisfied that the lease, licence or other estate or interest meets the requirements of the new section 46.

**Schedule 1 [18]** further amends section 47 of the Act so as to bring within the ambit of the section leases, licences and other instruments granting any estate or interest in respect of community land where, although the grant is limited to a term of not more than 5 years, the provisions of the lease, licence or instrument impose a disadvantage or penalty on the council if a similar estate or interest is not granted on expiry of the current one or confer an advantage or benefit on the council in the event that it is.

**Schedule 1 [19]** inserts new sections 47A–47F, the effect of which is as follows:

Proposed section 47A prescribes in respect of tenures of 5 years or less the same requirements as pertain to longer leases, licences and estates or interests under section 37, so far as that section requires public exhibition of proposals

and consideration of objections. It provides further that, at the option of the Minister, the procedures for obtaining the Minister's consent to a proposal may be required to be followed.

Proposed section 47B prohibits the grant of a lease, licence or other estate or interest in respect of community land that has been categorised as a natural area in such a way as to authorise the erection of a building or structure other than one of a kind prescribed by regulation or in such a way as to authorise the erection or use of a building or structure otherwise than for a purpose prescribed by regulation.

Proposed section 47C provides that community land that is the subject of a lease cannot be sublet for a purpose other than the purpose for which, as publicly notified, the land was to be used under the lease or a purpose prescribed by regulation.

Proposed section 47D prohibits (subject to specified exceptions) the exclusive occupation or exclusive use by any person of community land otherwise than in accordance with a lease, licence or estate or interest to which section 47 or 47A applies, or in accordance with a sublease or other title directly or indirectly derived from the holder of such a lease, licence, estate or interest.

Proposed section 47E restricts a council's power of delegation of its environmental planning functions in so far as they are exercised in relation to community land. The new section prohibits (subject to specified exceptions) such delegation if:

- (a) the development involves the construction of a building, or
- (b) the development involves extensions to an existing building that would extend its existing area by more than 10 per cent, or
- (c) the development involves intensification, by more than 10 per cent, of the use of the land or any building on the land, or
- (d) the location of the development has not been specified in the plan of management applying to the land and the development is likely to be intrusive to nearby residents.

Proposed section 47F prescribes the conditions on which community land may be dedicated as a public road.

**Schedule 1 [20] and [21]** amend Schedule 8 to the Act (Savings, transitional and other provisions consequent on the enactment of other Acts) so as to include certain savings and transitional provisions and to enable other such provisions to be made by regulation.