

Local Government Amendment (Miscellaneous) Act 2002 No 40

[2002-40]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

Authorisation

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Local Government Amendment (Miscellaneous) Act 2002 No 40



New South Wales

An Act to amend the *Local Government Act 1993* in relation to council meetings, plans of management for community land, sewerage system approvals, alterations to council ward boundaries, fees for councillors, and water supply, sewerage and stormwater drainage works by councils; to make a consequential amendment to the *Freedom of Information Act 1989*; and for other purposes.

1 Name of Act

This Act is the *Local Government Amendment (Miscellaneous) Act 2002*.

2 Commencement

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

3 Amendment of *Local Government Act 1993 No 30*

The *Local Government Act 1993* is amended as set out in Schedule 1.

4 Amendment of *Freedom of Information Act 1989 No 5*

The *Freedom of Information Act 1989* is amended as set out in Schedule 2.

Schedule 1 Amendment of *Local Government Act 1993*

(Section 3)

[1] Section 10A Which parts of a meeting can be closed to the public?

Insert “(other than councillors)” after “individuals” in section 10A (2) (a).

[2] Section 10A (2) (h)

Insert after section 10A (2) (g):

- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

[3] Section 12 What information is publicly available?

Insert “(other than councillors)” after “individuals” in section 12 (7) (a).

[4] Section 12 (7) (e)

Insert after section 12 (7) (d):

- (e) that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA.

[5] Section 36DA

Insert after section 36D:

36DA Location of places and items of Aboriginal significance may be kept confidential

- (1) This section applies to draft and adopted plans of management for areas of community land, all or part of which consist of land to which section 36D applies.
- (2) A council may resolve (at the request of any Aboriginal person traditionally associated with the land concerned or on the council’s own initiative) to keep confidential such parts of a draft or adopted plan of management to which this section applies as would disclose the nature and location of a place or an item of Aboriginal significance.
- (3) Despite any other provision of this Act (including sections 38, 39 and 43) or any other law, councillors and council employees are not to disclose that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under subsection (2), except with the consent of the council.
- (4) A draft or adopted plan of management that is the subject of a resolution of confidentiality under subsection (2) must contain a note stating that the whole of the plan is affected by the resolution or identifying the parts that are so affected.
- (5) A council proposing to prepare a draft plan of management to which this section applies must (in accordance with the regulations) consult with the appropriate Aboriginal communities regarding public access to, and use of, information concerning any places or items of Aboriginal significance on the land concerned.

[6] Section 40A

Omit the section. Insert instead:

40A Public hearing in relation to proposed plans of management

- (1) The council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4).
- (2) However, a public hearing is not required if the proposed plan would merely have the effect of altering the categorisation of the land under section 36 (5).
- (3) A council must hold a further public hearing in respect of the proposed plan of management if:
 - (a) the council decides to amend the proposed plan after a public hearing has been held in accordance with this section, and
 - (b) the amendment of the plan would have the effect of altering the categorisation of community land under section 36 (4) from the categorisation of that land in the proposed plan that was considered at the previous public hearing.

[7] Section 46 Leases, licences and other estates in respect of community land—generally

Insert after section 46 (1) (a):

- (a1) may be granted for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider, or

[8] Section 46 (1) (b) (iv)

Omit “or”.

[9] Section 46 (1) (b) (v)

Omit the subparagraph.

[10] Section 59A

Insert after section 59:

59A Ownership of water supply, sewerage and stormwater drainage works

- (1) Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).
- (2) A council may operate, repair, replace, maintain, remove, extend, expand,

connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed.

[11] Section 68 What activities, generally, require the approval of the council?

Insert at the end of Part C of the table to section 68:

6 Operate a system of sewage management (within the meaning of section 68A)

[12] Section 68A

Insert after section 68:

68A Meaning of “operate a system of sewage management”

- (1) In this Part, **operate a system of sewage management** means hold or process, or re-use or discharge, sewage or by-products of sewage (whether or not the sewage is generated on the premises on which the system of sewage management is operated).
- (2) Without limiting subsection (1), **operate a system of sewage management** includes the following:
 - (a) use artificial wetlands, transpiration mounds, trenches, vegetation and other effluent polishing, dispersal or re-use arrangements in related land application areas,
 - (b) hold or process sewage that is to be subsequently discharged into a public sewer.
- (3) However, **operate a system of sewage management** does not include any of the following:
 - (a) any action relating to the discharge of sewage directly into a public sewer,
 - (b) any action relating to sewage or by-products of sewage after their discharge into a public sewer.
- (4) In this section:

public sewer means a sewer operated by a council or county council, a water supply authority (within the meaning of the [Water Management Act 2000](#)), a State owned corporation specified in Schedule 1 or 5 to the [State Owned Corporations Act 1989](#) (or a subsidiary of such a corporation) or any other public or local authority.

related land application area, in relation to a sewage management facility, means the area of land (if any) where it is intended that effluent and bio-solid waste from the facility will be re-used, applied or dispersed into the environment.

sewage includes any effluent of the kind referred to in paragraph (a) of the definition of **waste** in the Dictionary to this Act.

sewage management facility means:

- (a) a human waste storage facility, or
 - (b) a waste treatment device intended to process sewage,
- and includes a drain connected to such a facility or device.

[13] Section 107A

Insert after section 107:

107A Special provision—renewal of approvals relating to operation of sewage management systems

- (1) This section applies to an approval to operate a system of sewage management.
- (2) The council may by notice in writing (in any form determined by the council) invite any person to whom an approval to which this section applies has been granted to apply to renew the approval.

Note—

For example, an invitation in writing to a person to renew an approval could be made in the form of an account or invoice.

- (3) A person to whom such an invitation is made is taken to have made an application under section 107 to renew the approval on the same terms as the original approval if the person pays any required application fee (being an approved fee under section 80).

[14] Section 191A

Insert after section 191:

191A Power of entry—construction and maintenance of water supply, sewerage and stormwater drainage works

- (1) Without limiting section 191, a council employee (or other person) authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises (being work that

the council is authorised by this or any other Act to carry out).

- (2) Subsection (1) does not apply to premises that comprise a National Parks and Wildlife reserve.

[15] Section 210 Division of areas into wards

Insert after section 210 (6):

- (7) The division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.

[16] Section 210A

Insert after section 210:

210A Consultation, public notice and exhibition of proposals regarding ward boundaries

- (1) Before dividing a council's area into wards or altering a council's ward boundaries, the council must:
- (a) consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of appropriate subdivisions (within the meaning of the [Parliamentary Electorates and Elections Act 1912](#)) and census districts, and to ensure that the proposed boundaries comply with section 210 (7), and
 - (b) prepare and publicly exhibit a plan detailing the proposed division or alteration (the **ward boundary plan**).
- (2) The council must give public notice of the following:
- (a) the place at which the ward boundary plan may be inspected,
 - (b) the period for which the plan will be exhibited (being a period of not less than 28 days),
 - (c) the period during which submissions regarding the ward boundary plan may be made to the council (being a period of not less than 42 days after the date on which the ward boundary plan is placed on public exhibition).
- (3) The council must, in accordance with its notice, publicly exhibit the ward boundary plan together with any other matter that it considers appropriate or necessary to better enable the plan and its implications to be understood.

(4) Any person may make a submission to the council regarding the ward boundary plan within the period referred to in subsection (2) (c).

(5) The council must consider submissions made in accordance with this section.

[17] Section 211

Omit the section. Insert instead:

211 Ward boundaries

(1) The council of an area divided into wards must keep the ward boundaries under review.

(2) If:

(a) during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, and

(b) that difference remains at the end of the first year of the following term of office of the council,

the council must, as soon as practicable, alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area.

(3) Nothing in subsection (2) prevents a council that has become aware of the discrepancy referred to in subsection (2) (a) from altering its ward boundaries before the end of the first year of the following term of office of the council.

[18] Chapter 9, Part 1, Division 2, note

Omit the note under the heading to Division 2 of Part 1 of Chapter 9.

Insert instead:

Note—

This Division sets out the things that must be done before areas can be constituted.

Land may only be constituted as an area if the public has been notified of the proposal to do so and the councils and electors concerned have been given an opportunity to make representations concerning the proposal.

It also provides for the Boundaries Commission to consider proposals to constitute areas.

[19] Section 218 Referral of proposal for examination and report

Omit “or, if the Minister is of the opinion that the proposal involves a minor alteration or variation only, to the Director-General” from section 218 (1).

[20] Section 218 (2) (a)

Omit “or Director-General’s”.

[21] Section 234 When does a vacancy occur in a civic office?

Omit section 234 (d). Insert instead:

- (d) is absent from 3 consecutive ordinary meetings of the council (unless the holder is absent because he or she has been suspended from office under section 482) without:
 - (i) prior leave of the council, or
 - (ii) leave granted by the council at any of the meetings concerned, or

[22] Section 234 (2)

Insert at the end of section 234:

- (2) For the purposes of subsection (1) (d), a councillor applying for a leave of absence from a meeting of a council does not need to make the application in person and the council may grant such leave in the absence of that councillor.

[23] Section 254A Circumstances in which annual fees are to be withheld

Omit section 254A (a). Insert instead:

- (a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or

[24] Section 254A (2)

Insert at the end of section 254A:

- (2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.

[25] Section 377 General power of the council to delegate

Insert “under section 406” after “• the adoption of a management plan” in section 377 (1).

[26] Section 403 Content of draft management plan with respect to council’s work and activities

Insert “(including, but not limited to, social, community and cultural matters)” after “such other matters” in section 403 (1).

[27] Section 403 (2)

Insert at the end of the subsection:

- such other particulars as may be prescribed by the regulations.

[28] Section 422 Appointment of auditors

Insert “or reappointed” after “appointed” in section 422 (5).

[29] Section 422 (5)

Insert “or reappointment” after “appointment”.

[30] Section 694 Application of penalties

Omit “under any Act” from section 694 (1).

Insert instead “imposed under any Act, or imposed for a contempt of a court order to remedy or restrain a breach of this Act or any other Act, and”.

[31] Section 694 (1A)

Insert after section 694 (1):

(1A) In subsection (1):

breach of this Act or any other Act means:

- a contravention of or failure to comply with this Act or any other Act, or
- a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act or any other Act.

this Act or any other Act includes a regulation or other instrument made under this Act or any other Act.

[32] Schedule 8 Savings, transitional and other provisions consequent on the enactment

of other Acts

Insert at the end of clause 1 (1):

Local Government Amendment (Miscellaneous) Act 2002

[33] Schedule 8

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

Part Provisions consequent on enactment of [Local Government Amendment \(Miscellaneous\) Act 2002](#)

No compensation for transfer of ownership of water supply, sewerage and stormwater drainage works

No compensation is payable to any person as a result of the operation of section 59A.

Renewal of approvals relating to operation of sewage management systems

Section 107A extends to an approval to operate a system of sewerage management that was granted or renewed before the commencement of that section.

Annual fees to be withheld

Section 254A (2) extends to an absence of a councillor from ordinary meetings of the council that commenced before the commencement of that subsection.

[34] Dictionary

Omit “or cleansing” from the definition of **sewerage work**.

Insert instead “, cleansing, maintenance, repair, renewal or clearing”.

[35] Dictionary

Omit “or cleansing” from the definition of **stormwater drainage work**.

Insert instead “, flushing, cleansing or clearing”.

[36] Dictionary

Insert “flushing, cleansing,” after “removal,” in the definition of **water supply work**.

Schedule 2 Amendment of [Freedom of Information Act 1989](#)

(Section 4)

Schedule 1 Exempt documents

Insert at the end of the Schedule with an appropriate clause number:

Plans of management containing information relating to places or items of Aboriginal significance

A plan of management, and a draft plan of management, for an area of community land under Division 2 of Part 2 of Chapter 6 of the [Local Government Act 1993](#) is an exempt document if it is the subject of a resolution of confidentiality referred to in section 36DA (2) of that Act.