



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
  - (b) to impose further restrictions with respect to the grant of leases, licences and other estates or interests in respect of community land.
-

## 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



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 47, 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 unduly 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.



First print



New South Wales

# **Local Government Amendment (Community Land Management) Bill 1998**

## **Contents**

---

|  | Page  |
|--|-------|
| 1 Name of Act                                  | 2     |
| 2 Commencement                                 | 2     |
| 3 Amendment of Local Government Act 1993 No 30 | 2     |
| <br>Schedule 1 Amendments                      | <br>3 |

---







New South Wales

# **Local Government Amendment (Community Land Management) Bill 1998**

No. , 1998

---

## **A Bill for**

An Act to amend the *Local Government Act 1993* with respect to the management of community land; and for other purposes.

---

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Local Government Amendment (Community Land Management) Act 1998*.

**2 Commencement**

5

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.

10



---

## Schedule 1 Amendments

(Section 3)

**[1] Section 36 Preparation of draft plans of management for community land**

Insert “, except as provided by this Division” after “land” in section 36 (2). 5

**[2] Section 36 (3A)**

Insert after section 36 (3):

(3A) A plan of management that applies to just one area of community land: 10

(a) must include a description of:

(i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the plan of management, and 15

(ii) the use of the land and any such buildings or improvements as at that date, and

(b) must:

(i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used, and 20

(ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and 25

(iii) describe the scale and intensity of any such permitted use or development.

**[3] Section 36 (4) (d) and (e)**

Omit section 36 (4) (d). Insert instead:

(d) an area of cultural significance, 30

(e) general community use.

**[4] Section 36 (6)**

Insert after section 36 (5):

- (6) The regulations may make provision for or with respect to the categorisation of community land under this section, including: 5
  - (a) prescribing core objectives for the management of community land of any particular category, and
  - (b) defining any expression used in subsection (4) or (5), and
  - (c) prescribing guidelines for the categorisation of community land and the effect of any guidelines so prescribed. 10

**[5] Sections 36A–36D**

Insert after section 36:

**36A Community land comprising the habitat of endangered species** 15

- (1) In this section:
  - critical habitat** means:
    - (a) an area declared to be critical habitat under the *Threatened Species Conservation Act 1995*, or 20
    - (b) an area declared to be critical habitat under Part 7A of the *Fisheries Management Act 1994*.
  - relevant Director** means:
    - (a) in relation to critical habitat being an area declared to be critical habitat under the *Threatened Species Conservation Act 1995*, the Director-General of National Parks and Wildlife, and 25
    - (b) in relation to critical habitat being an area declared to be critical habitat under Part 7A of the *Fisheries Management Act 1994*, the Director of NSW Fisheries. 30
- (2) A plan of management adopted in respect of an area of community land, all or part of which consists of critical habitat, is to apply to that area only, and not to other areas of land. 35



- 
- (3) A plan of management to be adopted for an area of community land, all or part of which consists of critical habitat:
- (a) must, subject to any decision of the Director-General of National Parks and Wildlife under section 146 of the *Threatened Species Conservation Act 1995* or any decision of the Director of Fisheries under section 220Y of the *Fisheries Management Act 1994*, state that the land, or the relevant part, is critical habitat, and 5
  - (b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and 10
  - (c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that: 15
    - (i) take account of the existence of the critical habitat, and
    - (ii) are consistent with the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, and 20
    - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area, and 25
  - (d) must:
    - (i) when public notice is given of the draft plan under section 38, be sent (or a copy must be sent) by the council to the relevant Director, and 30
    - (ii) incorporate any matter specified by the relevant Director in relation to the land, or the relevant part.
- (4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes critical habitat: 35

Schedule 1 Amendments

- 
- (a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and
  - (b) the council must amend the plan of management (and, in doing so, the provisions of subsection (3) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and 5
  - (c) until the plan of management has been amended as required by paragraph (b): 10
    - (i) the use of the land must not be varied, except to the extent necessary to further the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and 15 20
    - (ii) no lease, licence or other estate may be granted in respect of the land.
  - (5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes critical habitat: 25
    - (a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and
    - (b) a plan of management must be prepared and adopted by the council for that area, and 30
    - (c) the plan of management so prepared and adopted must comply with subsection (3).

**36B Community land comprising the habitat of threatened species**

- (1) In this section: 35
 

*recovery plan* means a recovery plan under Part 4 of the *Threatened Species Conservation Act 1995* or Division 5 of Part 7A of the *Fisheries Management Act 1994*.

---

**relevant Director** means:

- (a) in relation to a recovery plan under Part 4 of the *Threatened Species Conservation Act 1995* or a threat abatement plan under Part 5 of that Act, the Director-General of National Parks and Wildlife, and 5
- (b) in relation to a recovery plan or a threat abatement plan under Division 5 of Part 7A of the *Fisheries Management Act 1994*, the Director of NSW Fisheries. 10

**threat abatement plan** means a threat abatement plan under Part 5 of the *Threatened Species Conservation Act 1995* or Division 5 of Part 7A of the *Fisheries Management Act 1994*.

- (2) For the purposes of this section, land is directly affected by a recovery plan or threat abatement plan only if the plan concerned requires measures specified in the plan to be taken by a specified council on or in respect of the land. 15
- (3) A plan of management adopted in respect of an area of community land, all or part of which is directly affected by a recovery plan or threat abatement plan, is to apply to that area only, and not to other areas of land. 20
- (4) A plan of management to be adopted for an area of community land, all or part of which is directly affected by a recovery plan or threat abatement plan: 25
  - (a) must state that the land, or the relevant part, is so affected, and
  - (b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and 30
  - (c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:
    - (i) take account of the council's obligations under the recovery plan or threat abatement plan in relation to the land, and 35



Schedule 1 Amendments

- 
- (ii) are otherwise consistent with the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, and
    - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area, and 5
  - (d) must:
    - (i) when public notice is given of the draft plan under section 38, be sent (or a copy must be sent) by the council to the relevant Director, and 10
    - (ii) incorporate any matter specified by the relevant Director in relation to the land, or the relevant part. 15
  - (5) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes directly affected by a recovery plan or threat abatement plan:
    - (a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and 20
    - (b) the council must amend the plan of management (and, in doing so, the provisions of subsection (4) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and 25
    - (c) until the plan of management has been amended as required by paragraph (b): 30
      - (i) the use of the land must not be varied, except to the extent necessary to further the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, 35



- 
- or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and
- (ii) no lease, licence or other estate may be granted in respect of the land. 5
- (6) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes directly affected by a recovery plan or threat abatement plan: 10
- (a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and
- (b) a plan of management must be prepared and adopted by the council for that area, and 15
- (c) the plan of management so prepared and adopted must comply with subsection (4).

### **36C Community land containing significant natural features**

- (1) This section applies to community land that is the subject of a resolution by the council that declares that the land, being the site of: 20
- (a) a known natural, geological, geomorphological, scenic or other feature that is considered by the council to warrant protection or special management considerations, or 25
- (b) a wildlife corridor,
- is land to which this section applies.
- (2) A plan of management adopted in respect of an area of community land, all or part of which is land to which this section applies, is to apply to that area only, and not to other areas of land. 30
- (3) A plan of management to be adopted for an area of community land, all or part of which is land to which this section applies:

Schedule 1 Amendments

- 
- (a) must state that the land, or the relevant part, is land to which this section applies, and the reason why, and
    - (b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and 5
    - (c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:
      - (i) are designed to protect the area, and 10
      - (ii) take account of the existence of the features of the site identified by the council's resolution, and
      - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area. 15
  - (4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes the subject of a resolution of the kind described in subsection (1): 20
    - (a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and
    - (b) the council must amend the plan of management (and in doing so, the provisions of subsection (3) (a) and (c) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and 25
    - (c) until the plan of management has been amended as required by paragraph (b): 30
      - (i) the use of the land must not be varied, except to the extent necessary to protect the features of the site identified in the council's resolution or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and 35

- 
- (ii) no lease, licence or other estate may be granted in respect of the land.
- (5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes the subject of a resolution of the kind described in subsection (1): 5
- (a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and
- (b) a plan of management must be prepared and adopted by the council for that area, and 10
- (c) the plan of management so prepared and adopted must comply with subsection (3).

**36D Community land comprising area of cultural significance**

- (1) This section applies to community land that is the subject of a resolution by the council that declares that, because of the presence on the land of any item that the council considers to be of Aboriginal, historical or cultural significance, the land is an area of cultural significance for the purposes of this Part. 15 20
- (2) A plan of management adopted in respect of an area of land, all or part of which is land to which this section applies, is to apply to that land only, and not to other areas.
- (3) A plan of management to be adopted for an area of community land, all or part of which consists of land to which this section applies: 25
- (a) must state that the land, or the relevant part, is an area of cultural significance, and
- (b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as an area of cultural significance, and 30



Schedule 1 Amendments

- 
- (c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:
      - (i) are designed to protect the area, and
      - (ii) take account of the existence of the features of the site identified by the council's resolution, and 5
      - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as an area of cultural significance, and 10
    - (d) must:
      - (i) when public notice is given of it under section 38, be sent (or a copy must be sent) by the council to the Director-General of National Parks and Wildlife, and 15
      - (ii) incorporate any matter specified by the Director-General of National Parks and Wildlife in relation to the land, or the relevant part. 20
  - (4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes the subject of a resolution of the kind described in subsection (1):
    - (a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as an area of cultural significance, and 25
    - (b) the council must amend the plan of management (and in doing so, the provisions of subsection (3) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and 30
    - (c) until the plan of management has been amended as required by paragraph (b): 35
-



- 
- (i) the use of the land must not be varied, except to the extent necessary to protect any item identified in the council's resolution or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as an area of cultural significance, or to terminate the use, and 5
    - (ii) no lease, licence or other estate may be granted in respect of the land. 10
  - (5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes the subject of a resolution of the kind described in subsection (1):
    - (a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and 15
    - (b) a plan of management must be prepared and adopted by the council for that area, and
    - (c) the plan of management so prepared and adopted must comply with subsection (3). 20

**[6] Section 40 Adoption of plans of management**

Omit section 40 (2). Insert instead:

- (2) As often as it decides to amend a draft plan, the council must publicly exhibit the amendments in accordance with the provisions of this Division relating to public exhibition of draft plans, until satisfied that the draft plan may be adopted without further amendment. 25

**[7] Section 40A**

Insert after section 40:

**40A Public hearing in connection with certain amendments**

- (1) A council that proposes to amend a plan of management so as to re-categorise community land that is for the time being categorised as a natural area or an area of cultural significance must arrange a public hearing with respect to the proposal. 5
- (2) This section does not apply to the re-categorisation of a natural area as an area of cultural significance, or vice versa. 10

**[8] Section 45 What dealings can a council have in community land?**

Omit "section 46 and (if relevant) section 47" from section 45 (2).  
Insert instead "this Division". 15

**[9] Section 45 (3)**

Omit the subsection. Insert instead:

- (3) A council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act. 20

**Note.** The word **estate** has a wide meaning. See the *Interpretation Act 1987*, section 21 (1).

**[10] Sections 46 and 46A**

Omit section 46. Insert instead:

**46 Leases, licences and other estates in respect of community land—generally** 25

- (1) A lease, licence or other estate in respect of community land:
  - (a) may be granted for the provision of public utilities and works associated with or ancillary to public utilities, or 30

- 
- (b) may be granted, in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate, for any purpose: 5
- (i) prescribed by subsection (4) or by the regulations, if the plan of management applies to just one area of community land, or
- (ii) prescribed by the regulations, if the plan of management applies to several areas of community land, 10
- but may not otherwise be granted.
- (2) Despite subsection (1), a lease, licence or other estate in respect of community land must not be granted for a purpose other than a purpose mentioned in subsection (1) (a) if its grant would defeat any of the core objectives, as prescribed under section 36, of its categorisation in terms of that section. 15
- (3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years. 20
- (4) The following purposes are prescribed for the purposes of subsection (1) (b) (i): 25
- (a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following: 30
- (i) public recreation,
- (ii) the physical, cultural, social and intellectual welfare or development of persons,
- (b) the provision of public roads.



Schedule 1 Amendments

- 
- (5) Purposes prescribed by subsection (4) in relation to the matters mentioned in subsection (4) (a) (ii) include, but are not limited to, maternity welfare centres, infant welfare centres, kindergartens, nurseries, child care centres, family day-care centres, surf life saving clubs, restaurants or refreshment kiosks. 5
- (6) A plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of this section.
- 46A Means of granting leases, licences and other estates** 10
- (1) A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted only by tender in accordance with Division 1 of Part 3.
- (2) Nothing in this section precludes a council from applying a tender process in respect of the grant of any particular lease, licence or estate. 15
- [11] Section 47 Leases, licences and other estates in respect of community land—terms greater than 5 years**
- Omit “a lease or licence” from section 47 (1). 20  
 Insert instead “a lease, licence or other estate in respect”.
- [12] Section 47 (1)**
- Omit “the lease or licence”.  
 Insert instead “the lease, licence or other estate”.
- [13] Section 47 (1) (d)** 25
- Insert after section 47 (1) (c):  
 , and
- (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person’s enjoyment of community land. 30

---

**[14] Section 47 (2), (4), (5) and (6)**

Omit "lease or licence" wherever occurring.  
Insert instead "lease, licence or other estate".

**[15] Section 47 (2)**

Omit "proposed lessee or licensee".  
Insert instead "person to whom it is proposed to grant the lease,  
licence or other estate".

5

**[16] Section 47 (8)**

Insert "and that such consent would not contravene section 46,"  
after "with,".

10

**[17] Section 47 (8)**

Omit "lease or licence".  
Insert instead "lease, licence or other estate in respect".

**[18] Section 47 (10)**

Insert after section 47 (9):

15

(10) For the purposes of this section, any provision made by a  
lease or licence, or by an instrument granting any other  
estate, in respect of community land, according to which  
the council:

(a) would suffer a disadvantage or penalty if the same  
or a similar lease, licence or estate were not to be  
granted, for a further term, after the expiry of the  
current lease, licence or other estate, or

20

(b) would enjoy an advantage or benefit if the same or  
a similar lease, licence or estate were to be so  
granted.

25

is taken to confer an option for renewal for a term equal  
to the further term.

Insert after section 47:

(1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations. 5 10

(2) If a council proposes to grant a lease, licence or other estate to which this section applies:

(a) the proposal must be notified and exhibited in the manner prescribed by section 47, and

(b) the provisions of section 47 (3) and (4) apply to the proposal, and 15

(c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)–(9) are to apply to the proposal. 20

(3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:

(a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and 25

(b) section 47 (9) has effect with respect to the Minister's consent. 30



---

**47B Lease or licence in respect of natural area**

- (1) A lease, licence or other estate must not be granted, in respect of community land categorised as a natural area:
  - (a) to authorise the erection or use of a building or structure that is not a building or structure of a kind prescribed by the regulations, or 5
  - (b) to authorise the erection or use of a building or structure that is not for a purpose prescribed by the regulations.
- (2) A lease, licence or instrument granting any other estate is void to the extent that its provisions are inconsistent with this section. 10
- (3) In this section, *erection* of a building or structure includes rebuilding or replacement of a building or structure. 15

**47C Sublease of community land**

- (1) In addition to any restrictions created by the lease, community land that is the subject of a lease cannot be sublet for a purpose other than:
  - (a) the purpose for which, as notified under section 47 (2), the land was to be used under the lease, or 20
  - (b) a purpose prescribed by the regulations.
- (2) A lease is void to the extent that its provisions are inconsistent with this section.

**47D Occupation of community land otherwise than by lease or licence 25**

- (1) The exclusive occupation or exclusive use by any person of community land otherwise than in accordance with:
    - (a) a lease, licence or estate to which section 47 or 47A applies, or 30
    - (b) a sublease or other title directly or indirectly derived from the holder of such a lease, licence or estate.
- is prohibited.

- 
- (2) This section does not apply to:
- (a) the occupation or use of part of the site of a senior citizens' centre or home or community care facility by a duly appointed manager of the centre, or 5
  - (b) the occupation or use of community land by persons, and in circumstances, prescribed by the regulations.

**47E Development of community land**

- (1) No power of a council under an environmental planning instrument to consent to the carrying out of development on community land may be delegated by the council, if: 10
  - (a) the development involves the erection, rebuilding or replacement of a building (other than a building exempted by or under subsection (2) from the operation of this paragraph), or 15
  - (b) the development involves extensions to an existing building that would occupy more than 10 per cent of its existing area, 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 20
  - (d) the location of the development has not been specified in the plan of management applying to the land and the development is likely, in the opinion of the council, to be unduly intrusive to nearby residents. 25
- (2) The following buildings are exempt from the operation of subsection (1) (a):
  - (a) toilet facilities, 30
  - (b) small refreshment kiosks,
  - (c) shelters for persons from the sun and weather,
  - (d) picnic facilities.

- 
- (e) structures (other than accommodations for spectators) required for the playing of games or sports,
    - (f) playground structures,
    - (g) work sheds or storage sheds, 5
    - (h) buildings of a kind prescribed by the regulations.
  - (3) An **existing area** referred to in subsection (1) (b) does not include the area of any awning, balcony, verandah or other thing that extends beyond the main structural outline of the building. 10
  - (4) A delegation granted before the commencement of this section, to the extent that the delegation could not have been granted if this section had been in force at the time it was granted, is void.
- 47F Dedication of community land as public road** 15
- (1) Community land may not be dedicated as a public road under section 10 of the *Roads Act 1993* unless:
    - (a) the road is necessary to facilitate enjoyment of the area of community land on which the road is to be constructed or of any facility on that land, and 20
    - (b) the council has considered means of access other than public road access to facilitate that enjoyment, and
    - (c) there is a plan of management applying only to the land concerned and provision of the public road is expressly authorised in the plan of management. 25
  - (2) Subsection (1) does not apply to:
    - (a) a dedication of land for the purpose of widening an existing public road, or
    - (b) a dedication of land for the purpose of other roadworks of a minor character, authorised by the plan of management applying to the land, in respect of existing roads, or 30
    - (c) a dedication of land for the purpose of a road that is the subject of an order under Division 1 of Part 5 of the *Roads Act 1993*. 35
-



**[20] 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 (Community Land Management) Act 1998*

5

**[21] Schedule 8**

Insert in the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of Local Government Amendment (Community Land Management) Act 1998**

10

**Provisions made by plans of management applying to just one area of community land**

Section 36 (3A) extends to apply to a plan of management in force at its commencement, but so applies as to require compliance with its provisions within a period of 12 months after its commencement or within such longer period as the Minister may by order in writing allow.

15

**Transitional application of section 36A**

(1) The provisions of subsection (4) of section 36A apply to plans of management: 20

(a) that had been adopted before the commencement of that section, and

(b) that applied to an area of community land, all or part of which consists of critical habitat within the meaning of that section, 25

but so apply as though the area or part became such habitat on the commencement of that section.

- 
- (2) The provisions of subsection (5) of section 36A apply to plans of management:
- (a) that had been adopted before the commencement of that section, and
  - (b) that applied to two or more areas of community land, all or part of one of which consists of critical habitat within the meaning of that section, 5
- but so apply as though the area or part became such habitat on the commencement of that section.

**Transitional application of section 36B** 10

- (1) The provisions of subsection (5) of section 36B apply to plans of management:
- (a) that had been adopted before the commencement of that section, and
  - (b) that applied to an area of community land, all or part of which is affected by a recovery plan or threat abatement plan within the meaning of that section, 15
- but so apply as though the area or part first became so affected on the commencement of that section. 20
- (2) The provisions of subsection (6) of section 36B apply to plans of management:
- (a) that had been adopted before the commencement of that section, and
  - (b) that applied to two or more areas of community land, all or part of one of which is affected by a recovery plan or threat abatement plan within the meaning of that section, 25
- but so apply as though the area or part first became so affected on the commencement of that section. 30

---

**Leases and licences**

- (1) This clause applies to:
  - (a) a lease, licence or other estate, granted by a council in respect of community land:
    - (i) that was in existence on the date on which section 46 was repealed by the *Local Government Amendment (Community Land Management) Act 1998*, and 5
    - (ii) that was granted for a purpose for which it could not lawfully have been granted if section 46, as inserted by the *Local Government Amendment (Community Land Management) Act 1998*, had been in force at the time of its grant, and 10
  - (b) a lease, licence or other estate granted under a plan of management that ceases to have effect because of the operation of section 36A (5), 36B (6), 36C (5) or 36D (5), as inserted by the *Local Government Amendment (Community Land Management) Act 1998*. 15  
20
- (2) A lease, licence or other estate to which this clause applies that was granted for a fixed term continues in force, subject to this Act, until the end of the term for which it was granted and may be renewed from time to time in accordance with any option of renewal afforded by its terms. 25
- (3) Unless sooner revoked, a licence to which this clause applies that was granted at the will of the council continues in force, subject to Division 2 of Part 2 of Chapter 6, until a date prescribed by the regulations. 30

**Buildings or structures under existing leases**

Section 47B does not apply in respect of a lease granted before the commencement of that section.



---

**Subleases of community land**

Section 47C does not apply to:

- (a) a sublease granted before the commencement of that section, or
- (b) any sublease that may be granted pursuant to the exercise of an option in relation to the sublease if the option was granted before the commencement of that section. 5

**Occupation of community land otherwise than by lease or licence 10**

Section 47D does not, but only for a maximum period of 12 months from the commencement of that section, prohibit the exclusive occupation or exclusive use by any person of community land that was lawfully in existence or lawfully undertaken immediately before the commencement of that section. 15