



New South Wales

Local Government Amendment (Community Land Management) Act 1998 No 140

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New South Wales

Local Government Amendment (Community Land Management) Act 1998 No 140

Act No 140, 1998

An Act to amend the *Local Government Act 1993* with respect to the management of community land; and for other purposes. [Assented to 8 December 1998]

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

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.

Schedule 1 Amendments

(Section 3)

[1] Section 29 Public hearing into reclassification

Insert at the end of the section:

- (2) A council must, before making any resolution under section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.

[2] Section 30 Reclassification of community land as operational

Omit "On the commencement of a local environmental plan that reclassifies community land as operational land" from section 30 (1).
Insert instead "A local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan".

[3] Section 30 (1)

Omit "the land is".

Insert instead "that the land is by operation of the plan".

[4] Section 30 (2)

Omit section 30 (2). Insert instead:

- (2) A provision referred to in subsection (1) has effect according to its tenor, but only if the Governor has, before the making of the local environmental plan, approved of the provision.

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

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

[6] Section 36 (3A)

Insert after section 36 (3):

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

- (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
 - (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
 - (ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and
 - (iii) describe the scale and intensity of any such permitted use or development.

[7] Section 36 (4) (d) and (e)

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

- (d) an area of cultural significance,
- (e) general community use.

[8] 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:
 - (a) defining any expression used in subsection (4) or (5), and
 - (b) prescribing guidelines for the categorisation of community land and the effect of any guidelines so prescribed.

[9] Sections 36A–36N

Insert after section 36:

36A Community land comprising the habitat of endangered species

- (1) In this section:

critical habitat means:

- (a) an area declared to be critical habitat under the *Threatened Species Conservation Act 1995*, or
- (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
 - (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.
- (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.
- (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

Schedule 1 Amendments

- (b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and
- (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 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
 - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area, and
- (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
 - (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:
 - (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

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- (c) until the plan of management has been amended as required by paragraph (b):
- (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
 - (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:
- (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
 - (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:

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

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- (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.

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.
- (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.
- (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:
 - (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
 - (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
 - (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

- (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
 - (ii) incorporate any matter specified by the relevant Director in relation to the land, or the relevant part.
- (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
 - (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
 - (c) until the plan of management has been amended as required by paragraph (b):
 - (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
 - (ii) no lease, licence or other estate may be granted in respect of the land.
- (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:

- (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
- (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:
 - (a) a known natural, geological, geomorphological, scenic or other feature that is considered by the council to warrant protection or special management considerations, or
 - (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.
- (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:
 - (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
 - (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

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- (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.
 - (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 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
 - (c) until the plan of management has been amended as required by paragraph (b):
 - (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
 - (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):
 - (a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and
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- (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).

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.
- (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:
 - (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
 - (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
 - (iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as an area of cultural significance, and

- (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
 - (ii) incorporate any matter specified by the Director-General of National Parks and Wildlife 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 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
 - (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
 - (c) until the plan of management has been amended as required by paragraph (b):
 - (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
 - (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):
- (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
 - (c) the plan of management so prepared and adopted must comply with subsection (3).

36E Core objectives for management of community land categorised as a natural area

The core objectives for management of community land categorised as a natural area are:

- (a) to conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area, and
- (b) to maintain the land, or that feature or habitat, in its natural state and setting, and
- (c) to provide for the restoration and regeneration of the land, and
- (d) to provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion, and
- (e) to assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*.

36F Core objectives for management of community land categorised as a sportsground

The core objectives for management of community land categorised as a sportsground are:

- (a) to encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and
- (b) to ensure that such activities are managed having regard to any adverse impact on nearby residences.

36G Core objectives for management of community land categorised as a park

The core objectives for management of community land categorised as a park are:

- (a) to encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and
- (b) to provide for passive recreational activities or pastimes and for the casual playing of games, and
- (c) to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

36H Core objectives for management of community land categorised as an area of cultural significance

- (1) The core objectives for management of community land categorised as an area of cultural significance are to retain and enhance the cultural significance of the area (namely its Aboriginal, aesthetic, archaeological, historical, technical or research or social significance) for past, present or future generations by the active use of conservation methods.
- (2) Those conservation methods may include any or all of the following methods:
 - (a) the continuous protective care and maintenance of the physical material of the land or of the context and setting of the area of cultural significance,

- (b) the restoration of the land, that is, the returning of the existing physical material of the land to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material,
 - (c) the reconstruction of the land, that is, the returning of the land as nearly as possible to a known earlier state,
 - (d) the adaptive reuse of the land, that is, the enhancement or reinforcement of the cultural significance of the land by the introduction of sympathetic alterations or additions to allow compatible uses (that is, uses that involve no changes to the cultural significance of the physical material of the area, or uses that involve changes that are substantially reversible or changes that require a minimum impact),
 - (e) the preservation of the land, that is, the maintenance of the physical material of the land in its existing state and the retardation of deterioration of the land.
- (3) A reference in subsection (2) to land includes a reference to any buildings erected on the land.

36I Core objectives for management of community land categorised as general community use

The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

- (a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and
- (b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

36J Core objectives for management of community land categorised as bushland

The core objectives for management of community land categorised as bushland are:

- (a) to ensure the ongoing ecological viability of the land by protecting the ecological biodiversity and habitat values of the land, the flora and fauna (including invertebrates, fungi and micro-organisms) of the land and other ecological values of the land, and
- (b) to protect the aesthetic, heritage, recreational, educational and scientific values of the land, and
- (c) to promote the management of the land in a manner that protects and enhances the values and quality of the land and facilitates public enjoyment of the land, and to implement measures directed to minimising or mitigating any disturbance caused by human intrusion, and
- (d) to restore degraded bushland, and
- (e) to protect existing landforms such as natural drainage lines, watercourses and foreshores, and
- (f) to retain bushland in parcels of a size and configuration that will enable the existing plant and animal communities to survive in the long term, and
- (g) to protect bushland as a natural stabiliser of the soil surface.

36K Core objectives for management of community land categorised as wetland

The core objectives for management of community land categorised as wetland are:

- (a) to protect the biodiversity and ecological values of wetlands, with particular reference to their hydrological environment (including water quality and water flow), and to the flora, fauna and habitat values of the wetlands, and

- (b) to restore and regenerate degraded wetlands, and
- (c) to facilitate community education in relation to wetlands, and the community use of wetlands, without compromising the ecological values of wetlands.

36L Core objectives for management of community land categorised as an escarpment

The core objectives for management of community land categorised as an escarpment are:

- (a) to protect any important geological, geomorphological or scenic features of the escarpment, and
- (b) to facilitate safe community use and enjoyment of the escarpment.

36M Core objectives for management of community land categorised as a watercourse

The core objectives for management of community land categorised as a watercourse are:

- (a) to manage watercourses so as to protect the biodiversity and ecological values of the instream environment, particularly in relation to water quality and water flows, and
- (b) to manage watercourses so as to protect the riparian environment, particularly in relation to riparian vegetation and habitats and bank stability, and
- (c) to restore degraded watercourses, and
- (d) to promote community education, and community access to and use of the watercourse, without compromising the other core objectives of the category.

36N Core objectives for management of community land categorised as foreshore

The core objectives for management of community land categorised as foreshore are:

- (a) to maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area, and
- (b) to facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use.

[10] 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.
- (3) The council may not, however, proceed to adopt the plan until a public hearing has been held in accordance with section 40A.

[11] Section 40A

Insert after section 40:

40A Public hearing in relation to proposed plans of management

The council must hold a public hearing in respect of a proposed plan of management if the proposed plan would have the effect of categorising or recategorising community land under section 36 (4) or (5).

[12] 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".

[13] 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.

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

[14] Sections 46 and 46A

Omit section 46. Insert instead:

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

- (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
 - (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:
 - (i) for a purpose prescribed by subsection (4), or for a purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned, or
 - (ii) for a purpose prescribed by the regulations, if the plan of management applies to several areas of community land, or
 - (iii) for a short-term, casual purpose prescribed by the regulations, or
 - (iv) for a residential purpose in relation to housing owned by the council, or

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- (v) 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 that is situated on the community land,

but may not otherwise be granted.

- (2) Despite subsection (1), a lease, licence or other estate in respect of community land may be granted for a purpose mentioned in subsection (1) (b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in this Part, of its categorisation.
- (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.
- (4) The following purposes are prescribed for the purposes of subsection (1) (b) (i):
 - (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:
 - (i) public recreation,
 - (ii) the physical, cultural, social and intellectual welfare or development of persons,
 - (b) the provision of public roads.
- (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.
- (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

- (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.
- (3) A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

[15] 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).

Insert instead “a lease, licence or other estate in respect”.

[16] Section 47 (1)

Omit “the lease or licence”.

Insert instead “the lease, licence or other estate”.

[17] Section 47 (1) (d)

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.

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

Omit “lease or licence” wherever occurring.

Insert instead “lease, licence or other estate”.

[19] Section 47 (2)

Omit "proposed lessee or licensee".

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

[20] Section 47 (8) and (9)

Omit section 47 (8). Insert instead:

(8) After considering the application and any report of the Director of Planning, the Minister, if satisfied that:

- (a) subsections (1), (2) and (6) have been complied with, and
- (b) such consent would not contravene section 46, and
- (c) in all the circumstances, it is desirable to grant consent,

may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.

(9) On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).

[21] Section 47 (10)

Insert after section 47 (9):

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

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

[22] Sections 47A–47F

Insert after section 47:

**47A Leases, licences and other estates in respect of
community land—terms of 5 years or less**

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

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 this section or the regulations, or
 - (b) to authorise the erection or use of a building or structure that is not for a purpose prescribed by this section or 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.
- (3) In this section, **erection** of a building or structure includes rebuilding or replacement of a building or structure.
- (4) The following buildings and structures are prescribed for the purposes of subsection (1) (a):
 - (a) walkways,
 - (b) pathways,
 - (c) bridges,
 - (d) causeways,
 - (e) observation platforms,
 - (f) signs.
- (5) The following purposes are prescribed for the purposes of subsection (1) (b):
 - (a) information kiosks,
 - (b) refreshment kiosks (but not restaurants),
 - (c) work sheds or storage sheds required in connection with the maintenance of the land,
 - (d) toilets or rest rooms.

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
 - (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

- (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
 - (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
 - (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:

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- (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
 - (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
 - (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.
 - (2) The following buildings are exempt from the operation of subsection (1) (a):
 - (a) toilet facilities,
 - (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,
 - (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.
 - (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

- (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
 - (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.
- (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
 - (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*.

[23] Section 47G

Insert before section 48:

47G Public hearings

- (1) In this section, **public hearing** means any public hearing required to be arranged under this Part.
- (2) The person presiding at a public hearing must not be:
 - (a) a councillor or employee of the council holding the public hearing, or
 - (b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.

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- (3) Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.

[24] Section 409 The consolidated fund

Insert after section 409 (3) (c):

, and

- (d) money that has been received as rents, profits or other proceeds from a lease, licence or other estate granted in respect of community land must be expended on community land acquisition and community land management requirements, and may be used for any other purpose only to the extent that such receipts are surplus to the outgoings necessary to meet those requirements.

[25] Section 734 Public hearings by a council

Omit "(section 29 excepted)".

Insert instead "(section 29 (1) excepted)".

[26] Section 734 (2)

Insert "this Act and" before "the regulations".

[27] 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

[28] 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**

Transitional application of section 30

The amendments made to section 30 (1) and (2) by the *Local Government Amendment (Community Land Management) Act 1998* do not apply in respect of a local environmental plan a draft of which was authorised for public exhibition by a certificate under section 65 of the *Environmental Planning and Assessment Act 1979* issued before those amendments took effect.

**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.

Transitional application of section 36A

- (1) The provisions of subsection (4) of section 36A 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 consists of critical habitat within the meaning of that section,

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

Transitional application of section 36B

- (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,
- but so apply as though the area or part first became so affected on the commencement of that section.
- (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,
- but so apply as though the area or part first became so affected on the commencement of that section.

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
 - (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
 - (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*.
- (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.
- (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.

Effect of certain environmental planning instruments on permissible uses

- (1) This clause applies where an environmental planning instrument contains a provision (the relevant land use

provision), in force for the time being, that, immediately before the commencement of Part 2:

- (a) applied in relation to an area that has subsequently become (whether by a provision of Schedule 7 or otherwise) classified as community land, and
 - (b) permitted the carrying out of development on the land (whether with or without development consent) for the purposes (or a specified class of the purposes) specified in Division 2 or 3 of Part 13 of the *Local Government Act 1919*.
- (2) Despite clause 4 of Schedule 7 and any other provision of this Act, and until the relevant land use provision is amended, by an environmental planning instrument, so as to remove the reference to the provisions of the *Local Government Act 1919* referred to in subclause (1) (b), nothing in a plan of management under Part 2 operates to permit:
- (a) the carrying out of development on the land concerned, whether with or without development consent, for a purpose for which development was, immediately before the commencement of Part 2, prohibited by the relevant land use provision, or
 - (b) the carrying out of development on any such land, without development consent, for a purpose for which development consent was, immediately before the commencement of Part 2, required by the relevant land use provision.

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.

Occupation of community land otherwise than by lease or licence

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.

[Minister's second reading speech made in—
Legislative Assembly on 10 September 1998 am
Legislative Council on 14 October 1998]

BY AUTHORITY