



New South Wales

Local Government Amendment (Independent Valuation) Bill 2002

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* to prevent local councils from entering into certain transactions with councillors (or persons with whom councillors are associated) unless the consideration received by the council is equal to, or exceeds, the current market value of the subject of the transaction.

Outline of provisions

Schedule 1 inserts Division 1A into Part 3 of Chapter 6 of the *Local Government Act 1993* to deal with certain dispositions of public land to a councillor or to a person with whom the councillor is associated.

Proposed section 55A sets out the transactions to which Division 1A applies and the situations when a councillor is taken to be associated with a person. The Division applies to the sale or other disposition of public land (otherwise than by means of a public auction or public tender) and to grants of certain leases, licences or other estates in or over public land.

Proposed section 55B provides that a council may not enter into certain transactions unless the consideration received by the council under the transaction is equal to, or exceeds, the current market value of the land, lease, licence or other estate the subject of the transaction. The section also provides a definition of *current market value*.

Proposed section 55C gives any person the power to bring proceedings in the Land and Environment Court to set aside a transaction entered into in contravention of section 55B.

Introduced by Mr David Barr, MP

First print



New South Wales

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New South Wales

Local Government Amendment (Independent Valuation) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Local Government Act 1993* to make provision with respect to the valuation of certain land to be sold by local councils; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on the date of assent.

3 Amendment of Local Government Act 1993 No 30

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

Schedule 1 Amendment

(Section 3)

Chapter 6 What are the service functions of councils?

Insert after Division 1 of Part 3:

Division 1A Restrictions on transactions concerning public land

55A Application of Division

(1) This Division applies to and in respect of any transaction by which a council:

- (a) sells or otherwise disposes of public land, or
- (b) grants a lease, licence or other estate in or over public land (other than a lease, licence or other estate for a term not exceeding 5 years that is in terms that prohibits its assignment),

to a councillor or to a person with whom a councillor is associated.

(2) For the purposes of this Division, a person is *associated* with a councillor:

- (a) if the person is the councillor's spouse or de facto partner, or is otherwise a relative of the councillor, or
- (b) if the person is a partner or employee of the councillor, or
- (c) if the person is a company of which the councillor is a shareholder or director.

55B Transactions to be for current market value

(1) A council may not enter into a transaction to which this Division applies (otherwise than by means of a public auction or public tender) unless the consideration received by the council under the transaction is equal to, or exceeds, the current market value of the land, lease, licence or other estate the subject of the transaction.

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- (2) Subject to section 55C, a contravention of subsection (1) does not invalidate a transaction to which this Division applies. 1
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Note. A contravention, or a threatened or apprehended contravention, of subsection (1) may be dealt with by proceedings brought in the Land and Environment Court under section 673 or 674. 3
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- (3) Section 55 applies to an invitation for a public tender referred to in subsection (1) in the same way as it applies to an invitation for a tender for a contract referred to in section 55 (1), and so applies despite section 55 (3). 6
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- (4) In this section: 10
current market value, in relation to: 11
(a) land the subject of a transaction to which this Division applies, or 12
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(b) a lease, licence or other estate in or over land the subject of a transaction to which this Division applies, 14
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means the market value of the land, lease, licence or estate, as set out in the most recent determination by the Valuer-General of the market value of the land, lease, licence or estate, being a determination of the market value of the land, lease, licence or estate as at a date occurring within 6 months before the date of the transaction. 16
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market value has the same meaning as it has in the *Land Acquisition (Just Terms Compensation) Act 1991*. 22
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- 55C Setting aside of certain transactions** 24
- (1) Any person may bring proceedings in the Land and Environment Court to set aside a transaction to which this Division applies. 25
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- (2) Proceedings under this section may not be brought more than 6 years after the transaction was entered into by the council concerned. 28
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- (3) If, in any proceedings under this section in relation to a transaction, the Land and Environment Court is satisfied: 31
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(a) that the transaction is a transaction to which this Division applies, and 33
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(b) that the transaction has been entered into in contravention of section 55B (1), and 35
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- (c) where the transaction involves the sale or other disposal of land, or the granting of a lease, licence or other estate in or over public land, to a person with whom a councillor is associated—that the councillor was aware, at the time the transaction was entered into:
- (i) that the transaction was a transaction to which this Division applies, and
 - (ii) that the transaction was being entered into in contravention of section 55B (1),
- the Court may make an order setting aside the transaction and may make such further orders as it considers appropriate to revest the land, or the relevant estate in or over the land, in the council.
- (4) Pending the determination of proceedings under this section, the Land and Environment Court may make such orders as it considers appropriate to prevent any further dealing with the land to which the proceedings relate.
- (5) Nothing in this section affects an estate or interest in land under the provisions of the *Real Property Act 1900* that has been the subject of a transaction to which this Division applies entered into:
- (a) between a council and a councillor, or
 - (b) between a council and a person with whom a councillor is associated,
- if the registered proprietor of that estate or interest (not being the councillor or a person with whom the councillor is associated) has acquired the estate or interest in good faith and for value.
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