

Passed by both Houses



New South Wales

Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2008

Clerk of the Parliaments



New South Wales

Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008

Act No , 2008

An Act to amend the *Western Lands Act 1901* and the *Crown Lands Act 1989* with respect to the establishment of development districts and the granting of special purpose leases in the Western Division; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Western and Crown Lands Amendment (Special Purpose Leases) Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Western Lands Act 1901 No 70

The *Western Lands Act 1901* is amended as set out in Schedule 1.

4 Amendment of Crown Lands Act 1989 No 6

The *Crown Lands Act 1989* is amended as set out in Schedule 2.

5 Amendment of Forestry Act 1916 No 55

The *Forestry Act 1916* is amended by inserting after the words “Second Schedule” in paragraph (a) of the definition of *landholder* in section 30 the words “(not being a special purpose lease within the meaning of Division 3A of Part 4 of the *Crown Lands Act 1989* or Part 9E of the *Western Lands Act 1901*)”.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Western Lands Act 1901

(Section 3)

[1] Section 2A Application of Crown Lands Act 1989

Insert after section 2A (4):

- (5) This section is subject to section 35XC (6).

Note. That subsection provides that a lease granted under section 35XC (a **special purpose lease**) is subject to the provisions of the *Crown Lands Act 1989* and is not subject to any provision of this Act (other than Part 9E).

[2] Section 3 Definitions

Omit the definition of **Crown lands** from section 3 (1). Insert instead:

Crown land has the same meaning as in the *Crown Lands Act 1989*.

[3] Section 3 (3)

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[4] Part 9E

Insert after Part 9D:

Part 9E Development districts and special purpose leases

35XA Definitions

In this Part:

designated purpose, in relation to a development district, means a purpose designated for the district under section 35XB as a purpose for which a special purpose lease may be granted over land in that district.

development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development district means land the subject of a declaration under section 35XB.

general purpose lease means any lease, other than a special purpose lease, to which the provisions of this Act apply.

significant improvement means any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, tree plantation, soil conservation work or other valuable work or structure.

special purpose lease means a lease granted under section 35XC.

35XB Development districts

- (1) The Minister may, by notification in the Gazette, declare any land to be a development district for the purposes of this Part.
- (2) Such a declaration must designate the purposes for which a special purpose lease may be granted over land in the development district established by the declaration.
- (3) A purpose may not be designated under subsection (2) unless it is an approved purpose.
- (4) The following purposes are approved for the purposes of subsection (3):
 - (a) the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electrical energy,
 - (b) such other purposes as may be approved by a proclamation under section 44B (4) (b) of the *Crown Lands Act 1989*.
- (5) The Minister may, by notification in the Gazette, alter the boundaries of, or abolish, any development district or, subject to subsections (3) and (4), vary the designated purposes for the district.
- (6) A special purpose lease is not affected merely because the whole or any part of the land over which it is granted ceases to be in a development district as a result of a notification referred to in subsection (5).

35XC Minister may grant special purpose leases

- (1) The Minister may, in accordance with section 34 or 34A of the *Crown Lands Act 1989*, lease any Crown land within a development district for the purpose of enabling development for a designated purpose to be carried out on that land.
- (2) Despite subsection (1), a lease may not be granted under this section in respect of any land the subject of:
 - (a) a mining lease under the *Mining Act 1992*, or

- (b) a production lease under the *Petroleum (Onshore) Act 1991*,
except with the consent of the Minister administering the Act concerned.
- (3) The maximum term for which a lease may be granted under this section (including the period of any option to renew) is 100 years.
- (4) Crown land that is the subject of a general purpose lease may be leased under this section, but only with the written consent of the lessee under the general purpose lease.
- (5) A written consent given for the purposes of subsection (4) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (6) A lease granted under this section is subject to the provisions of the *Crown Lands Act 1989* and is not subject to any provision of this Act (other than this Part).

35XD Provisions applicable to general purpose lease over land subject to special purpose lease

- (1) The following provisions apply to a general purpose lease over land the subject of a special purpose lease, regardless of the order in which those leases were granted:
 - (a) the general purpose lease is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,
 - (b) the general purpose lease is taken to include a condition prohibiting the lessee under that lease from doing anything that has the effect of restricting or impeding the lessee under the special purpose lease from exercising the rights conferred by that lease,
 - (c) the general purpose lease is taken to include a further condition prohibiting the lessee under that lease from carrying out development for the purposes of any dwelling-house, garden or significant improvement on any land to which both leases apply except with the written consent of the lessee under the special purpose lease.
- (2) Any sublease of a general purpose lease is taken to include the conditions that, pursuant to this section, are taken to be included in the general purpose lease.
- (3) This section applies to a general purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a special purpose lease.

35XE Provisions applicable to special purpose lease over land subject to general purpose lease

- (1) The following provisions apply to a special purpose lease over land the subject of a general purpose lease, regardless of the order in which those leases were granted:
 - (a) the special purpose lease is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,
 - (b) the special purpose lease is taken to include a condition prohibiting the lessee under that lease from exercising any of the rights conferred by that lease over any part of the land held under the general purpose lease:
 - (i) on which, or within 200 metres of which, is situated any dwelling-house, or
 - (ii) on which, or within 50 metres of which, is situated any garden, or
 - (iii) on which is situated any significant improvement, except with the written consent of the lessee under the general purpose lease,
 - (c) the special purpose lease is taken to include a further condition prohibiting the lessee under that lease from unreasonably withholding any consent referred to in section 35XD (1) (c).
- (2) A written consent given for the purposes of subsection (1) (b) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (3) The provisions of subsection (1) (b) (i) and (ii) do not prevent the lessee under the special purpose lease from travelling along any road or track that is within 200 metres or 50 metres, respectively, of a dwelling-house or garden referred to in those subparagraphs.
- (4) A special purpose lease over land the subject of a general purpose lease may include conditions agreed to between each of the lessees under those leases.
- (5) Any sublease of a special purpose lease is taken to include the conditions that, pursuant to this section, are included, or taken to be included, in the special purpose lease.
- (6) Any condition of the kind referred to in subsection (4):
 - (a) that is included in a special purpose lease over land the subject of a general purpose lease, or

- (b) that, pursuant to subsection (5), is taken to be included in a sublease of a special purpose lease over land the subject of a general purpose lease,
is enforceable, as between the lessees and sublessees for the time being under those leases, as if it were contained in a deed entered into between them.
- (7) This section applies to a special purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a general purpose lease.

[5] Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert at the end of the matter relating to Division 1 of Part 4:

The references in sections 34 (7) and 34A (9) to a special purpose lease are taken to extend to a special purpose lease within the meaning of Part 9E of the *Western Lands Act 1901*.

Schedule 2 Amendment of Crown Lands Act 1989

(Section 4)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

land district means a land district referred to in section 8 (1), or established under section 8 (1A) or (2), and includes land within the Western Division that is:

- (a) a development district within the meaning of Division 3A of Part 4 of this Act, and
- (b) a development district within the meaning of Part 9E of the *Western Lands Act 1901*.

[2] Section 34 Powers of Minister in relation to Crown land

Insert after section 34 (6):

- (7) Crown land the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

[3] Section 34A Special provisions relating to Minister's powers over Crown reserves

Omit "Division 3" from section 34A (6) (a).

Insert instead "Divisions 3 and 3A".

[4] Section 34A (9)

Insert after section 34A (8):

- (9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

[5] Part 4, Division 3A

Insert after Division 3 of Part 4:

Division 3A Development districts in the Western Division and special purpose leases

44A Definitions

In this Division:

designated purpose, in relation to a development district, means a purpose designated for the district under section 44B as a purpose for which a special purpose lease may be granted over land in that district.

development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development district means land the subject of a declaration under section 44B.

general purpose lease means any lease, other than a special purpose lease, granted under this Act or under the *Crown Lands (Continued Tenures) Act 1989*, and includes an incomplete purchase under the *Crown Lands (Continued Tenures) Act 1989*.

significant improvement means any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, tree plantation, soil conservation work or other valuable work or structure.

special purpose lease means a lease granted under section 44C.

44B Development districts

- (1) The Minister may, by notification in the Gazette, declare any land within the Western Division to be a development district for the purposes of this Division.
- (2) Such a declaration must designate the purposes for which a special purpose lease may be granted over land in the development district established by the declaration.
- (3) A purpose may not be designated under subsection (2) unless it is an approved purpose.
- (4) The following purposes are approved for the purposes of subsection (3):
 - (a) the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electrical energy,
 - (b) such other purposes as may be approved by proclamation on the recommendation of the Minister.
- (5) A recommendation for such a proclamation may not be made unless the Minister has consulted with the Minister administering the *Environmental Planning and Assessment Act 1979* as to the terms of the recommendation, but a proclamation is not invalid merely because this requirement is not complied with.

- (6) The Minister may, by notification in the Gazette, alter the boundaries of, or abolish, any development district or, subject to subsections (3) and (4), vary the designated purposes for the district.
- (7) A special purpose lease is not affected merely because the whole or any part of the land over which it is granted ceases to be in a development district as a result of a notification referred to in subsection (6).

44C Minister may grant special purpose leases

- (1) The Minister may, in accordance with section 34 or 34A, lease any Crown land within a development district for the purpose of enabling development for a designated purpose to be carried out on that land.
- (2) Despite subsection (1), a lease may not be granted under this section in respect of any land the subject of:
 - (a) a mining lease under the *Mining Act 1992*, or
 - (b) a production lease under the *Petroleum (Onshore) Act 1991*,except with the consent of the Minister administering the Act concerned.
- (3) The maximum term for which a lease may be granted under this section (including the period of any option to renew) is 100 years.
- (4) Crown land that is the subject of a general purpose lease may be leased under this section, but only with the written consent of the lessee under the general purpose lease.
- (5) A written consent given for the purposes of subsection (4) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.

44D Provisions applicable to general purpose lease over land subject to special purpose lease

- (1) The following provisions apply to a general purpose lease over land the subject of a special purpose lease, regardless of the order in which those leases were granted:
 - (a) the general purpose lease (not being an incomplete purchase under the *Crown Lands (Continued Tenures) Act 1989*) is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,

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- (b) the general purpose lease is taken to include a condition prohibiting the lessee under that lease from doing anything that has the effect of restricting or impeding the lessee under the special purpose lease from exercising the rights conferred by that lease,
 - (c) the general purpose lease is taken to include a further condition prohibiting the lessee under that lease from carrying out development for the purposes of any dwelling-house, garden or significant improvement on any land to which both leases apply except with the written consent of the lessee under the special purpose lease.
- (2) Any sublease of a general purpose lease is taken to include the conditions that, pursuant to this section, are taken to be included in the general purpose lease.
 - (3) This section applies to a general purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a special purpose lease.

44E Provisions applicable to special purpose lease over land subject to general purpose lease

- (1) The following provisions apply to a special purpose lease over land the subject of a general purpose lease, regardless of the order in which those leases were granted:
 - (a) the special purpose lease is (or remains) a lease even though it does not confer (or no longer confers) exclusive possession on the lessee under that lease,
 - (b) the special purpose lease is taken to include a condition prohibiting the lessee under that lease from exercising any of the rights conferred by that lease over any part of the land held under the general purpose lease:
 - (i) on which, or within 200 metres of which, is situated any dwelling-house, or
 - (ii) on which, or within 50 metres of which, is situated any garden, or
 - (iii) on which is situated any significant improvement, except with the written consent of the lessee under the general purpose lease,
 - (c) the special purpose lease is taken to include a further condition prohibiting the lessee under that lease from unreasonably withholding any consent referred to in section 44D (1) (c).

- (2) A written consent given for the purposes of subsection (1) (b) by the lessee under a general purpose lease is irrevocable and binds each successor in title to the land the subject of that lease.
- (3) The provisions of subsection (1) (b) (i) and (ii) do not prevent the lessee under the special purpose lease from travelling along any road or track that is within 200 metres or 50 metres, respectively, of a dwelling-house or garden referred to in those subparagraphs.
- (4) A special purpose lease over land the subject of a general purpose lease may include conditions agreed to between each of the lessees under those leases.
- (5) Any sublease of a special purpose lease is taken to include the conditions that, pursuant to this section, are included, or taken to be included, in the special purpose lease.
- (6) Any condition of the kind referred to in subsection (4):
 - (a) that is included in a special purpose lease over land the subject of a general purpose lease, or
 - (b) that, pursuant to subsection (5), is taken to be included in a sublease of a special purpose lease over land the subject of a general purpose lease,is enforceable, as between the lessees and sublessees for the time being under those leases, as if it were contained in a deed entered into between them.
- (7) This section applies to a special purpose lease, and any sublease of that lease, only for so long as the land over which it is granted remains subject to a general purpose lease.