

# LOCAL GOVERNMENT AMENDMENT (COMMUNITY LAND MANAGEMENT) BILL 1998

SECOND READING SPEECH  
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LEGISLATIVE ASSEMBLY

MR SPEAKER,

I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

IT GIVES ME GREAT PLEASURE TO INTRODUCE THE *LOCAL GOVERNMENT AMENDMENT (COMMUNITY LAND MANAGEMENT) BILL*, WHICH MAKES NECESSARY AND DESIRABLE REFORMS TO THE COMMUNITY LAND MANAGEMENT PROVISIONS OF THE *LOCAL GOVERNMENT ACT 1993*.

THE COMMENCEMENT OF THE *LOCAL GOVERNMENT ACT* IN JULY, 1993, SAW THE INTRODUCTION OF A NEW APPROACH TO THE CONCEPT OF PUBLIC LAND MANAGEMENT BY COUNCILS. THE PREVIOUS PRESCRIPTIVE APPROACH WAS REPLACED WITH A NEW SYSTEM WHEREBY COUNCILS, IN CONSULTATION WITH THEIR LOCAL COMMUNITIES, BECAME RESPONSIBLE FOR DECIDING HOW PUBLIC LAND IN THEIR AREAS WOULD BE USED AND MANAGED.

PUBLIC LAND WAS DIVIDED INTO OPERATIONAL AND COMMUNITY LAND. PARTICULAR PROVISION WAS MADE TO PROTECT VALUABLE COMMUNITY LAND WHICH INCLUDED PUBLIC RESERVES, PARKS, SPORTSGROUNDS, AND OTHER LAND SET ASIDE FOR GENERAL COMMUNITY USE. A REGIME WAS SET IN PLACE WHEREBY COUNCILS HAD TO PREPARE PLANS OF MANAGEMENT FOR ALL COMMUNITY LAND WITHIN THEIR AREAS.

THE SYSTEM THAT WAS SET IN PLACE PROVIDED A FOUNDATION FOR RESPONSIBLE AND ACCOUNTABLE MANAGEMENT BY COUNCILS OF COMMUNITY LAND. BY AND LARGE, THE NEW SYSTEM HAS WORKED WELL. HOWEVER, SINCE 1995, THE GOVERNMENT HAS BECOME AWARE THAT THERE IS SOME COMMUNITY CONCERN THAT THE PRESENT PROVISIONS OF THE ACT ARE TOO BROADLY CAST.

COMMUNITY LAND CANNOT BE SOLD. HOWEVER, THERE IS WIDESPREAD CONCERN THAT THE PRESENT PROVISIONS LEAVE TOO MUCH SCOPE FOR MISUSE OF ENVIRONMENTALLY SENSITIVE LAND, AND FOR INAPPROPRIATE ALIENATION OF COMMUNITY LAND FOR ESSENTIALLY PRIVATE PURPOSES BY LEASE OR LICENCE. A CORRESPONDING COMMUNITY DEMAND FOR REINFORCEMENT OF ITS RIGHT TO PARTICIPATE IN IMPORTANT DECISIONS ABOUT HOW COMMUNITY LAND IS USED AND MANAGED HAS ALSO BECOME APPARENT.

A NUMBER OF SIGNIFICANT COURT DECISIONS HAVE ALSO ILLUSTRATED THE NEED FOR CLARIFICATION, AT LEAST, OF THE EXISTING PROVISIONS OF THE ACT.

IN VIEW OF THOSE CONCERNS, I ISSUED A GREEN PAPER ON COMMUNITY LAND MANAGEMENT IN SEPTEMBER, 1997. THE MANY RESPONSES TO THE GREEN PAPER FROM ALL SECTORS OF THE COMMUNITY, INCLUDING VALUABLE SUBMISSIONS FROM COUNCILS AND OTHER LOCAL GOVERNMENT ORGANISATIONS, CONVINCED ME OF THE NEED FOR REFORM.

IT IS IN THAT CONTEXT THAT I NOW PRESENT THIS BILL.

ONE OF THE FUNDAMENTAL ANOMALIES IN THE PRESENT PROVISIONS RELATES TO THE CATEGORISATION OF COMMUNITY LAND IN A PLAN OF MANAGEMENT.

THE ACT AT PRESENT REQUIRES A PLAN OF MANAGEMENT FOR COMMUNITY LAND TO PLACE THE LAND IN ONE OR MORE OF THE CATEGORIES OF “A NATURAL AREA”, “A SPORTSGROUND”, “A PARK”, OR “GENERAL COMMUNITY USE”. HOWEVER, THE ACT DOES NOT DEFINE THOSE TERMS, NOR DOES IT SPECIFY IN WHAT WAY THOSE CATEGORIES SHOULD RELATE TO OR AFFECT THE WAY IN WHICH COMMUNITY LAND SHOULD BE USED OR MANAGED.

THE BILL ACCORDINGLY MAKES PROVISION TO IDENTIFY WHAT LAND SHOULD APPROPRIATELY BE PLACED IN EACH CATEGORY, AND PRESCRIBES A NUMBER OF CORE MANAGEMENT OBJECTIVES THAT MUST APPLY TO LAND IN EACH CATEGORY. THESE DEFINITIONS AND CORE OBJECTIVES ARE CONTAINED IN A DRAFT EXPOSURE REGULATION THAT I WILL RELEASE TODAY FOR PUBLIC COMMENT. THE DEFINITIONS AND CORE OBJECTIVES HAVE BEEN DEVELOPED IN CONSULTATION WITH A NUMBER OF GOVERNMENT AGENCIES WHO HAVE A DIRECT INTEREST IN ENVIRONMENTAL AND LAND ISSUES.

A MAJOR CONSEQUENCE OF DEFINING THE CATEGORIES OF COMMUNITY LAND AND CORE OBJECTIVES FOR EACH OF THEM WILL BE TO ENABLE ENVIRONMENTAL AND OTHER VALUES OF COMMUNITY LAND TO BE BETTER IDENTIFIED AND PROTECTED. IT WILL ALSO ENABLE COMMUNITY LAND TO BE MORE APPROPRIATELY MANAGED TO ACHIEVE A RESPONSIBLE BALANCE BETWEEN PROTECTION OF RELEVANT VALUES AND USE OF THE LAND BY THE COMMUNITY.

THE BILL INTRODUCES A FIFTH CATEGORY OF COMMUNITY LAND, NAMELY, “AN AREA OF CULTURAL SIGNIFICANCE”. THIS WILL ENABLE SPECIFIC MEASURES TO BE DEVELOPED FOR THE PROTECTION AND PRESERVATION OF ITEMS OF CULTURAL, AS DISTINCT FROM NATURAL, VALUE. IT WILL ALSO REMOVE ANY POSSIBILITY OF CONFLICTING MANAGEMENT OBJECTIVES ARISING FROM CULTURAL AND NATURAL ITEMS BEING COVERED BY THE SAME CATEGORY.

NEW SECTIONS 36A AND 36B APPLY SPECIFICALLY TO COMMUNITY LAND THAT IS AFFECTED BY AN INSTRUMENT UNDER THE THREATENED SPECIES CONSERVATION ACT OR THE FISHERIES MANAGEMENT ACT. UNDER THOSE SECTIONS, ANY LAND THAT IS DECLARED TO BE CRITICAL HABITAT OR THAT IS DIRECTLY AFFECTED BY A RECOVERY PLAN OR THREAT ABATEMENT PLAN UNDER THOSE ACTS MUST BE CATEGORISED IN A PLAN OF MANAGEMENT AS “A NATURAL AREA”. THE PLAN MUST ALSO INCLUDE THE CORE OBJECTIVES PRESCRIBED BY REGULATION FOR THE CATEGORY OF “A NATURAL AREA”.

THE PLAN OF MANAGEMENT WILL BE REQUIRED TO TAKE ACCOUNT OF THE EXISTENCE OF CRITICAL HABITAT OR THE COUNCIL’S OBLIGATIONS UNDER THE RECOVERY PLAN OR THREAT ABATEMENT PLAN, AND OTHERWISE BE CONSISTENT WITH THE OBJECTS OF THE *THREATENED SPECIES CONSERVATION ACT* OR THE *FISHERIES MANAGEMENT ACT*, AS THE CASE MAY BE. THE COUNCIL WILL BE REQUIRED TO SEND A COPY OF ITS DRAFT PLAN OF MANAGEMENT OR AMENDED PLAN OF MANAGEMENT TO THE DIRECTOR-GENERAL OF NATIONAL PARKS AND WILDLIFE OR THE DIRECTOR OF NEW SOUTH WALES FISHERIES, AS THE CASE MAY BE, AND TO INCORPORATE IN THE PLAN OF MANAGEMENT ANY MATTERS REQUIRED BY THEM.

THE ACT AT PRESENT ALLOWS A PLAN OF MANAGEMENT TO APPLY TO MORE THAN ONE AREA OF COMMUNITY LAND. THESE PLANS ARE COMMONLY REFERRED TO AS “GENERIC” PLANS OF MANAGEMENT.

THE MANAGEMENT OBJECTIVES, PERFORMANCE TARGETS, ETC., IN GENERIC PLANS ARE, OF NECESSITY, QUITE GENERAL IN NATURE. SUCH PLANS ARE CONSIDERED INAPPROPRIATE FOR COMMUNITY LAND THAT INCLUDES CRITICAL HABITAT OR IS DIRECTLY AFFECTED BY A RECOVERY PLAN OR THREAT ABATEMENT PLAN, WHICH NEED QUITE SPECIFIC OBJECTIVES, PERFORMANCE TARGETS, ETC.



ACCORDINGLY, THE BILL PROVIDES THAT THE PLAN OF MANAGEMENT APPLYING TO AN AREA OF LAND THAT IS CRITICAL HABITAT OR DIRECTLY AFFECTED BY A RECOVERY PLAN OR THREAT ABATEMENT PLAN MUST APPLY ONLY TO THAT AREA OF COMMUNITY LAND. SUCH LAND CANNOT BE INCLUDED IN A GENERIC PLAN OF MANAGEMENT.

ALSO, UNTIL SUCH TIME AS A NEW PLAN OF MANAGEMENT IS ADOPTED, OR AN EXISTING PLAN OF MANAGEMENT IS AMENDED, THE USE OF THE LAND MUST NOT BE VARIED IN A DETRIMENTAL MANNER. CHANGES OF USE WILL BE ALLOWED FOR THE COUNCIL TO COMPLY WITH ITS OBLIGATIONS IN RELATION TO CRITICAL HABITAT, ETC., TO GIVE EFFECT TO THE PRESCRIBED CORE OBJECTIVES, OR TO CEASE AN INAPPROPRIATE USE. NO NEW LEASE OR LICENCE OF THE LAND MAY BE GRANTED IN THAT INTERIM PERIOD.

PROPOSED NEW SECTION 36C MAKES SIMILAR PROVISIONS WITH REGARD TO LAND THAT IS THE SUBJECT OF A COUNCIL RESOLUTION DECLARING THAT THE LAND HAS A KNOWN NATURAL, GEOLOGICAL, GEOMORPHOLOGICAL, SCENIC OR OTHER FEATURE THAT IS CONSIDERED BY THE COUNCIL TO WARRANT PROTECTION OR SPECIAL MANAGEMENT CONSIDERATIONS.

PROPOSED NEW SECTION 36D APPLIES TO LAND THAT THE COUNCIL DECLARES BY RESOLUTION TO BE "AN AREA OF CULTURAL SIGNIFICANCE", AND CONTAINS PROVISIONS SIMILAR TO SECTIONS 36A TO 36C. LAND WOULD BE DECLARED "AN AREA OF CULTURAL SIGNIFICANCE" BECAUSE OF THE PRESENCE ON THE LAND OF ANY ITEM THAT THE COUNCIL CONSIDERS TO BE OF ABORIGINAL, HISTORICAL OR CULTURAL SIGNIFICANCE.

ANY PROPOSAL BY A COUNCIL TO CHANGE THE CATEGORY OF COMMUNITY LAND FROM "A NATURAL AREA" OR "AN AREA OF CULTURAL SIGNIFICANCE", TO ANOTHER CATEGORY WILL REQUIRE A PUBLIC HEARING. THE TYPES AND PURPOSES FOR WHICH BUILDINGS MAY BE ERECTED OR USED UNDER LEASE OR LICENCE ON LAND CATEGORISED "A NATURAL AREA" WILL ALSO BE STRICTLY REGULATED.

THE BILL MAKES OTHER PROVISIONS RELATING TO THE QUALITY AND CONTENT OF PLANS OF MANAGEMENT GENERALLY, INCLUDING SOME RESTRAINTS CONCERNING APPROVALS FOR MAJOR DEVELOPMENT, SUBLEASING, AND CONSTRUCTION OF PUBLIC ROADS ON COMMUNITY LAND.

UNDER PRESENT PROVISIONS, A COUNCIL IS REQUIRED TO PUBLICLY EXHIBIT A DRAFT PLAN OF MANAGEMENT. NO FURTHER EXHIBITION IS NEEDED IF THE COUNCIL CONSIDERS THAT AMENDMENTS TO THE EXHIBITED PLAN ARE NOT SUBSTANTIAL. THIS HAS BEEN THE SOURCE OF CONSIDERABLE COMMUNITY CONCERN. THERE IS SIGNIFICANT SCOPE FOR DISAGREEMENT ON THE QUESTION WHETHER A PARTICULAR AMENDMENT IS "SUBSTANTIAL" OR "NOT SUBSTANTIAL", AND THE ISSUE HAS ALREADY LED TO COURT ACTION. THE POTENTIAL FOR FURTHER COURT CHALLENGE IN ANY PARTICULAR CASE IS SIGNIFICANT.

COMMUNITY LAND MANAGEMENT IS NOW LARGELY THE RESPONSIBILITY OF THE COUNCIL AND ITS COMMUNITY. IT IS THEREFORE IMPORTANT IN TERMS OF TRANSPARENCY IN LOCAL DECISION-MAKING AND COMMUNITY PARTICIPATION THAT SUCH A RELATIVELY MINOR CAUSE FOR DISPUTE BETWEEN A COUNCIL AND ITS COMMUNITY BE REMOVED.

ACCORDINGLY, THE BILL AMENDS THE ACT TO REQUIRE ALL AMENDMENTS TO AN EXHIBITED DRAFT PLAN OF MANAGEMENT TO BE PUBLICLY EXHIBITED FOR FURTHER SUBMISSIONS BEFORE THE PLAN MAY BE ADOPTED.

ONLY THE AMENDMENTS ARE REQUIRED TO BE FURTHER EXHIBITED, AND SUBMISSIONS WILL BE LIMITED TO THE AMENDMENTS. RE-EXHIBITION OF AMENDMENTS WILL NOT THEREFORE RE-OPEN THE WHOLE PLAN OF MANAGEMENT TO FURTHER PUBLIC COMMENT. IF THE AMENDMENTS ARE TRULY NOT SUBSTANTIAL, THE ADDITIONAL PROCESS SHOULD NOT UNREASONABLY DELAY ADOPTION OF THE PLAN OF MANAGEMENT.

THE OTHER MAIN AREA OF REFORM IS THAT DEALING WITH THE GRANTING OF LEASES, LICENCES AND OTHER ESTATES IN RESPECT OF COMMUNITY LAND.

PARTICULAR PROVISION IS MADE TO PERMIT THE GRANTING OF LEASES, LICENSES AND OTHER ESTATES IN RESPECT OF COMMUNITY LAND FOR THE PROVISION OF PUBLIC UTILITIES. THIS WAS SOMETIMES OVERLOOKED IN THE PREPARATION OF SOME PLANS OF MANAGEMENT, CAUSING SOME UNINTENDED DIFFICULTIES IN THE PROVISION OF THESE NECESSARY WORKS.

THE ACT AT PRESENT PROHIBITS COMMUNITY LAND FROM BEING SOLD, EXCHANGED, OR OTHERWISE DISPOSED OF. THIS WILL NOT CHANGE. HOWEVER, IN ADDITION TO PROVIDING FOR THE GRANTING OF LEASES AND LICENCES OF COMMUNITY LAND, THE ACT AT PRESENT ALSO ALLOWS THE GRANTING OF ANY OTHER ESTATE IN COMMUNITY LAND FOR ANY PURPOSE AND WITHOUT ANY REQUIREMENT FOR PRIOR PUBLIC NOTIFICATION. THERE IS NO REAL REASON WHY THE GRANTING OF OTHER ESTATES SHOULD BE DEALT WITH DIFFERENTLY TO LEASES OR LICENCES.

WITH SOME EXCEPTIONS NECESSARY FOR PRACTICAL REASONS, THE BILL WILL MAKE THE GRANTING OF OTHER ESTATES IN COMMUNITY LAND SUBJECT TO SIMILAR REQUIREMENTS TO THOSE APPLYING TO THE GRANTING OF LEASES AND LICENCES.

NEW PROVISIONS IN THE BILL WILL LIMIT THE GRANTING OF LEASES, LICENCES AND OTHER ESTATES IN RESPECT OF COMMUNITY LAND THAT IS MANAGED UNDER A GENERIC PLAN OF MANAGEMENT. UNDER THE NEW PROVISIONS, A GENERIC PLAN OF MANAGEMENT WILL GENERALLY ONLY BE ABLE TO AUTHORISE THE GRANTING OF A LEASE, LICENCE OR OTHER ESTATE IN RESPECT OF COMMUNITY LAND TO WHICH IT APPLIES FOR A PURPOSE PRESCRIBED IN THE REGULATIONS. PRESCRIBED PURPOSES WILL BE STRICTLY LOW IMPACT.

DIFFERENT CONSIDERATIONS WILL APPLY TO A PLAN OF MANAGEMENT THAT APPLIES TO JUST ONE AREA OF COMMUNITY LAND. AT PRESENT, AN AUTHORISATION IN A PLAN OF MANAGEMENT FOR THE GRANTING OF A LEASE OR LICENCE OF COMMUNITY LAND MAY BE LIMITED TO THE GRANTING OF A LEASE OR LICENCE FOR A PUBLIC PURPOSE OR BY REFERENCE TO OTHER MATTERS. IT WOULD BE POSSIBLE UNDER THAT PROVISION FOR COMMUNITY LAND TO BE LEASED FOR A PURELY PRIVATE PURPOSE NOT ASSOCIATED WITH ANY PUBLIC BENEFIT. THIS IS WIDELY REGARDED AS UNACCEPTABLE, AND THERE IS A STRONG FEELING IN THE COMMUNITY THAT LEASES AND LICENCES OF COMMUNITY LAND SHOULD ONLY BE GRANTED FOR A PUBLIC PURPOSE. THE GOVERNMENT SUPPORTS THAT VIEW.

ACCORDINGLY, AN IMPORTANT REFORM IS THAT, WITH SOME EXCEPTIONS EITHER SPECIFIED IN THE BILL OR TO BE PRESCRIBED BY REGULATION, LEASES, LICENCES, AND OTHER ESTATES IN RESPECT OF COMMUNITY LAND MAY ONLY BE GRANTED FOR WHAT ARE ESSENTIALLY PUBLIC PURPOSES. COUNCILS WILL NO LONGER BE ABLE TO GRANT LEASES, RIGHTS OF WAY, ETC., FOR A PURELY PRIVATE PURPOSE, SUCH AS ALLOWING VEHICULAR ACCESS OVER COMMUNITY LAND TO ADJOINING PRIVATELY-OWNED LAND.



ANOTHER IMPORTANT REFORM IS THAT, WITH SOME EXCEPTIONS PRESCRIBED BY REGULATION, A PROPOSAL BY A COUNCIL TO GRANT A LEASE, LICENCE, OR OTHER ESTATE IN RESPECT OF COMMUNITY LAND FOR A TERM OF FIVE YEARS OR LESS MUST BE PUBLICLY NOTIFIED IN THE SAME WAY AS IS REQUIRED FOR LEASES, ETC., FOR TERMS OF MORE THAN FIVE YEARS. A PERIOD FOR LODGMENT OF SUBMISSIONS MUST BE ALLOWED, AND THE COUNCIL WILL HAVE TO CONSIDER ALL SUBMISSIONS LODGED DURING THE PRESCRIBED PUBLIC NOTIFICATION PERIOD.

COUNCILS WILL NOT GENERALLY BE REQUIRED TO OBTAIN MINISTERIAL CONSENT TO THE GRANTING OF LEASES OR LICENCES FOR TERMS OF FIVE YEARS OR LESS EVEN IF OBJECTIONS ARE LODGED. HOWEVER, THERE WILL BE CASES WHERE MINISTERIAL OVERSIGHT OF SUCH PROPOSALS IS DESIRABLE IN THE OVERALL PUBLIC INTEREST. PROPOSED NEW SECTION 47A ACCORDINGLY EMPOWERS THE MINISTER, IN EFFECT, TO REQUIRE A PARTICULAR PROPOSAL TO BE REFERRED FOR PRIOR MINISTERIAL CONSENT BEFORE THE LEASE, LICENCE OR OTHER ESTATE MAY BE GRANTED.

OTHER LESS SIGNIFICANT MEASURES TO ENHANCE TRANSPARENCY, ACCOUNTABILITY, AND PUBLIC PARTICIPATION IN RELATION TO LEASES, LICENCES , ETC., ARE DETAILED IN THE BILL.

THE BILL ALSO CONTAINS PROVISIONS TO CLOSE SOME LOOPHOLES WHICH HAVE BECOME APPARENT WITH REGARD TO ALIENATION OF COMMUNITY LAND. THESE ALLOW THE ALIENATION OF COMMUNITY LAND OTHERWISE THAN IN STRICT COMPLIANCE WITH THE PROVISIONS OF THE ACT RELATING TO THE GRANTING OF LEASES, LICENSES AND OTHER ESTATES.

BRIEFLY, THE BILL PROVIDES THAT ANY LEASE, ETC., FOR A TERM OF FIVE YEARS OR LESS THAT INCLUDES INCENTIVES FOR FUTURE COUNCILS TO RENEW IT UPON EXPIRY OF THE ORIGINAL TERM WILL BE REGARDED AS CONFERRING AN OPTION FOR RENEWAL FOR A TERM EQUAL TO THE FURTHER TERM. THIS WILL ENSURE THAT THE NEED FOR MINISTERIAL CONSENT TO SUCH A PROPOSAL, ON THE PREMISE THAT THE LEASE, ETC., IS ONLY FOR FIVE YEARS, CANNOT BE AVOIDED BY USE OF THAT DEVICE.

A SECOND LOOPHOLE ALLOWS ALIENATION OF COMMUNITY LAND OTHERWISE THAN BY WAY OF A LEASE OR LICENCE. AT PRESENT, A COUNCIL MAY INSTEAD ENTER INTO A MANAGEMENT ARRANGEMENT WITH SOME PERSON OR BODY THAT, IN EFFECT, ALLOWS EXCLUSIVE USE OF LAND OR A BUILDING. SUCH AN ARRANGEMENT IS NOT SUBJECT TO SPECIFIC STATUTORY CONTROLS. PROPOSED NEW SECTION 47D ACCORDINGLY PROHIBITS, WITH SOME EXCEPTIONS, ANY EXCLUSIVE USE OR OCCUPATION OF COMMUNITY LAND OTHERWISE THAN IN ACCORDANCE WITH A LEASE, LICENCE, OR ESTATE GRANTED IN ACCORDANCE WITH THE ACT.

APPROPRIATE TRANSITIONAL PROVISIONS ARE INCLUDED IN THE BILL TO REQUIRE EXISTING PLANS OF MANAGEMENT TO BE BROUGHT INTO COMPLIANCE WITH THE NEW PROVISIONS IN SOME CIRCUMSTANCES, TO ENABLE EXISTING LEASES, LICENCES AND OTHER MATTERS TO REMAIN IN PLACE, AT LEAST UNTIL THEIR DESIGNATED TERMINATION DATE, OR TO ALLOW A REASONABLE TIME FOR COMPLIANCE WITH THE NEW PROVISIONS.

I COMMEND THE BILL TO THE HOUSE.