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# Local Government Act 1993 No 30

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## Chapter 8

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### Chapter 8 What ancillary functions does a council have?

#### Part 1 Acquisition of land

##### 186 For what purposes may a council acquire land?

- (1) A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.
- (2) Without limiting subsection (1), a council may acquire:
  - (a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or
  - (b) land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.
- (3) However, if the land acquired is, before its acquisition, community land vested in a council, the acquisition does not discharge the land from any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land or any part of the land immediately before that acquisition.

##### 187 How does a council acquire land?

- (1) Land that a council is authorised to acquire under this Part may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) A council may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the Minister.

##### 188 Restriction on compulsory acquisition of land for re-sale

- (1) A council may not acquire land under this Part by compulsory process without the approval of the owner of the land if it is being acquired for the purpose of re-sale.
- (2) However, the owner's approval is not required if:
  - (a) the land forms part of, or adjoins or lies in the vicinity of, other land acquired at

the same time under this Part for a purpose other than the purpose of re-sale, or

(b) the owner of the land cannot be identified after diligent inquiry has been made and at least 6 months has elapsed since that inquiry was made.

(3) For the purposes of subsection (2) (b), **diligent inquiry** has the meaning given by the regulations, and includes the giving of notice of the proposed acquisition to the New South Wales Aboriginal Land Council and to the relevant Local Aboriginal Land Council.

### **189 No restriction as to area**

Land may be acquired by a council under this Part even if it lies wholly or partly outside the council's area.

### **190 Special provisions relating to land containing minerals**

Division 4 of Part 8 of the [Public Works Act 1912](#) applies to a council and land acquired by a council in the same way as that Division applies to a Constructing Authority and land acquired by a Constructing Authority.

## **Part 2 Entry on to land and other powers**

### **191 Power of entry**

- (1) For the purpose of enabling a council to exercise its functions, a council employee (or other person) authorised by a council may enter any premises.
- (2) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

### **191A Power of entry—construction and maintenance of water supply, sewerage and stormwater drainage works**

- (1) Without limiting section 191, a council employee (or other person) authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises (being work that the council is authorised by this or any other Act to carry out).
- (2) Subsection (1) does not apply to premises that comprise a National Parks and Wildlife reserve.

### **192 Inspections and investigations**

For the purpose of enabling a council to exercise its functions, a person authorised to enter premises under this Part may:

- (a) inspect the premises and any food, vehicle, article, matter or thing on the premises, and

- (b) for the purpose of an inspection:
  - (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
  - (ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act or the regulations, and
- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and
- (e) examine and test any meter, and
- (f) measure a supply of water, and
- (g) take samples or photographs in connection with any inspection.

### **193 Notice of entry**

- (1) Before a person authorised to enter premises under this Part does so, the council must give the owner or occupier of the premises written notice of the intention to enter the premises.
- (2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or
  - (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
  - (c) if entry is required urgently and the case is one in which the general manager has authorised in writing (either generally or in the particular case) entry without notice, or
  - (d) if entry is made solely for the purpose of reading a meter or other device for measuring:
    - (i) the supply of water to the premises from the council's water mains, or
    - (ii) the discharge of sewage or other waste matter from the premises into the

council's sewer mains.

#### **194 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Part, but only if authorised by the council in accordance with this section.
- (2) The authority of the council:
  - (a) must be in writing, and
  - (b) must be given in respect of the particular entry concerned, and
  - (c) must specify the circumstances which are required to exist before force may be used.

#### **195 Notification of use of force or urgent entry**

- (1) A person authorised to enter premises under this Part who:
  - (a) uses force for the purpose of gaining entry to the premises, or
  - (b) enters the premises in an emergency without giving written notice to the owner or occupier,must promptly advise the council.
- (2) The council must give notice of the entry to such persons or authorities as appear to the council to be appropriate in the circumstances.

#### **196 Care to be taken**

- (1) In the exercise of a function under this Part, a person authorised to enter premises must do as little damage as possible. The council must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.
- (2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.
- (3) If, in the exercise of a function under this Part, any pit, trench, hole or bore is made, the council must, if the owner or occupier of the premises so requires:
  - (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and
  - (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

### **197 Recovery of cost of entry and inspection**

If a person authorised by a council enters any premises under this Part for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council, the council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

### **198 Compensation**

A council must pay compensation for any damage caused by any person authorised by the council under this Part to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act.

**Note—**

Section 730 provides for the resolution of claims for compensation under this section in cases of dispute between the person claiming the compensation and the council.

### **199 Authority to enter premises**

- (1) A power conferred by this Part to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority which is issued by the council and which:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and
  - (f) bears the signature of the general manager.
- (3) This section does not apply to a power conferred by a search warrant.

### **200 In what circumstances can entry be made to a residence?**

The powers of entry and inspection conferred by this Part are not exercisable in relation to that part of any premises being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises, or
- (b) if entry is necessary for the purpose of inspecting work being carried out under an

approval, or

- (c) under the authority conferred by a search warrant.

## **201 Search warrants**

- (1) An authorised person may apply to an authorised officer if the authorised person has reasonable grounds for believing that the provisions of this Act or the regulations or the terms of an approval or order under this Act have been or are being contravened in or on any premises.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations or the terms of an approval or order.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#), a police officer:
  - (a) may accompany an authorised person executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised person in the exercise of the person's functions under this section.

- (5) In this section:

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

## **202, 203 (Repealed)**