

# LAKE ILLAWARRA AUTHORITY ACT 1987 No. 285

NEW SOUTH WALES



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**LAKE ILLAWARRA AUTHORITY ACT 1987 No. 285**

NEW SOUTH WALES



**Act No. 285, 1987**

An Act to constitute the Lake Illawarra Authority for the purpose of improving the environment of Lake Illawarra, its foreshores and environs; and for related purposes. [Assented to 16 December 1987]

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**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Lake Illawarra Authority Act 1987.

**Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

**Effect of other Acts**

3. To the extent that this Act is inconsistent with other Acts (the Clean Waters Act 1970, the State Pollution Control Commission Act 1970 and the Environmentally Hazardous Chemicals Act 1985 excepted) this Act prevails.

**Act binds the Crown**

4. (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**Interpretation**

5. (1) In this Act—

“Authority” means the Lake Illawarra Authority constituted by this Act;

“Chairperson” means the Chairperson of the Authority;

“development area” means the land described in Schedule 1, as extended or restricted under section 24;

“development works” means the works described in Schedule 2 and any additional works declared by the regulations to be development works for the purposes of this Act;

“Executive Officer” means the Executive Officer of the Authority;

“member” means a member of the Authority;

“public authority” means any public or local authority constituted by an Act other than this Act.

- (2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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(3) If the development area is extended under section 24, a reference in this Act (section 2 excepted) to the commencement of this Act shall, in relation to the additional area, be treated as a reference to the commencement of the day on which the notification extending the development area was published in the Gazette.

**PART 2—CONSTITUTION OF THE LAKE ILLAWARRA  
AUTHORITY**

**The Authority**

6. (1) There is constituted by this Act a corporation under the corporate name "Lake Illawarra Authority".

(2) The Authority—

- (a) has the functions conferred or imposed on it by or under this or any other Act;
- (b) is, for the purposes of any Act, a statutory body representing the Crown; and
- (c) is, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), subject to the control and direction of the Minister.

(3) The Authority shall consist of 7 part-time members appointed by the Minister.

(4) Of the members—

- (a) 1 shall be appointed from a panel of 3 persons nominated by the Wollongong City Council;
- (b) 1 shall be appointed from a panel of 3 persons nominated by the Shellharbour Municipal Council; and
- (c) 1 of the other 5 members shall, in and by the instrument by which the member is appointed (or by another instrument signed by the Minister), be appointed as the Chairperson of the Authority.

(5) If nominations for the purposes of subsection (4) (a) or (b) are not made in the manner and within the time notified by the Minister to the nominating body, the Minister may appoint a member who shall be deemed to have been duly nominated by the body.

(6) Schedule 3 has effect with respect to the members.

(7) Schedule 4 has effect with respect to the procedure of the Authority.

**Staff of Authority**

7. (1) The Authority may—

- (a) with the approval of the Minister; and

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- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(2) An officer of the Public Works Department nominated by the Director of that Department shall be the Executive Officer of the Authority.

**Functions of Executive Officer**

**8. The Executive Officer—**

- (a) is responsible, as the chief executive of the Authority, for the management of the affairs of the Authority subject to and in accordance with any directions of the Authority; and
- (b) has such other functions as are conferred or imposed on the Executive Officer by or under this or any other Act.

**Advisory committees**

9. (1) The Authority may establish advisory committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of an advisory committee are not members of the Authority.

(3) The procedure for the calling of meetings of an advisory committee and for the conduct of business at those meetings shall be as determined by the Authority or (subject to any determination of the Authority) by the committee.

**PART 3—FUNCTIONS OF THE AUTHORITY**

**Functions of the Authority—generally**

10. (1) The Authority shall carry out the development works or cause them to be carried out.

(2) For the purpose of carrying out the development works, the Authority may do all things, including entering into contracts, as it may consider necessary.

(3) Nothing in this section prevents the lawful extraction of sand or other material pursuant to rights accrued before the commencement of this Act.

**Application of Public Works Act 1912**

11. (1) The development works shall be deemed to be an authorised work, within the meaning of the Public Works Act 1912, but Part IX (Special provisions relating to railways) of that Act does not apply to or in respect of the development works.

(2) For the purposes of the development works, the Minister shall be the Constructing Authority, within the meaning of the Public Works Act 1912.

(3) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of expenditure on any works carried out or constructed in pursuance of this section.

(4) Without limiting the generality of this section, section 38 of the Public Works Act 1912 applies to and in respect of any contract made under this Act.

#### **Agreements for extractive operations**

12. The Authority may enter into, and give effect to, agreements for the extraction from the development area of sand or other material.

#### **Leases and licences**

13. The Authority may grant leases of, or licences with respect to, any part of the development area—

- (a) for the conduct of a commercial activity such as a restaurant, kiosk or boatshed;
- (b) for the extraction of sand or other material; and
- (c) for any other prescribed purpose, whether of a similar or different nature.

#### **Certain work etc. requires consent of Authority**

14. (1) A work shall not be carried out within the development area, a structure shall not be constructed or erected within the development area, and a work or structure within the development area shall not be altered, without the written consent of the Authority.

(2) Application for the consent of the Authority under this section may not be made unless all other consents or approvals required by or under any other Act for the carrying out, construction, erection or alteration of the work or structure to which the application relates have been obtained.

(3) The Authority may, after investigating an application for its consent under this section—

- (a) refuse to grant the application;
- (b) grant the application unconditionally; or
- (c) grant the application subject to such limitations and conditions as it thinks fit.

(4) This section does not apply with respect to the carrying out of the development works by the Authority.

*Lake Illawarra Authority 1987***Unauthorised works or structures**

15. (1) If any work or structure has been, or is being, carried out, constructed, erected or altered on land in contravention of section 14 or otherwise than in accordance with any limitations or conditions imposed by the Authority when giving its consent under that section, a person authorised by the Authority for the purpose may enter the land and may—

- (a) demolish the work or structure; or
- (b) alter the work or structure in such manner as the Authority directs.

(2) The cost of any such demolition or alteration may be recovered from the owner or occupier of the land on which the work or structure was, or was being, carried out or erected in any court of competent jurisdiction as a debt due to the Crown.

**Appeals**

16. (1) An applicant for a consent under section 14 who is aggrieved—

- (a) by any decision of the Authority on the application; or
- (b) by any neglect or delay by the Authority to give, within 40 days after the application was lodged with the Authority, a decision with respect to it,

may appeal to the Land and Environment Court within the prescribed time or such longer period as that Court may in special circumstances allow.

(2) In this section—

“prescribed time” means the period of 12 months commencing—

- (a) when the applicant receives notice of the decision appealed against; or
- (b) where appropriate—when the period of 40 days after the application was lodged with the Authority expires.

**PART 4—VESTING, ACQUISITION AND DISPOSAL OF LAND****Vesting of the development area in the Authority**

17. (1) On the commencement of this Act, the land within the development area is vested in the Authority for an estate in fee simple.

(2) Land vested in the Authority by this section is—

- (a) except as provided by paragraph (b), freed and discharged from any trusts and other interests affecting it before the commencement of this Act; and
- (b) vested in the Authority subject to any lease, licence or other right of occupancy (being a right of occupancy created under the Crown Lands Consolidation Act 1913) which affected the land immediately before that commencement.

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- (3) The only land that is vested in the Authority by this section is—
- (a) Crown land, within the meaning of the Crown Lands Consolidation Act 1913;
  - (b) land held on behalf of the Crown by a Minister;
  - (c) land held by a Constructing Authority, within the meaning of the Public Works Act 1912;
  - (d) land held by the corporation constituted by the Environmental Planning and Assessment Act 1979; and
  - (e) land held by a council, within the meaning of the Local Government Act 1919.

(4) Land vested in the Authority by this section is limited to a depth of 20 metres below Australian Height Datum.

(5) The Authority shall not be required to pay, by way of compensation or otherwise, any amount to the Crown, or to any person or public authority, in respect of the vesting of land by this section.

**Acquisition by appropriation or resumption**

18. Any land, and any estate or interest in land, required for the purposes of this Act may be acquired by appropriation or resumption under the Public Works Act 1912 as if—

- (a) the development works were an authorised work within the meaning of that Act;
- (b) the Minister were the Constructing Authority within the meaning of that Act; and
- (c) sections 34, 35, 36 and 37 of that Act had been repealed.

**Certain land vested in the Authority may become Crown land**

19. (1) The Authority may, by notification published in the Gazette, declare that specified land which is vested in the Authority is Crown land within the meaning of the Crown Lands Consolidation Act 1913.

(2) On the publication of a notification under this section, the land specified in the notification is divested from the Authority and becomes Crown land within the meaning of the Crown Lands Consolidation Act 1913.

(3) This section does not apply to land which was held by a council, within the meaning of the Local Government Act 1919, immediately before it was vested in the Authority.

**Return of land to council**

20. (1) The Authority may, by notification published in the Gazette, declare that specified land—

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- (a) which is vested in the Authority; and
- (b) which was held by a council, within the meaning of the Local Government Act 1919, immediately before it was so vested,

is revested in the council.

(2) On the publication of a notification under this section, the land specified in the notification is divested from the Authority and vests in the council for its former estate or interest.

**Rents and profits of vested land**

21. If land is vested in the Authority under this Act, the Authority, or any other person nominated by the Authority for the purpose, is entitled to the rents and profits in respect of the land and no attornment by a lessee to the Authority is necessary.

**PART 5—FINANCIAL PROVISIONS****Staging and financing of development works**

22. (1) The Authority must carry out the development works in stages approved by the Minister.

(2) The Authority may refuse to carry out a stage of the development works if financial arrangements satisfactory to the Minister have not been made between—

- (a) the Authority; and
- (b) the Wollongong City Council or the Shellharbour Municipal Council, or both,

for payment of the cost of carrying out the stage and for payment of a contribution (approved by the Minister) towards the administrative expenses of the Authority.

**Financial year**

23. (1) The financial year of the Authority is the year commencing on 1 April.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**PART 6—GENERAL****Extension or restriction of development area**

24. The Governor may, by notification published in the Gazette, amend Schedule 1 to extend or restrict the development area whether or not all the land in the development area is, after the extension or restriction, contiguous land.

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**Authority may take over certain agreements**

**25. (1)** Where there is in force an agreement between a public authority and any other person with respect to the extraction of sand or other material from within the development area, the Authority may serve notice in writing on that public authority and that other person to the effect that, on and from a day specified in the notice, the Authority is entitled to the benefits, will exercise the rights and will discharge the obligations, of the public authority under the agreement.

**(2)** On and from the day specified in a notice under subsection (1) the agreement to which the notice relates has effect as if it had been entered into with the Authority instead of with the public authority upon which the notice was served.

**(3)** Subsection (2) does not operate to prejudice or affect any consent or approval given by a public authority under or in consideration of an agreement to which a notice under subsection (1) relates.

**(4)** If, under an agreement to which a notice under subsection (1) relates, money is held by a public authority to secure due performance of the agreement—

- (a)** the public authority shall pay the money to the Authority or to any other person nominated by the Authority for the purpose; and
- (b)** the Authority or the other person shall hold the money on the same terms and conditions as those on which it was held by the public authority.

**(5)** The Authority may enter into an agreement in substitution for, or varying the terms and conditions of, an agreement to which a notice under subsection (1) relates.

**(6)** If the Authority, by notice in writing served upon a public authority requires the public authority to do so, the public authority shall, within the time specified in the notice—

- (a)** provide the Authority with a copy of any agreement referred to in subsection (1) and a copy of any document that relates to the agreement and is in the possession or custody of the public authority; and
- (b)** provide the Authority with such information relating to the operation of the agreement and those related documents as is specified in the notice and is in the possession of the public authority.

whether or not the Authority has served a notice under subsection (1) in respect of the agreement.

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**Application of Environmental Planning and Assessment Act 1979**

26. (1) The carrying out of any of the development works is an activity for the purposes of Part V (Environmental assessment) of the Environmental Planning and Assessment Act 1979 and the Authority is a determining authority for those purposes.

(2) Because of subsection (1), a consent under Part IV (Environmental planning control) of the Environmental Planning and Assessment Act 1979 is not required for the carrying out of any of the development works.

(3) Nothing in this section affects the application of the Environmental Planning and Assessment Act 1979 to the carrying out, within the development area, of any development (within the meaning of that Act) that is not development work (within the meaning of this Act).

**PART 7—MISCELLANEOUS****Disclosure of information**

27. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act;
- (c) for the purposes of any legal proceedings or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Penalty: 20 penalty units or imprisonment for 6 months, or both.

**Delegation by Authority and Executive Officer**

28. (1) The Authority may delegate to a person any of its functions, other than this power of delegation.

(2) The Executive Officer may delegate to a person any of the functions delegated to the Executive Officer by the Authority subject to any conditions to which the delegation to the Executive Officer is subject.

**Service of documents**

29. (1) A document may be served on the Authority by leaving it at, or by sending it by post to—

- (a) the office of the Authority; or
- (b) if it has more than one office—any one of its offices.

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(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

**Recovery of charges etc. by Authority and others**

30. Any charge, fee or other money due to the Authority or to any other person nominated by the Authority may be recovered by the Authority or the other person, as the case may be, as a debt in a court of competent jurisdiction.

**Proof of certain matters not required**

31. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Authority;
- (b) any resolution of the Authority;
- (c) the appointment of, or the holding of office by, any member; or
- (d) the presence or nature of a quorum at any meeting of the Authority.

**Regulations**

32. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the use and custody of the common seal of the Authority; and
- (b) the use of the development area.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**Proceedings for offences**

33. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Amendment of Act No. 204, 1979**

34. The Land and Environment Court Act 1979 is amended by inserting after section 18 (c) the following paragraph:

- (c1) appeals under section 16 of the Lake Illawarra Authority Act 1987;
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*Lake Illawarra Authority 1987***SCHEDULE 1—DEVELOPMENT AREA**

(Sec. 5 (1))

Land within the Parishes of Terragong, Wollongong, Calderwood and Kembla in the County of Camden, and within the City of Wollongong and Municipality of Shellharbour, bounded by the mean high water mark of Lake Illawarra and bounded at the entrance of that Lake—

- (a) by a straight line (bearing generally easterly) from the easternmost point of that mean high water mark in Pur Pur Bay to the westernmost point of Windang Island; and
- (b) from that westernmost point, by a straight line (bearing generally north-westerly) to the nearest point of that mean high water mark directly west of the southernmost extremity of the surf club situated on Berrwarra Point,

including all named bays, all islands (other than those reserved or dedicated under any Act) and all structures situated in that Lake, but excluding creeks, rivulets and inlets, the bridge and roadway between Windang and Warilla (including the causeway and supporting structures) and land vested in the Electricity Commission of New South Wales.

**SCHEDULE 2—DEVELOPMENT WORKS**

(Sec. 5 (1))

The improvement of Lake Illawarra and its foreshores and immediate environs, including—

- (a) the removal of ooze, silt, sand, sediment, algae and weed growth;
- (b) the deepening of channels and bays and disposal of spoil;
- (c) the construction of silt traps and nutrient filters at entry points of streams and drains;
- (d) the landscaping of foreshores, including the planting and removal of trees and other vegetation;
- (e) the provision of recreational facilities and amenities, including beaches, boat ramps, boatsheds, jetties, wharves, moorings and appropriately screened car parks; and
- (f) the carrying out of land reclamation and works for the protection of the environment.

**SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE AUTHORITY**

(Sec. 6 (6))

**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of a member.

**Chairperson of Authority**

2. (1) The Minister may remove a member from the office of Chairperson at any time.

- (2) A person vacates the office of Chairperson if the person—
  - (a) is removed from that office by the Minister;

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 SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE  
 AUTHORITY—*continued*

- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Acting members and acting Chairperson**

3. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and shall be deemed to be a member.

(2) The Minister may, from time to time, appoint a member to act in the office of Chairperson of the Authority during the illness or absence of the Chairperson, and the member, while so acting, has all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson shall be regarded as an absence from office of the member or Chairperson.

**Terms of office**

4. Subject to this Schedule, a member shall hold office for such period not exceeding 2 years as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

**Vacancy in office of member**

6. (1) The office of a member becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns the office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this clause;
- (e) reaches the age of 70 years;
- (f) is absent from 4 consecutive meetings of the Authority of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings;

*Lake Illawarra Authority 1987*SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE  
AUTHORITY—*continued*

- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove from office a member who contravenes clause 8.

**Filling of vacancy in office of member**

7. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Disclosure of pecuniary interests**

8. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter being considered or about to be considered at a meeting of the Authority; or
- (b) in a thing being done or about to be done by the Authority,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure by a member at a meeting of the Authority that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Authority shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Authority from time to time.

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**SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE  
AUTHORITY—*continued***

(4) After a member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Authority, or take part in any decision of the Authority, with respect to that matter; or
- (b) exercise any function under this Act with respect to that thing.

(5) A contravention of this clause does not invalidate any decision of the Authority or the exercise of any function under this Act.

(6) A reference in this clause to a meeting of the Authority includes a reference to a meeting of a committee of the Authority.

**Liability of members etc.**

9. No matter or thing done by the Authority, any member or any person acting under the direction of the Authority shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

**SCHEDULE 4—PROVISIONS RELATING TO PROCEDURE OF THE  
AUTHORITY**

(Sec. 6 (7))

**General procedure**

1. The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Authority.

**Quorum**

2. The quorum for a meeting of the Authority is 4 members.

**Presiding member**

3. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Authority.

(2) The person presiding at any meeting of the Authority has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 4—PROVISIONS RELATING TO PROCEDURE OF THE  
AUTHORITY—*continued***Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

**Minutes**

5. The Authority must cause full and accurate minutes to be kept of the proceedings of each meeting of the Authority.