

Local Government (Building and Miscellaneous Provisions) Act 1993

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Division 5 - Amendments of sealed plans

103. Amendment of sealed plans

- (1) When a plan has taken effect, it may be amended by the council –
 - (a) of its own motion –
 - (i) to do anything that the council could do under any other power subject to any conditions precedent to the exercise of the power relied on; or
 - (ii) to bring the plan into conformity with any change in the rights and duties of land owners made under a statutory power; or
 - (b) on the application of any person having an interest in land subject to the plan.
- (2) If a council acts on its own motion, it is to serve a notice in writing to all persons appearing by the registers under the Land Titles Act 1980 and the Registration of Deeds Act 1935 to have an estate or interest at law affected by the proposed amendment.
- (3) A person is to –
 - (a) make an application under subsection (1) by petition; and
 - (b) serve a copy of the petition on all persons appearing by the registers under the Land Titles Act 1980 and the Registration of Deeds Act 1935 to have an estate or interest at law affected by the proposed amendment.
- (4) Any person affected by the proposed amendment may ask to be heard in support or opposition.
- (5) If a notice is not given or a petition is not served as required by this section, subsequent proceedings are not void.

104. Hearing in respect of amendment of plans

- (1) At the end of 28 days after the last notice is served or the last petition is served as required by section 103 (2) or (3), the council –
 - (a) may, if no person has asked to be heard in opposition, cause the amendment to be made; or
 - (b) if a person has asked to be heard, is to appoint a day for hearing any petitioner and those persons who have asked to be heard.
- (2) A hearing is to be by the council or a council committee who may –
 - (a) hear persons who have asked to be heard after the period referred to in subsection (1); and
 - (b) obtain the assistance of legal practitioners, architects, engineers and surveyors.
- (3) On the conclusion of the hearing, the council may –
 - (a) cause the amendment to be made with or without modification; and
 - (b) require as a condition of so doing that any person who benefits the amendment is to make compensation in money or land to a person who is injured by it.
- (4) The council may, with the consent of all persons concerned, act as provided in subsection (3).
- (5) The Recorder of Titles may call in and cancel or correct any certificate of title affected by amendments.

105. Compensation in respect of amendments

- (1) Subject to subsection (2), a person adversely affected by an amendment is entitled to compensation by the council if –

(a) having asked to be heard under section 103 (4) , the person gave the council notice of the claim at or before the hearing; or

(b) within 60 days of having been served a notice or petition under section 103 (2) or (3) , the person gave the council notice of the claim; or

(c) not having been given notice or served a petition, the person gave the council notice of the claim within 60 days of learning that he or she was affected by the amendment.

(2) If compensation is payable under subsection (1) , the council may recover against the petitioner and any person heard or asking to be heard in support of the amendment to the extent to which they benefited by the amendment.

105A. Amendments to sealed plans sealed under *Local Government Act 1962*

Sections 103 and 104 apply to sealed plans that have taken effect under section 464 of the Local Government Act 1962 as if they were sealed plans made under this Act.

105B. Validation of amendments to certain sealed plans

Amendments made in accordance with sections 103 and 104 to plans sealed under the *Local Government Act 1962* are valid and effectual only to the extent that the amendments were made in accordance with the powers conferred on a council under those sections in respect of plans sealed under this Act.