



New South Wales

Environmental Planning and Assessment Legislation Amendment Act 1997 No 81

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Environmental Planning and Assessment Legislation Amendment Act 1997 No 81

Act No 81, 1997

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Land and Environment Court Act 1979* in relation to the validity of certain development consents; and for other purposes. [Assented to 10 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

advertised development means development (not being designated development) to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90 apply by virtue of an environmental planning instrument, as referred to in section 30 (4).

[2] Sections 1048–104D

Insert after section 104A:

1048 Non-compliance with certain provisions regarding certain development consents

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section.
- (2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which this section applies are as follows:
 - (a) A requirement that a development application to carry out designated development and its accompanying documents be publicly exhibited for the minimum period of time.
 - (b) A requirement that a development application to carry out advertised development and its accompanying documents be publicly exhibited for the minimum period of time.

104C Revocation or regrant of development consents after order of Court

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section, being a development consent to which an order of suspension under section 25B of the *Land and Environment Court Act 1979* applies.
- (2) The Minister may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with.
- (3) However, if the terms imposed by the Court have been substantially complied with, the Minister may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the Minister thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a **regrant** of the consent.
- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.
- (5) Section 92 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

104D Appeals and other provisions relating to development consents after order of Court

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and

- (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
 - (b) takes effect from the date of the declaration or another date specified by the Court.

[3] Section 124 Orders of the Court

Insert after section 124 (4):

- (5) Nothing in this section affects the provisions of Division 3 of Part 3 of the *Land and Environment Court Act 1979*.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

Part 3, Division 3

Insert after Division 2 of Part 3:

Division 3 Orders of conditional validity for certain development consents

25A Application of Division

- (1) This Division applies to a development consent granted, or purporting to be granted, by the Minister under the *Environmental Planning and Assessment Act 1979* whether before or after the commencement of this Division.
- (2) This Division extends to invalidity arising from any steps preliminary to the granting of a development consent to which this Division applies, whether those steps were taken, or should have been taken, by the Minister or by any other person or body.
- (3) In particular, this Division extends to invalidity arising from non-compliance with requirements declared to be mandatory requirements under section 104B of the *Environmental Planning and Assessment Act 1979*.
- (4) A reference in this Division to the Minister is a reference to the Minister responsible for the administration of the *Environmental Planning and Assessment Act 1979*.

25B Orders for conditional validity of development consents

- (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
 - (a) suspending the operation of the consent in whole or in part, and
 - (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).

- (2) Terms may include (without limitation):
- (a) terms requiring the carrying out again of steps already carried out, or
 - (b) terms requiring the carrying out of steps not already commenced or carried out, or
 - (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.

25C Orders for validity of development consents

- (1) On application by the Minister for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order:
- (a) declaring that the terms have been substantially complied with, and
 - (b) declaring that the consent is valid, and
 - (c) revoking the order of suspension.
- (2) On application by the Minister for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 104C of the *Environmental Planning and Assessment Act 1979*, the Court may make an order:
- (a) declaring that the terms have been complied with, and
 - (b) declaring that the development consent has been validly regranted, and
 - (c) declaring that the suspended development consent has been revoked, and
 - (d) revoking the order of suspension.

25D Power to grant another development consent

Nothing in this Division prevents the grant of another development consent in relation to the same matter, during or after the period of suspension, pursuant to a development application duly made.

25E Duty of Court

It is the duty of the Court to consider making an order under this Division instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part.

[Minister's second reading speech made in –
Legislative Assembly on 28 May 1997
Legislative Council on 19 June 1997]