

Act 1994 No. 29

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) BILL 1994\***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Environmental Planning and Assessment Act 1979:

- (a) to define the extent to which the Director of Planning is obliged to consult with councils and others in the preparation of a draft regional environmental plan; and
- (b) to make it clear that a consent authority may contemporaneously consider a development application and a proposed amendment to an environmental planning instrument; and
- (c) to limit the discretion of a consent authority in determining a development application in so far as the proposed development complies with development standards that are identified in the relevant environmental planning instrument as being non-discretionary development standards; and
- (d) to enable a consent authority to impose performance-based conditions of a development consent; and
- (e) to make further provision for the determination of development applications made by or on behalf of the Crown; and
- (f) to enable the making of regulations under that Act of a savings or transitional nature consequent on its amendment.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** gives effect to the Schedule of amendments to the Principal Act.

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\* Amended in committee—see table at end of volume.

## **SCHEDULE 1—AMENDMENTS**

### **Consultation concerning draft regional environmental plans**

**Schedule 1 (1)** amends section 45 to specify the extent to which the Director of Planning is obliged to consult with councils and others in the preparation of a draft regional environmental plan. The Director will be required to provide specified information to them, they will have the opportunity to comment to the Director on the preparation of the environmental study or draft regional plan within 40 days after the information is provided to them and the Director will be required to consider any comments so made.

### **Instrument amendments and development applications**

**Schedule 1 (2)** inserts proposed Division 4B (sections 721–72M) into Part 3 of the Principal Act. The purpose of the proposed Division is to make it clear that a consent authority may contemporaneously consider a development application and a proposed amendment to an environmental planning instrument.

The proposed Division contains the following provisions:

Proposed section 721 provides for the application of the proposed Division.

Proposed section 727 makes it clear that a consent authority is not precluded from dealing with a development application pending the amendment of an environmental planning instrument which, when amended, would enable the development to be carried out.

Proposed section 72K requires the development application and the proposed environmental planning instrument to both be publicised in the one notice.

Proposed section 72L will enable an environmental impact statement prepared for a development application to serve, if appropriate, as an environmental study for the proposed environmental planning instrument.

Proposed section 72M will enable the same Commission of Inquiry to inquire into the development and the amendment of the environmental planning instrument.

### **Non-discretionary development standards**

**Schedule 1 (3)** inserts proposed section 90A into the Principal Act. The proposed section will enable development standards in an environmental planning instrument to be identified in the instrument as non-discretionary development standards. If development the subject of a development application complies with a development standard so identified, the consent authority has no discretion under sections 90 and 91 of the Principal Act to give further consideration to the development standard, to refuse the application on the ground of non-compliance with the development standard or to impose conditions more onerous than the development standard.

### **Performance-based conditions of consent**

**Schedule 1 (4)** amends section 91 to enable a condition subject to which a development consent is granted to be expressed in terms of the outcome or objective to be achieved without specifying any particular means by which the outcome or objective is to be achieved.

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**Development applications by or on behalf of the Crown**

**Schedule 1 (5)** substitutes section 91A to clarify the procedure by which development applications made by or on behalf of the Crown are to be determined if the consent authority wishes to impose conditions of consent or to refuse consent to the application.

**Savings and transitional provisions**

**Schedule 1 (6) and (7)** contain savings and transitional provisions consequent on the enactment of the proposed Act and make amendments to the Principal Act that will facilitate the making of provisions of that kind as a consequence of future amendments to the Principal Act.

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