

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1989**

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 authorise the making of a development application contemporaneously with an application for the preparation of a draft local environmental plan so as to enable the carrying out of certain development that could not otherwise be carried out; and
- (b) to provide for the determination of such an application.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) inserts a new Division 4A into Part 3 of the Principal Act. The proposed Division contains sections 72A–72H.

Making of application

Proposed section 72A provides for the making of an application to a council for the preparation of a local environmental plan to permit the carrying out, with the consent of the council, of certain development which otherwise could not be carried out. The development which may be the subject of such an application is development prescribed by the regulations which is proposed to be carried out on land prescribed by the regulations. The application must be accompanied by a development application in respect of the development.

Environmental Planning and Assessment (Amendment) 1989

Preparation of local environmental plan and advertising of development application

Proposed section 72B provides that the council must prepare a draft local environmental plan, in terms determined by the Minister, to enable the development the subject of the application to be carried out with the council's consent. The council must advertise the draft plan and the accompanying development application and the public may make submissions to the council about the plan and the application.

Consideration and making of plan

Proposed section 72C provides that, after considering submissions and any matters prescribed by the regulations, the council shall decide whether or not the draft plan should be made. If it decides that the draft plan should be made, the council shall submit the draft plan to the Director who shall arrange for the plan to be published in the Gazette. The plan takes effect from the date of its publication.

Determination of development application by council

Proposed section 72D provides that, if the council decides that the draft plan should be made, it shall determine the development application as if the development the subject of the application was permissible development. If the council decides that the draft plan should not be made, the council shall refuse the application. If the council makes no decision about the making of the plan or otherwise does not determine the development application within the time limits specified in section 96, the development application will be taken to have been refused and the applicant may appeal to the Land and Environment Court.

Appeals

Proposed section 72E provides that if the applicant appeals to the Land and Environment Court against a decision by the council to refuse the application, or to attach conditions to its consent, each person who made a submission in respect of the application shall be given notice of the appeal and shall be entitled to be heard at the hearing. It also provides that the Court shall make its decision on any appeal (whether by the applicant or by an objector) as if the draft plan were in force.

Making of local environmental plan following decision of Court

Proposed section 72F provides that if the decision of the Court on an appeal has the effect of granting consent to the development, the registrar of the Court shall notify the Director accordingly. The Director shall then arrange for the draft local environmental plan associated with the development application to be published in the Gazette if this has not already been done.

Date from which consent operates

Proposed section 72G provides that a consent under the new Division (whether by the council or the Court) shall be treated as if it were a consent granted in the normal manner under Division 1 of Part 4 but generally shall operate from the date on which the draft plan associated with the application is published in the Gazette.

Application of Divisions 1 and 5 and Part 4

Proposed section 72H provides that certain other provisions of the Principal Act concerning local environmental plans and development applications shall apply to plans and applications prepared and made under the proposed new Division.

Schedule 1 (2) and (4) make amendments to sections 99 and 106 as a consequence of the new Division.

Environmental Planning and Assessment (Amendment) 1989

Schedule 1 (3) amends section 102 (Amendment of consents). Section 102 (2) currently provides that a development consent to carry out designated development cannot be modified unless the consent authority first considers the views of those who made submissions concerning the original development application. The proposed amendment extends that provision so that it applies not only to designated development but to all development which is required to be advertised as if it were designated development.
