

[Act 2002 No 76]



New South Wales

Land and Environment Court Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Land and Environment Court Act 1979*:
 - (i) to facilitate the hearing of proceedings in Class 1 (environmental planning and protection appeals) of the jurisdiction of the Land and Environment Court (*the Court*) that are brought under section 97 of the *Environmental Planning and Assessment Act 1979* by making a distinction between matters that are to be dealt with by means of a conference presided over by a single Commissioner (an *on-site hearing matter*) and matters that are to be heard by the Court or by a panel consisting either of two or more Commissioners or of a Judge and one or more Commissioners (a *court hearing matter*), and

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

- (ii) to specify the arrangements by which on-site hearing matters and court hearing matters are to be dealt with, and
 - (iii) to enable the appointment of part-time Commissioners of the Court as well as full-time Commissioners and to broaden the qualifications for appointment as a Commissioner, and
 - (iv) to enable the Court to grant an easement as an ancillary order to the grant of development consent, and
- (b) to amend the *Environmental Planning and Assessment Act 1979*:
- (i) to enable an applicant for the review of a determination of a development application to make modifications to the development described in the original application, and
 - (ii) to enable the Court to modify a development consent granted by it, and
 - (iii) to enable a council to modify a development consent granted by the Court, and
- (c) to amend the *Statutory and Other Offices Remuneration Act 1975* by way of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Land and Environment Court Act 1979* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Statutory and Other Offices Remuneration Act 1975* set out in Schedule 3.

Schedule 1 Amendment of Land and Environment Court Act 1979

Hearing of proceedings in Class 1 (environmental planning and protection appeals) that are brought under section 97 of the Environmental Planning and Assessment Act 1979

In order to facilitate the hearing of proceedings in Class 1 of the Court's jurisdiction that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*, that is, appeals by applicants against the determination of development applications, **Schedule 1 [7]** (proposed section 34A) makes a distinction between on-site hearing matters and court hearing matters.

An on-site hearing matter comprises proceedings which the parties agree or, in the absence of agreement, the Registrar of the Court determines, involve proposed development that:

- (a) has an estimated value that is less than half the median sale price for the previous quarter for all dwellings in the relevant local government area, and
- (b) if carried out, would have little or no impact beyond neighbouring properties, and
- (c) does not involve any significant issue of public interest beyond any impact on neighbouring properties.

A court hearing matter is a matter that is not an on-site hearing matter.

The classification of a matter can be changed at any time before the matter is commenced to be dealt with.

Schedule 1 [1] makes a consequential amendment.

Arrangements for dealing with on-site hearing matters and court hearing matters

Schedule 1 [7] (proposed section 34B) contains the arrangements for dealing with on-site hearing matters. On-site hearing matters are to be dealt with by means of a conference presided over by a single Commissioner who, in dealing with the matter, exercises the functions of the Court. Generally, the conference is to be held on the site of the proposed development. The Commissioner may dispose of the matter at the conclusion of the conference and is to give reasons for his or her decision.

Schedule 1 [7] (proposed sections 34C and 34D) contains the arrangements for dealing with court hearing matters. Court hearing matters are to be dealt with by the Court or by a panel consisting either of two or more Commissioners or of a Judge and one or more Commissioners. A panel is to be constituted if the matter is a complex matter or the Chief Judge determines that it is appropriate to constitute a panel. A panel exercises the functions of the Court. Before disposing of a court hearing matter, a site inspection is to be made unless all the parties agree to dispense with an inspection.

Schedule 1 [6], [8] and [9] make consequential amendments.

Appointment of Commissioners

Schedule 1 [2] extends the list of qualifications for appointment as a Commissioner by adding the qualification of special knowledge of and experience in urban design or heritage.

Schedule 1 [3] enables the appointment of full-time and part-time Commissioners.

Schedule 1 [4] and **[11]–[16]** make consequential amendments.

Granting of easements

Schedule 1 [10] substitutes section 40 to enable the Court to grant an easement as an ancillary order to the grant of development consent by exercising the same powers as may be exercised by the Supreme Court under section 88K of the *Conveyancing Act 1919*.

Schedule 1 [17] provides that the substituted section extends to proceedings before the Court.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Applications for review of council determinations

Schedule 2 [2] provides that a council may not review its determination of a development application under section 82A of the *Environmental Planning and Assessment Act 1979* after the time for making an appeal under section 97 of that Act expires.

Schedule 2 [3] and **[4]** enable an applicant for review to make limited amendments to the development described in the original application. The amendments must be such that the council is satisfied that the development, as amended, is substantially the same as that described in the original application. In addition, the council may be required to advertise the request for the review and to consider any submissions made concerning the request.

Schedule 2 [1] makes a consequential amendment to enable a request for a review, with amendments, to be advertised in accordance with the provisions of a development control plan.

Modification by Court of development consent granted by it

Schedule 2 [5] extends the provisions of section 96 of the *Environmental Planning and Assessment Act 1979* to enable the Court to modify a consent granted by it.

Modification by council of development consent granted by Court

Schedule 2 [6] (proposed section 96AA) enables a council to modify a development consent granted by the Court. The council must be satisfied that the development as modified is substantially the same as that described in the original application. Other provisions, which parallel those in section 96, also apply.

A consequential amendment is made by **Schedule 1 [5]** to the *Land and Environment Court Act 1979* to provide that appeals against the determination of a council in these circumstances are to be dealt with in Class 1 of the Court's jurisdiction.

Savings and transitional provisions

Schedule 2 [7] enables the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of Statutory and Other Offices Remuneration Act 1975

Schedule 3 amends Schedule 2 (Public offices) to the *Statutory and Other Offices Remuneration Act 1975* by way of statute law revision to remove obsolete references to a Senior assessor or Assessor (under the *Land and Environment Court Act 1979*) and to replace them with references to a Senior Commissioner or Full-time Commissioner (under that Act).