



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
 - (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).



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New South Wales

Land and Environment Court Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Land and Environment Court Act 1979* with respect to the appointment and functions of Commissioners; to amend the *Environmental Planning and Assessment Act 1979* and the *Statutory and Other Offices Remuneration Act 1975*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Land and Environment Court Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Land and Environment Court Act 1979 No 204	7
The <i>Land and Environment Court Act 1979</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Environmental Planning and Assessment Act 1979 No 203	10 11
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 2.	12 13
5 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	14 15
The <i>Statutory and Other Offices Remuneration Act 1975</i> is amended as set out in Schedule 3.	16 17

Schedule 1	Amendment of Land and Environment Court Act 1979	1
		2
	(Section 3)	3
[1]	Section 4 Definitions	4
	Insert in section 4 (1) in appropriate order:	5
	<i>court hearing matter</i> —see section 34A (5).	6
	<i>on-site hearing matter</i> —see section 34A (3).	7
[2]	Section 12 Commissioners	8
	Insert at the end of section 12 (2) (g):	9
	, or	10
	(h) special knowledge of and experience in urban design or heritage.	11
		12
[3]	Section 12 (2A)	13
	Insert after section 12 (2):	14
	(2A) A person may be appointed as a full-time Commissioner or a part-time Commissioner.	15
		16
[4]	Section 12 (3)	17
	Insert “full-time” before “Commissioners”.	18
[5]	Section 17 Class 1—environmental planning and protection appeals	19
	Insert “96AA,” after “96,” in section 17 (d).	20
[6]	Section 34 Preliminary conferences	21
	Insert “(other than proceedings in Class 1 that are brought under section 97 of the <i>Environmental Planning and Assessment Act 1979</i>)” after “jurisdiction” in section 34 (1).	22
		23
		24

[7] Sections 34A–34D	1
Insert after section 34:	2
34A Class 1 proceedings under sec 97 of Environmental Planning and Assessment Act 1979	3 4
(1) This section applies to proceedings in Class 1 of the Court’s jurisdiction that are brought under section 97 of the <i>Environmental Planning and Assessment Act 1979</i> .	5 6 7
(2) If, in relation to proceedings to which this section applies, the parties agree, or, in the absence of any such agreement, the Registrar at the first or a subsequent callover determines, that the proceedings involve proposed development that:	8 9 10 11
(a) has an estimated value that is less than half the median sale price for the previous quarter for all dwellings in the local government area in which the development is proposed to be carried out, and	12 13 14 15
(b) if carried out, would have little or no impact beyond neighbouring properties, and	16 17
(c) does not involve any significant issue of public interest beyond any impact on neighbouring properties,	18 19
the proceedings are to be dealt with under section 34B, subject to subsection (6).	20 21
(3) Proceedings that are dealt with under section 34B are referred to in this Act as <i>on-site hearing matters</i> .	22 23
(4) Proceedings to which this section applies, other than those referred to in subsection (2), are to be dealt with under section 34C.	24 25 26
(5) Proceedings that are dealt with under section 34C are referred to in this Act as <i>court hearing matters</i> .	27 28
(6) At any time before proceedings to which this section applies commence to be dealt with under section 34B or 34C, the Court, on the application of a party or of its own motion, may determine that the proceedings are to be dealt with:	29 30 31 32
(a) under section 34C instead of under section 34B, or	33
(b) under section 34B instead of under section 34C.	34

34B	Arrangements for dealing with on-site hearing matters	1
(1)	Proceedings that are dealt with under this section are to be dealt with by means of a conference presided over by a single Commissioner.	2 3 4
(2)	The conference is to be held on the site of the proposed development, unless the Commissioner is of the opinion that:	5 6
(a)	it would be unfair to the interests of one or more of the parties to hold the conference there, or	7 8
(b)	the lack of facilities at that site make it impractical to hold the conference there.	9 10
(3)	The Commissioner may dispose of the proceedings with or without further hearing, at any time after the conclusion of the conference.	11 12 13
(4)	The Commissioner is to give reasons for his or her decision by means of:	14 15
(a)	a written statement issued at the conclusion of the hearing, or	16 17
(b)	an oral statement given at the conclusion of the hearing and recorded by means that can be reproduced.	18 19
(5)	The provisions of section 36 (2), (3), (5), (6) and (7) apply to the hearing and disposal of proceedings under this section in the same way as those provisions apply to the hearing and disposal of proceedings under that section by a single Commissioner.	20 21 22 23 24
34C	Arrangements for dealing with court hearing matters	25
(1)	Proceedings that are dealt with under this section are to be dealt with, at the direction of the Chief Judge:	26 27
(a)	by a Judge, or	28
(b)	by a single Commissioner, or	29
(c)	if, in the opinion of the Chief Judge, the hearing of the proceedings is likely to be lengthy, or if the proceedings involve a publicly controversial site, or a publicly controversial development, or if the proceedings involve a substantial number of issues, or if the Chief Judge is of the opinion that it is otherwise appropriate to do so, by a panel consisting of:	30 31 32 33 34 35 36

(i)	two or more Commissioners, or	1
(ii)	a Judge and one or more Commissioners.	2
(2)	The appointment of a person to a panel is to be made having regard to the relevance of the person's expertise and experience to the subject of the proceedings.	3 4 5
(3)	If a panel consists of two or more Commissioners, the provisions of section 36 (2)–(7) apply to the proceedings before the panel in the same way as those provisions apply to proceedings under section 36.	6 7 8 9
(4)	If a panel consists of a Judge and one or more Commissioners:	10
(a)	subject to this Act and the rules, the panel has and may exercise the functions of the Court, and	11 12
(b)	the Judge is to preside at the hearing of the proceedings before the panel, and	13 14
(c)	the Commissioner or Commissioners may advise and assist the Judge but are not to adjudicate on any matter before the panel, and	15 16 17
(d)	the provisions of section 37 (4) apply to the Judge who is a member of the panel in the same way as those provisions apply to a Judge before whom proceedings referred to in section 37 (1) or (2) are pending, and	18 19 20 21
(e)	the decision of the panel is taken to be the decision of the Court.	22 23
(5)	The provisions of section 36 (2), (3), (5), (6) and (7) apply to the hearing and disposal of proceedings under this section by a single Commissioner in the same way as those provisions apply to the hearing and disposal of proceedings under that section by a single Commissioner.	24 25 26 27 28
34D	Site inspections in court hearing matters	29
	Before disposing of a court hearing matter, the Court (or the persons exercising the functions of the Court) must make an inspection of the site of the proposed development, unless all the parties agree to dispense with an inspection.	30 31 32 33

[8] Section 36 Delegation to Commissioners	1
Insert “(other than proceedings in Class 1 that are brought under section 97 of the <i>Environmental Planning and Assessment Act 1979</i>)” after “jurisdiction” in section 36 (1).	2 3 4
[9] Section 37 Commissioners sitting with a Judge	5
Insert “(other than proceedings in Class 1 that are brought under section 97 of the <i>Environmental Planning and Assessment Act 1979</i>)” after “Judge” in section 37 (1).	6 7 8
[10] Section 40	9
Omit the section. Insert instead:	10
40 Additional powers of Court—provision of easements	11
(1) If the Court has determined to grant development consent on an appeal under section 97 of the <i>Environmental Planning and Assessment Act 1979</i> , the appellant may apply to the Court for an order imposing an easement over land.	12 13 14 15
(2) The Court, on application under subsection (1), may make an order imposing an easement over land if it is satisfied that:	16 17
(a) the easement is reasonably necessary for the development to have effect in accordance with the consent, and	18 19 20
(b) use of the land having the benefit of the easement will not be inconsistent with the public interest, and	21 22
(c) the owner of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement, and	23 24 25 26
(d) all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.	27 28 29
(3) The jurisdiction of the Court to make an order under this section is exercisable only by a Judge, whether or not sitting alone.	30 31 32

- (4) Before making an order under this section, the Court must notify the owner of the land affected by the proposed easement (other than an owner who is a party to the proceedings before the Court), and the owner of any land on which it may be necessary for works to be carried out in connection with the easement (other than such a party), of the proposed easement or works, or both.
- (5) An owner of land affected by the proposed easement and an owner of land on which it may be necessary for works to be carried out in connection with the easement:
- (a) may object to the proposed easement or works, and
 - (b) is entitled to appear before the Court in support of the objection.
- The Court must consider each objection.
- (6) The Court:
- (a) is to specify in the order the nature and terms of the easement and such of the particulars referred to in section 88 (1) (a)–(d) of the *Conveyancing Act 1919* as are appropriate, and
 - (b) is to identify its site by reference to a plan that is, or is capable of being, registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- The terms may limit the times at which the easement applies.
- (7) The Court is to provide in the order for payment by the applicant for the order to such persons as the Court specifies of such compensation as the Court considers appropriate, unless the Court determines that compensation is not payable because of the special circumstances of the case.
- (8) The costs of the proceedings, in so far as they relate to an order sought or made under this section, are payable by the applicant for the order, subject to any order of the Court to the contrary.
- (9) An easement imposed under this section:
- (a) may be released by the owner of the land having the benefit of it, or

(b)	may be modified by a deed made between the owner of the land having the benefit of it and the persons for the time being having the burden of it (or in the case of land under the provisions of the <i>Real Property Act 1900</i>) by a dealing in the form approved under that Act giving effect to the modification.	1 2 3 4 5 6
(10)	An easement imposed under this section, a release of such an easement or any modification of such an easement by a deed or dealing takes effect:	7 8 9
(a)	if the land burdened is under the <i>Real Property Act 1900</i> , when the Registrar-General registers a dealing in the form approved under that Act setting out particulars of the easement, or of the release or modification, by making such recordings in the Register kept under that Act as the Registrar-General considers appropriate, or	10 11 12 13 14 15 16
(b)	in any other case, when a minute of the order imposing the easement, or the deed of release or modification, is registered in the General Register of Deeds.	17 18 19
(11)	An easement imposed under this section has effect (for the purposes of the <i>Conveyancing Act 1919</i> and the <i>Real Property Act 1900</i>) as if it were contained in a deed.	20 21 22
(12)	Nothing in this section prevents such an easement from being extinguished or modified under section 89 of the <i>Conveyancing Act 1919</i> .	23 24 25
(13)	In this section, <i>owner</i> of land includes a person having an estate or interest in the land that is evidenced by an instrument registered in the General Register of Deeds or the Register kept under the <i>Real Property Act 1900</i> .	26 27 28 29
[11]	Schedule 1 The Commissioners	30
	Insert “full-time” before “Commissioner” in clause 1 (2).	31
[12]	Schedule 1, clause 2	32
	Insert “full-time” before “Commissioner” wherever occurring.	33

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Schedule 1 Amendment of Land and Environment Court Act 1979

[13] Schedule 1, clause 2 (2)	1
Insert at the end of clause 2:	2
(2) A part-time Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Commissioner.	3 4 5 6
[14] Schedule 1, clause 8	7
Insert “full-time” before “Commissioner” where firstly and secondly occurring in clause 8 (2).	8 9
[15] Schedule 1, clause 9	10
Insert “a full-time” before “Commissioner” wherever occurring in clause 9 (1).	11 12
[16] Schedule 1, clause 9	13
Insert “full-time” before “Commissioner” where firstly and secondly occurring in clause 9 (2).	14 15
[17] Schedule 3 Savings, transitional and other provisions	16
Insert after clause 3:	17
4 Provision consequent on enactment of Land and Environment Court Amendment Act 2002	18 19
Section 40, as substituted by the <i>Land and Environment Court Amendment Act 2002</i> , extends to proceedings before the Court at the time the section, as substituted, commences.	20 21 22

Schedule 2	Amendment of Environmental Planning and Assessment Act 1979	1
		2
	(Section 4)	3
[1]	Section 72 Development control plans	4
	Insert after section 72 (1) (c) (i):	5
	(ia) a request for the review of a determination of a development application where, in requesting the review, the applicant makes amendments to the development described in the original development application,	6 7 8 9 10
[2]	Section 82A Review of determination	11
	Omit section 82A (2). Insert instead:	12
	(2) A request for a review may be made at any time, subject to subsection (2A).	13 14
	(2A) A determination cannot be reviewed:	15
	(a) after the time limited for the making of an appeal under section 97 expires, if no such appeal is made against the determination, or	16 17 18
	(b) after an appeal under section 97 against the determination is disposed of by the Court, if such an appeal is made against the determination.	19 20 21
[3]	Section 82A (3A)	22
	Insert after section 82A (3):	23
	(3A) In requesting a review, the applicant may make amendments to the development described in the original application, subject to subsection (4) (c).	24 25 26
[4]	Section 82A (4) and (4A)	27
	Omit section 82A (4). Insert instead:	28
	(4) The council may review the determination if:	29

(a)	it has notified the request for review in accordance with:	1
(i)	the regulations, if the regulations so require, or	2
(ii)	a development control plan, if the council has made a development control plan under section 72 that requires the notification or advertising of requests for the review of its determinations, and	3 4 5 6
(b)	it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and	7 8 9 10
(c)	in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.	11 12 13 14 15
(4A)	As a consequence of its review, the council may confirm or change the determination.	16 17
[5]	Section 96 Modification of consents—generally	18
	Insert after section 96 (7):	19
(8)	Modifications by the Court	20
	The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A) (c) or subsection (2) (b) and (c) are to be exercised by the relevant council.	21 22 23 24 25 26
[6]	Section 96AA	27
	Insert after section 96:	28
96AA	Modification by councils of consents granted by the Court	29
(1)	A council may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:	30 31 32 33

-
- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and
- (b) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, and
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.
- (2) After determining an application for modification of a consent under this section, the council must send a notice of its determination to each person who made a submission in respect of the application for modification.
- (3) An applicant who is dissatisfied with the determination of the application or the failure of the council to determine the application within 40 days after the application is made may appeal to the Court and the Court may determine the appeal.
- (4) A person who made a submission in respect of the application for modification and who is dissatisfied with the determination of the application by the council may, in accordance with rules of court, apply to the Court for leave to appeal against the determination within 28 days after the date on which notice of the determination was given to the person and the Court may grant or refuse leave to appeal.

Land and Environment Court Amendment Bill 2002

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

[7] Schedule 6 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Land and Environment Court Amendment Act 2002</i>	3

Schedule 3	Amendment of Statutory and Other Offices Remuneration Act 1975	1 2
	(Section 5)	3
Schedule 2 Public offices		4
Omit from Part 1:		5
	Senior assessor (under the <i>Land and Environment Court Act 1979</i>)	6 7
	Assessor (under the <i>Land and Environment Court Act 1979</i>)	8
Insert instead:		9
	Senior Commissioner (under the <i>Land and Environment Court Act 1979</i>)	10 11
	Full-time Commissioner (under the <i>Land and Environment Court Act 1979</i>)	12 13