

Planning Appeals Legislation Amendment Bill 2010

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to re-enact, with modifications, uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008* establishing rights to reviews of decisions by councils to reject development applications without determining them,
- (b) to re-enact, with modifications, uncommenced provisions of that Act establishing rights to reviews of decisions by councils relating to applications to modify development consents and to provide for appeals to the Land and Environment Court (the **Court**) with respect to decisions about such reviews,
- (c) to require the Court to order an applicant who amends a development application on an appeal to pay the costs of the consent authority that are thrown away as a result of the amendment,
- (d) to provide for mandatory conciliation proceedings to be conducted by the Court in relation to proceedings relating to appeals about development applications for specified development and for determination by a Commissioner of the Court if no agreement is reached in conciliation proceedings,
- (e) to repeal uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008* relating to planning arbitrators,
- (f) to make consequential amendments and repeals and provisions of a savings and transitional nature.

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.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Reviews of decisions

Schedule 1 [9] inserts proposed sections 82B–82D into the *Environmental Planning and Assessment Act 1979*. New section 82B enables an applicant for a development application to obtain a review by a council of the council's decision to reject the development application without determining it. The review may result in the decision being confirmed or the council proceeding to determine the application. New sections 82C and 82D contain general provisions about reviews, including reviews of council determinations of development applications under current section 82A and reviews under new sections 82B and 96AB. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [17] inserts proposed section 96AB. New section 96AB enables an applicant for the modification of a development consent to obtain a review by a council of the council's decision as to the application. There is no right to a review for specified applications, including applications to modify a complying development certificate and determinations relating to designated development, integrated development and Crown developments where the Minister has directed the council to make a determination. **Schedule 1 [14]** makes a consequential amendment.

Schedule 1 [8] omits from existing section 82A (which relates to reviews of council decisions about development applications) provisions that are now covered by the new general review provisions. It also makes it clear that the council must conduct a review if a request is made under that section. **Schedule 1 [10]** makes a consequential amendment.

Schedule 1 [12] makes it clear that a development consent is taken never to have been granted if development consent is refused on a review application under existing section 82A.

Appeals

Schedule 1 [15] and [16] omit provisions that provide for appeals to the Court relating to decisions about applications to modify development consents, as a consequence of the insertion of appeal provisions by **Schedule 1 [21]**. The amendments also enable regulations to be made with respect to the time within which an application for modification that has not been determined is taken to have been refused and related matters.

Schedule 1 [18] reduces from 12 months to 6 months the period within which an appeal may be made to the Court against a determination by a consent authority with respect to a development application, the carrying out of ancillary development or a matter that must be satisfied before a deferred consent can operate.

Schedule 1 [19] makes a statute law revision amendment.

Schedule 1 [21] inserts proposed sections 97AA and 97A. New section 97AA enables an applicant for the modification of a development consent to appeal to the Court against a determination by the consent authority (including on a review by the consent authority) within 6 months of notice of the determination or the determination being taken to have been made.

Schedule 1 [20] and [23] omit the provisions being re-enacted. New section 97A re-enacts provisions requiring notice of appeals made to the Court to be given to objectors and in the case of development requiring concurrence by a Minister or public authority or integrated development. It also requires notice to be given to a joint regional planning panel or the Planning Assessment Commission of appeals made to the Court concerning certain determinations made or reviewable by those bodies. A person given notice of an appeal is entitled to be heard at the appeal as if the person were a party to the appeal.

Schedule 1 [22] requires the Court, if an amended development application is filed in an appeal against a determination of a development application, to require the applicant to pay to the consent authority costs that are thrown away as a result of amending the development application. Currently, the provision is expressed to require payment of costs incurred in respect of the assessment of, and proceedings relating to, the original development application the subject of the appeal.

Miscellaneous

Schedule 1 [1] inserts a definition of *regional panel*. **Schedule 1 [2]** makes consequential amendments.

Schedule 1 [3]–[6] and [25]–[28] omit references to planning arbitrators. Uncommenced provisions establishing planning arbitrators, contained in the *Environmental Planning and Assessment Amendment Act 2008*, are to be repealed by **Schedule 3.1 [5]**.

Schedule 1 [11] and [13] make statute law revision amendments.

Schedule 1 [24] enables regulations to be made exempting classes of temporary structures from requirements relating to construction certificates or occupation certificates.

Schedule 1 [29] enables regulations containing savings, transitional and other provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [30] provides that the proposed amendments relating to development applications, reviews and appeals do not apply to development applications lodged before the commencement of new section 82B.

Schedule 2 Amendment of Land and Environment Court Act 1979 No 204

Schedule 2 [1] inserts proposed section 34AA. New section 34AA provides for conciliation procedures to apply to proceedings concerning development applications, or modifications of development consents, for detached single dwellings and dual occupancies (including those involving subdivision) or alterations or additions to such dwellings or dual occupancies. They may also apply to other particular proceedings, if the Court so orders on application of a party or on its own motion. The conciliation procedures can occur without the consent of the parties and, if no agreement is reached through conciliation, the Commissioner of the Court may proceed to determine the proceedings. However, the Court or Commissioner may, if they think it appropriate in the circumstances of the case, determine at any time that the proceedings are not to be dealt with under the new section. In that case, the proceedings are to be dealt with by the Court.

Schedule 2 [2] makes a consequential amendment.

Schedule 2 [3] enables regulations containing savings, transitional and other provisions to be made consequent on the enactment of the proposed Act.

Schedule 2 [4] provides that the amendments made by the proposed Schedule do not apply to proceedings commenced before the commencement of new section 34AA.

Schedule 3 Amendment of other Acts

Schedule 3.1 Environmental Planning and Assessment Amendment Act 2008 No 36

Schedule 3.1 [1] and [5] omit uncommenced amendments to the *Environmental Planning and Assessment Act 1979* relating to a scheme for the review of certain planning decisions by planning arbitrators. This scheme will no longer be proceeding. The amendments also repeal amendments that have already commenced.

Schedule 3.1 [6] renumbers an uncommenced section which provides for applications for reviews by objectors (now new section 82BA). **Schedule 3.1 [2]–[4], [11], [12], [14], [16] and [17]** make consequential amendments.

Schedule 3.1 [7] makes an amendment consequential on the repeal of the uncommenced amendments relating to planning arbitrators.

Schedule 3.1 [8] inserts in new section 82BA additional provisions providing for decisions, notice of applications and the joint hearing of review applications by different parties.

Schedule 3.1 [9] omits an uncommenced amendment that substituted provisions relating to appeals to the Court from decisions by consent authorities and reviewing bodies relating to development applications. The amendment substitutes new amendments that:

- (a) amend new section 82C (as inserted by **Schedule 1 [9]**), which contains general provisions about review applications, to take into account new section 82BA, and
- (b) amend new section 97A, which relates to giving notice of appeals to the Court and of rights to be heard at appeals, to include a reference to new section 82BA.

Schedule 3.1 [10] repeals uncommenced consequential amendments relating to the planning arbitrator scheme and other provisions relating to reviews and appeals that are repealed by the proposed Act.

Schedule 3.1 [13] provides that a consent to a development application is taken to be void if an appeal on a review application under new section 82BA is upheld.

Schedule 3.1 [15] omits an uncommenced amendment that inserts a reference to planning arbitrators in the Ombudsman Act 1974 and uncommenced amendments to the Environmental Planning and Assessment Regulation 2000. That Regulation is currently being reviewed and necessary amendments will be included by way of amending regulation rather than statutory amendment.

Schedule 3.2 Independent Commission Against Corruption Act 1988 No 35

The amendment omits references to planning arbitrators.