

Explanatory note

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

Overview of Bill

The object of this Bill is to change the procedures for appointing planning administrators, and to change the functions of such administrators, so that a council's development consent powers and other decision-making functions are maintained, except in the limited circumstances where an administrator can exercise them (namely, if the planning administrator is of the opinion that the council has exercised the functions in a manner that fails to comply with the council's obligations under the planning legislation or in a manner that is not in the best interests of the community served by the council). The Bill also abolishes planning assessment panels.

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 the date of assent to the proposed Act.

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Environmental Planning and Assessment Amendment (Maintenance of Local Government Development Consent Powers) Bill 2010

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

Schedule 1 [4] inserts the following new provisions concerning planning administrators:

Subdivision 1 Preliminary

Proposed section 117C defines terms used in the proposed provisions. In particular, it defines *prescribed planning functions*, which are the only functions that a planning administrator can exercise, as:

- (a) the refusal of consent to a development application, or
- (b) the granting of consent to a development application, or
- (c) the imposition of conditions on a development consent, or
- (d) the modification of conditions on a development consent, or
- (e) the extension of the term of a development consent, or
- (f) any other function as a consent authority conferred by an environmental planning instrument, or
- (g) a function of a relevant planning authority relating to the making of an environmental planning instrument under Part 3 of the *Environmental Planning and Assessment Act 1979*, or
- (h) a function of a council relating to the making of an environmental planning instrument under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*, or
- (i) a function relating to the preparation, making and approval of a development control plan, or
- (j) a function relating to the preparation and approval of a contribution plan.

Subdivision 2 Appointment of planning administrators

Proposed section 117D constitutes the Panel for the Review of Councils, the functions of which are to advise the Minister about the need to provide assistance to councils in the exercise of their prescribed planning functions and to advise the Minister about the need to appoint planning administrators for particular councils.

Proposed section 117E provides that the Panel may advise the Minister as to whether or not to appoint a planning administrator for a particular council. The Panel may provide such advice at the request of the Minister or if the Independent Commission Against Corruption has made certain recommendations in relation to the council.

Proposed section 117F provides for the Minister to appoint a planning administrator

for a particular council, after giving notice to the council.

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Subdivision 3 Functions of planning administrators

Proposed section 117G confers functions on a planning administrator appointed for a particular council, which include providing advice to the council in relation to the exercise by the council of its prescribed planning functions and assisting the council in making improvements to its governance and to the process by which it exercises its prescribed planning functions. In certain limited circumstances, the planning administrator can reverse the exercise of one or more of the prescribed planning functions of the council or seek the revocation by the Minister of any delegation of a prescribed planning function made by a council to its general manager.

Proposed section 117H provides that a planning administrator appointed for a particular council may reverse the exercise of a planning function of the council and exercise the planning function in the place of the council, but only if the planning administrator is of the opinion that the council has exercised a prescribed planning function in a manner that fails to comply with the council's obligations under the planning legislation or in a manner that is not in the best interests of the community served by the council.

Proposed section 117I provides that the appointment of a planning administrator for a particular council does not affect any delegation of a prescribed planning function made by the council to its general manager, but the planning administrator may apply to the Minister for the revocation of any or all delegations by the council to its general manager or that other person in relation to prescribed planning functions.

Subdivision 4 Reporting of planning administrators

Proposed section 117J provides for a planning administrator to provide an interim review and progress report about the first 6 months of the administrator's appointment. That report must include an evaluation of the key performance indicators that relate to the decision-making of the council.

Proposed section 117K provides for a planning administrator to provide an annual report about the first 12 months of the administrator's appointment. That report must include an evaluation of the key performance indicators that relate to the decision-making of the council and a recommendation as to the need for the continuation or otherwise of the period of planning administration.

Proposed section 117L provides for the Minister to extend the term of appointment of the planning administrator if the administrator's annual report recommends the continuation.

Proposed section 117M makes it clear that the Minister can terminate the appointment of a planning administrator for any other reason.

Subdivision 5 Miscellaneous

Proposed section 117N makes it clear that the proposed provisions do not affect the power of the Governor to dismiss the mayor and councillors of a council.

Schedule 1 [1]–[3], [5]–[19] and [24] are consequential on the revision of provisions about planning administrators and the abolition of planning assessment panels.

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Schedule 1 [20]–[23] extend a provision that protects the exercise of certain functions of Ministers so that it applies to planning administrators. The Minister may consent to the provision being over-ridden.

Schedule 1 [25] provides for the making of savings and transitional regulations

consequent on the enactment of the proposed Act.

Schedule 1 [26] revokes any existing appointments of planning administrators and planning assessment panels.

Schedule 1 [27] makes provision for the membership and procedure of the Panel for the Review of Councils.

**Schedule 2 Amendment of Independent
Commission Against Corruption Act**

1988 No 35

Schedule 2 makes a consequential amendment. It modifies the power of the Independent Commission Against Corruption to recommend that a person be appointed under the *Environmental Planning and Assessment Act 1979* to administer the functions of a council because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions under that Act. The amended provision instead provides for the Commission to recommend the appointment of a planning administrator or regional panel to exercise planning functions.