



New South Wales

# Environmental Planning and Assessment Amendment (Review of Land Decisions) Bill 2020

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend various Acts as follows—

- (a) to allow a House of Parliament to disallow environmental planning instruments,
- (b) to provide for the mediation of disputes about certain determinations or decisions made under the *Environmental Planning and Assessment Act 1979*,
- (c) to confer administrative review jurisdiction on the Civil and Administrative Tribunal over—
  - (i) decisions relating to the use or value of private land, and
  - (ii) certain determinations or decisions made under the *Environmental Planning and Assessment Act 1979*.

## 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.

## **Schedule 1      Amendment of legislation relating to disallowance of environmental planning instruments**

**Schedule 1.1** amends the *Interpretation Act 1987* to provide that—

- (a) written notice of the making of an environmental planning instrument must be laid before each House of Parliament, and
- (b) either House of Parliament may disallow an environmental planning instrument.

**Schedule 1.2** amends the *Subordinate Legislation Act 1989* to provide that, if an environmental planning instrument is disallowed, no environmental planning instrument, being the same in substance as the disallowed environmental planning instrument, may be made within 4 months after the date of the disallowance.

## **Schedule 2      Amendment of Environmental Planning and Assessment Act 1979 No 203 relating to mediation of certain disputes**

**Schedule 2** inserts proposed Division 8.2A in the *Environmental Planning and Assessment Act 1979* to—

- (a) define *applicant* to mean—
  - (i) an applicant for development consent, or
  - (ii) an applicant for a complying development certificate, or
  - (iii) an applicant for modification of a development consent, and
- (b) provide that, if an applicant is dissatisfied with a determination or decision made by a consent authority, the dispute about the determination or decision may be referred for mediation.

## **Schedule 3      Amendment of legislation relating to administrative review of certain decisions about land**

**Schedule 3.1** amends the *Administrative Decisions Review Act 1997* to confer administrative review jurisdiction on the Civil and Administrative Tribunal over decisions relating to the use or value of private land.

**Schedule 3.2** inserts proposed Division 8.2B in the *Environmental Planning and Assessment Act 1979* to provide that, if a dispute about a determination or decision is not resolved in the course of mediation, an applicant may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the determination or decision.



New South Wales

# Environmental Planning and Assessment Amendment (Review of Land Decisions) Bill 2020

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New South Wales

# Environmental Planning and Assessment Amendment (Review of Land Decisions) Bill 2020

No. , 2020

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## **A Bill for**

An Act to amend various Acts to allow a House of Parliament to disallow environmental planning instruments; to provide for mediation of disputes about determinations and decisions under the *Environmental Planning and Assessment Act 1979*; to confer administrative review jurisdiction on the Civil and Administrative Tribunal over certain decisions about land; and for other purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Environmental Planning and Assessment Amendment (Review of Land Decisions) Act 2020*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of legislation relating to disallowance of environmental planning instruments</b>	1
		2
		3
<b>1.1</b>	<b>Interpretation Act 1987 No 15</b>	4
	<b>Section 5 Application of Act</b>	5
	Insert “40, 41,” after “33,” in section 5(6).	6
<b>1.2</b>	<b>Subordinate Legislation Act 1989 No 146</b>	7
<b>[1]</b>	<b>Section 8, heading</b>	8
	Insert “or environmental planning instrument” after “statutory rule”.	9
<b>[2]</b>	<b>Section 8</b>	10
	Insert “or environmental planning instrument” after “statutory rule” wherever occurring.	11

<b>Schedule 2</b>	<b>Amendment of Environmental Planning and Assessment Act 1979 No 203 relating to mediation of certain disputes</b>	1
		2
		3
<b>[1] Section 1.4 Definitions</b>		4
Insert in alphabetical order—		5
<i>applicant</i> , for Division 8.2A—see section 8.5A.		6
<i>mediation</i> , for Division 8.2A—see section 8.5A.		7
<i>mediator</i> , for Division 8.2A—see section 8.5A.		8
<b>[2] Division 8.2A</b>		9
Insert after Division 8.2—		10
	<b>Division 8.2A Mediation</b>	11
<b>8.5A Definitions</b>		12
In this Division—		13
<i>applicant</i> means—		14
(a) an applicant for development consent, or		15
(b) an applicant for a complying development certificate, or		16
(c) an applicant for modification of a development consent.		17
<i>mediation</i> means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.		18
<i>mediator</i> means a neutral and independent party, with qualifications in mediation.		19
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<b>8.5B Application of Division</b>		23
(1) This Division applies to a determination or decision of a consent authority under Part 4 in relation to—		24
(a) a development application, or		25
(b) an application for a complying development certificate, or		26
(c) an application to modify a development consent.		27
(2) This Division applies whether or not the applicant for the application has requested the consent authority to review the determination or decision under Division 8.2.		28
		29
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		31
<b>8.5C Mediation of disputes about determinations or decisions</b>		32
(1) If an applicant is dissatisfied with a determination or decision to which this Division applies, the applicant may request the consent authority to refer the dispute about the determination or decision for mediation.		33
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		35
(2) The consent authority must refer the dispute for mediation before a mediator within 14 days after the request is made.		36
		37
<b>8.5D Participation in good faith</b>		38
The applicant and the consent authority must participate in good faith in the mediation.		39
		40

<b>8.5E</b>	<b>Costs of mediation</b>	1
(1)	The costs of mediation, including the costs payable to the mediator, are payable in equal parts by the applicant and the consent authority.	2 3
(2)	Despite subsection (1), the costs of mediation, including the costs payable to the mediator, are payable by the consent authority if—	4 5
(a)	the applicant is the owner of the land to which the development application relates, and	6 7
(b)	a change to land use zones or development standards in relation to the land restricts the carrying out of development on the land, and	8 9
(c)	the dispute between the applicant and the consent authority is related to the restriction.	10 11
<b>8.5F</b>	<b>Statements made during mediation not admissible</b>	12
	A statement made in the course of mediation under this Division is not admissible in an application for administrative review under Division 8.2B or in legal proceedings.	13 14 15



<b>Schedule 3</b>	<b>Amendment of legislation relating to administrative review of certain decisions about land</b>	1
		2
		3
<b>3.1</b>	<b>Administrative Decisions Review Act 1997 No 76</b>	4
<b>[1]</b>	<b>Section 4 Definitions</b>	5
	Omit the definition of <i>enabling legislation</i> from section 4(1). Insert instead—	6
	<i>enabling legislation</i> means—	7
	(a) for a decision relating to the use or value of private land—legislation that confers or imposes the decision-making function on a person or body, and	8
		9
		10
	(b) for all other decisions—legislation, other than this Act or statutory rules made under this Act, that—	11
		12
	(i) provides for applications to be made to the Tribunal about a specified matter or class of matters, or	13
		14
	(ii) otherwise enables the Tribunal to exercise functions in relation to a specified matter or class of matters.	15
		16
<b>[2]</b>	<b>Section 4(1)</b>	17
	Omit the definition of <i>interested person</i> . Insert instead—	18
	<i>interested person</i> means—	19
	(a) for a decision relating to the use or value of private land—the owner of the private land, and	20
		21
	(b) for all other decisions—a person who is entitled under enabling legislation to make an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision.	22
		23
		24
<b>[3]</b>	<b>Section 4(1)</b>	25
	Insert in alphabetical order—	26
	<i>private land</i> means—	27
	(a) land, the fee-simple of which is not vested in the Crown, or	28
	(b) land that the Crown has lawfully contracted to sell.	29
<b>[4]</b>	<b>Section 10</b>	30
	Insert after section 9—	31
	<b>10 Administrative review jurisdiction over decisions about private land</b>	32
	The Tribunal has administrative review jurisdiction over a decision, made by a person or body under enabling legislation, relating to the use or value of private land.	33
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<b>3.2</b>	<b>Environmental Planning and Assessment Act 1979 No 203</b>	36
	<b>Division 8.2B</b>	37
	Insert before Division 8.3—	38

<b>Division 8.2B</b>	<b>Administrative review of determinations and decisions by Civil and Administrative Tribunal</b>	1 2
<b>8.5G</b>	<b>Administrative review of determinations and decisions</b>	3
(1)	This section applies if a dispute about a determination or decision to which Division 8.2A applies is not resolved in the course of mediation under Division 8.2A.	4 5 6
(2)	The applicant may apply to the Civil and Administrative Tribunal for an administrative review under the <i>Administrative Decisions Review Act 1997</i> of the determination or decision.	7 8 9
(3)	In this section— <i>applicant</i> has the same meaning as in Division 8.2A.	10 11
<b>8.5H</b>	<b>Right of appeal to Court not affected</b>	12
	This Division does not limit a person’s right to appeal to the Court under Division 8.3, 8.4, 8.5 or 8.6 against a determination or decision.	13 14