



New South Wales

# Environmental Planning and Assessment Amendment (Development Consents) Bill 2003

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*:

- (a) to enable the Minister for Infrastructure and Planning to extend the period within which work must be commenced before development consent for certain State significant development lapses, and
- (b) to provide for the voluntary surrender of development consents.

The Bill also makes some related minor amendments to 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Regulation 2000* set out in Schedule 2.

## **Schedule 1 Amendment of Environmental Planning and Assessment Act 1979**

### **Extension of lapsing period for consent for State significant development**

**Schedule 1 [3]** inserts proposed section 95B into the Principal Act. The proposed section will enable an applicant or any other person entitled to act on a development consent for State significant development other than staged development to apply to the Minister for Infrastructure and Planning for one or more extensions (not exceeding 3 years in total) of the 5 year period in which the consent will lapse if building, engineering or construction work or use of the land to which the consent applies has not commenced (the *lapsing period*). An application must be made within 12 months before the lapsing period (or lapsing period as previously extended under the proposed section) lapses. The Minister will be able to grant an extension if satisfied that the development consent may lapse because there is, has been or may be, delay in physically commencing building, engineering or construction work, or use, of all or part of the land that arises from or is related to one or more relevant legal proceedings (as defined in the proposed section) and that there is otherwise good cause. An extension may be for a period commensurate with the period of the delay but must not extend the lapsing period to more than 8 years from the date from which the consent operates.

**Schedule 2 [3]** makes a consequential amendment to insert proposed clause 114A into the *Environmental Planning and Assessment Regulation 2000* to require an application for an extension of the lapsing period to be in writing and to contain certain information.

### **Voluntary surrender of development consents**

**Schedule 1 [4]** inserts proposed section 104A into the Principal Act to enable a development consent to be voluntarily surrendered (subject to and in accordance with the regulations) by any person entitled to act on the consent. A development consent may be surrendered even if, on the making of an appeal under section 97 or 98 of the Act, it has ceased to be or does not become effective under

section 83 (2). (In such circumstances, the Land and Environment Court may make such orders as it considers appropriate under section 23 of the *Land and Environment Court Act 1979*). **Schedule 2 [1] and [2]** amend clause 97 of the *Environmental Planning and Assessment Regulation 2000* to require a notice of surrender setting out certain specified information to be given to the consent authority and to state when a surrender has effect. If development has commenced to be carried out, a surrender will have effect only if the consent authority determines that any condition of the consent, or any agreement with the consent authority relating to the consent, that is relevant to so much of the development as has been carried out has been complied with and that the surrender will not have an adverse impact on any third party or the locality.

#### **Savings, transitional and other provisions**

**Schedule 1 [5]** amends Schedule 6 to the Principal Act to enable the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

**Schedule 1 [6]** inserts proposed clauses 64 and 65 into Schedule 6 to the Principal Act to make it clear that proposed sections 95B and 104A, respectively, extend to certain development consents granted and applications made before the commencement of the proposed sections. The development consents concerned extend to those granted as a result of savings and transitional regulations made as a consequence of the enactment of the *Environmental Planning and Assessment Amendment Act 1997* (which commenced on 1 July 1998).

#### **Related amendments**

**Schedule 1 [1] and [2]** amend section 95 of the Principal Act to make it clear that the power to vary the lapsing periods for development consents under that section is limited to reduction of the periods referred to in that section.

### **Schedule 2 Consequential amendment of Environmental Planning and Assessment Regulation 2000**

**Schedule 2** contains the amendments described above to the *Environmental Planning and Assessment Regulation 2000*.





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New South Wales

# **Environmental Planning and Assessment Amendment (Development Consents) Bill 2003**

No. \_\_\_\_\_, 2003

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## **A Bill for**

An Act to amend the *Environmental Planning and Assessment Act 1979* to enable the lapsing period for consent to State significant development to be extended in certain circumstances; to provide for voluntary surrender of development consents; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Environmental Planning and Assessment     Amendment (Development Consents) Act 2003</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	8 9
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	10 11
<b>4 Consequential amendment of Environmental Planning and Assessment Regulation 2000</b>	12 13
The <i>Environmental Planning and Assessment Regulation 2000</i> is amended as set out in Schedule 2.	14 15



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## Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

### [1] Section 95 Lapsing of consent

Omit “vary” from section 95 (2). Insert instead “reduce”.

### [2] Section 95 (3)

Omit “variation”. Insert instead “reduction”.

### [3] Section 95B

Insert after section 95A:

#### **95B Extension of lapsing period for consent for State significant development**

(1) This section applies to a development consent for State significant development that:

- (a) is not subject to a condition under section 80 (5), and
- (b) is to lapse 5 years after the date from which it operates (the *lapsing period*).

(2) The applicant or any other person entitled to act on a development consent to which this section applies may apply to the consent authority for one or more extensions of the lapsing period of up to 3 years in total. The application must be made within 12 months before the lapsing period (or the period as previously extended under this section) lapses.

**Note.** The Minister is the consent authority for State significant development.

(3) The application must be made in accordance with the regulations.

(4) The consent authority may grant an extension if satisfied that the applicant has shown:

- (a) that the development consent may lapse because there is, has been or may be, delay in physically commencing building, engineering or construction work, or use, of all or part of the land to which the consent applies that arises from or is related to one or more relevant legal proceedings, and
- (b) that there is otherwise good cause.

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- (5) An extension may be for a period commensurate with the period of the delay but must not be made so as to cause the period before the development consent lapses to be longer than 8 years after the date from which the consent operates. 1  
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**Note.** See section 83 for when a consent operates. 5
- (6) There is no appeal against the determination of an application under this section. 6  
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- (7) An extension under this section commences to run from the later of the following: 8  
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- (a) the date on which the consent would have lapsed but for the extension, 10  
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- (b) the date on which the consent authority grants the extension. 12  
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- (8) If an application for an extension is made in accordance with this section but the consent authority does not determine the application before the development consent lapses, the development consent concerned does not lapse but ceases to be effective until the date on which the applicant is notified of the determination. 14  
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- (9) In this section: 20
- ineffective legal proceeding*** means a legal proceeding under this Act or any other law of this State or the Commonwealth (whether written or unwritten) that: 21  
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- (a) has been instituted but has not been heard or has commenced to be heard but has not been determined, or 24  
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- (b) has been determined without the court or tribunal concerned making the order or giving the approval or remedy sought by the person who commenced the proceeding or by the court or tribunal finding wholly or partly against the person. 26  
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- relevant legal proceeding***, in relation to land to which a development consent applies, means an ineffective legal proceeding that: 31  
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- (a) was brought with respect to work to be carried out on, use of or any other activity on the land or any claim or right in respect of a native title right or interest in the land, and 34  
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(b)	was commenced, whether before or after the commencement of this section, by a person other than the applicant or any other person entitled to act on the consent.	1 2 3 4
<b>[4]</b>	<b>Section 104A</b>	5
	Insert after section 104:	6
<b>104A</b>	<b>Voluntary surrender of development consent</b>	7
(1)	A development consent may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the consent.	8 9 10
(2)	A development consent may be surrendered under this section even if, on the making of an appeal under section 97 or 98, the consent has ceased to be, or does not become, effective as referred to in section 83 (2).	11 12 13 14
<b>[5]</b>	<b>Schedule 6 Savings, transitional and other provisions</b>	15
	Insert at the end of clause 1 (1):	16
	<i>Environmental Planning and Assessment Amendment (Development Consents) Act 2003</i>	17 18
<b>[6]</b>	<b>Schedule 6, Part 14</b>	19
	Insert after clause 63:	20
<b>Part 14</b>	<b>Environmental Planning and Assessment Amendment (Development Consents) Act 2003</b>	21 22 23
<b>64</b>	<b>Lapsing of development consents for State significant development</b>	24 25
	Section 95B, as inserted by the <i>Environmental Planning and Assessment Amendment (Development Consents) Act 2003</i> , extends to the following:	26 27 28
(a)	any development consent granted pursuant to <i>State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development</i> , or <i>State Environmental Planning Policy No 48—Major</i>	29 30 31 32

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*Putrescible Landfill Sites*, that was determined after 1 July 1998 by the operation of clause 18 or 19 of this Schedule,

- (b) any consent granted in response to an application for consent to State significant development made before, but not finally determined on, the commencement of this clause.

**65 Voluntary surrender of development consents**

Section 104A, as inserted by the *Environmental Planning and Assessment Amendment (Development Consents) Act 2003*, extends to a development consent granted before the commencement of the section.

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**Schedule 2 Consequential amendment of  
Environmental Planning and Assessment  
Regulation 2000** (Section 4)

**[1] Clause 97 Modification or surrender of development consent or  
existing use right**

Insert “referred to in subclause (1)” after “surrender of a development  
consent or existing use right” in clause 97 (2).

**[2] Clause 97 (3) and (4)**

Insert after clause 97 (2):

- (3) A notice of voluntary surrender of a development consent, as referred to in section 104A of the Act, is to be given to the consent authority and is to include the following information:
  - (a) the name and address of the person by whom the notice is given,
  - (b) the address, and formal particulars of title, of the land to which the consent relates,
  - (c) a description of the development consent to be surrendered,
  - (d) if the person giving the notice is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the surrender of the consent,
  - (e) if development has commenced to be carried out in accordance with the consent—a statement setting out the circumstances that indicate:
    - (i) that so much of the development as has been carried out has been carried out in compliance with any condition of the consent, or any agreement with the consent authority relating to the consent, that is relevant to that part of the development, and
    - (ii) that the surrender will not have an adverse impact on any third party or the locality.

- (4) A duly signed and delivered notice of surrender of a development consent referred to in subclause (3):
  - (a) takes effect when the consent authority notifies the person that:
    - (i) it is satisfied that so much of the development as has been carried out has been carried out in compliance with any condition of the consent, or any agreement with the consent authority relating to the consent, that is relevant to that part of the development, and
    - (ii) that the surrender will not have an adverse impact on any third party or the locality, and
  - (b) operates, according to its terms, to surrender the consent to which it relates.

**[3] Clause 114A**

Insert after clause 114:

**114A Applications to extend lapsing period for consent for State significant development**

An application under section 95B of the Act to extend the lapsing period for consent for State significant development:

- (a) must be in writing, and
- (b) must identify the development consent to which it relates, and
- (c) must show the matters referred to in section 95B (4) of the Act.