

First print



New South Wales

Environmental Planning and Assessment Legislation Amendment Bill 1997

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 *Land and Environment Court Act 1979* so as:

- (a) to limit the mandatory requirements to be complied with as regards ministerial development consents, and
- (b) to provide a scheme by which ministerial development consents can, if they are challenged in proceedings before the Land and Environment Court, be validated on compliance with terms determined by the Court.

Development consents granted by the Minister for Urban Affairs and Planning, generally relate to projects of State significance.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clauses 3 and 4 are formal provisions giving effect to the Schedules of amendments.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [1] amends section 4 to insert a definition of *advertised development*. The definition is used in proposed section 104B, which prescribes the mandatory requirements to be observed in connection with designated development and advertised development.

Schedule 1 [2] inserts sections 104B, 104C and 104D.

Proposed section 104B limits the mandatory requirements to be complied with as regards ministerial development consents to those relating to the period during which development applications for designated development or advertised development must be publicly exhibited.

Proposed section 104C empowers the regrant of ministerial development consents in conformity with terms specified by the Land and Environment Court.

Proposed section 104D makes it clear that an appeal does not lie against a validated or regranted development consent, and states that a validated consent is effective from the date of the original grant and that a regranted development consent is effective from the date it is declared to be validly regranted.

Schedule 1 [3] amends section 124 to make it clear that the provisions relating to orders that can be made by the Land and Environment Court do not limit the new powers proposed to be conferred on the Court.

Schedule 2 Amendment of Land and Environment Court Act 1979

The Schedule inserts Division 3 into Part 3 of the Act. The proposed Division empowers the Land and Environment Court to make orders suspending a ministerial development consent and specifying terms that, if complied with, will ensure the validity of the consent, either in its current form or in a different form following its regrant. The Court is under a duty to consider making such an order instead of declaring the consent to be invalid.



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Environmental Planning and Assessment Legislation Amendment Bill 1997

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New South Wales

Environmental Planning and Assessment Legislation Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Land and Environment Court Act 1979* in relation to the validity of certain development consents; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Legislation Amendment Act 1997*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is 10 amended as set out in Schedule 1.

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.

104C Revocation or regrant of development consents after order of Court

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section, being a development consent to which an order of suspension under section 25B of the *Land and Environment Court Act 1979* applies. 5
- (2) The Minister may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with. 10
- (3) However, if the terms imposed by the Court have been substantially complied with, the Minister may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the Minister thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a **regrant** of the consent. 15
20
- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms. 25
- (5) Section 92 and such other provisions of this Act as may be prescribed by the regulations extend to development consents regranted under this section with such modifications (if any) as may be prescribed.

104D Appeals and other provisions relating to development consents after order of Court 30

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:
- (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and 35

- (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly re-granted: 5
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
 - (b) takes effect from the date of the declaration or another date specified by the Court. 10

[3] Section 124 Orders of the Court

Insert after section 124 (4):

- (5) Nothing in this section affects the provisions of Division 3 of Part 3 of the *Land and Environment Court Act 1979*.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

Part 3, Division 3

Insert after Division 2 of Part 3:

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Division 3 Orders of conditional validity for certain development consents

25A Application of Division

- (1) This Division applies to a development consent granted, or purporting to be granted, by the Minister under the *Environmental Planning and Assessment Act 1979* whether before or after the commencement of this Division. 10
- (2) This Division extends to invalidity arising from any steps preliminary to the granting of a development consent to which this Division applies, whether those steps were taken, or should have been taken, by the Minister or by any other person or body. 15
- (3) In particular, this Division extends to invalidity arising from non-compliance with requirements declared to be mandatory requirements under section 104B of the *Environmental Planning and Assessment Act 1979*. 20
- (4) A reference in this Division to the Minister is a reference to the Minister responsible for the administration of the *Environmental Planning and Assessment Act 1979*. 25

25B Orders for conditional validity of development consents

- (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
 - (a) suspending the operation of the consent in whole or in part, and 30
 - (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).

-
- (2) Terms may include (without limitation):
- (a) terms requiring the carrying out again of steps already carried out, or
 - (b) terms requiring the carrying out of steps not already commenced or carried out, or 5
 - (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.

25C Orders for validity of development consents 10

- (1) On application by the Minister for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order: 15
- (a) declaring that the terms have been substantially complied with, and
 - (b) declaring that the consent is valid, and
 - (c) revoking the order of suspension. 20
- (2) On application by the Minister for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 104C of the *Environmental Planning and Assessment Act 1979*, the Court may make an order: 25
- (a) declaring that the terms have been complied with, and
 - (b) declaring that the development consent has been validly regranted, and 30
 - (c) declaring that the suspended development consent has been revoked, and
 - (d) revoking the order of suspension.

25D Power to grant another development consent

Nothing in this Division prevents the grant of another development consent in relation to the same matter, during or after the period of suspension, pursuant to a development application duly made.

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25E Duty of Court

It is the duty of the Court to consider making an order under this Division instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part.

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Second print



New South Wales

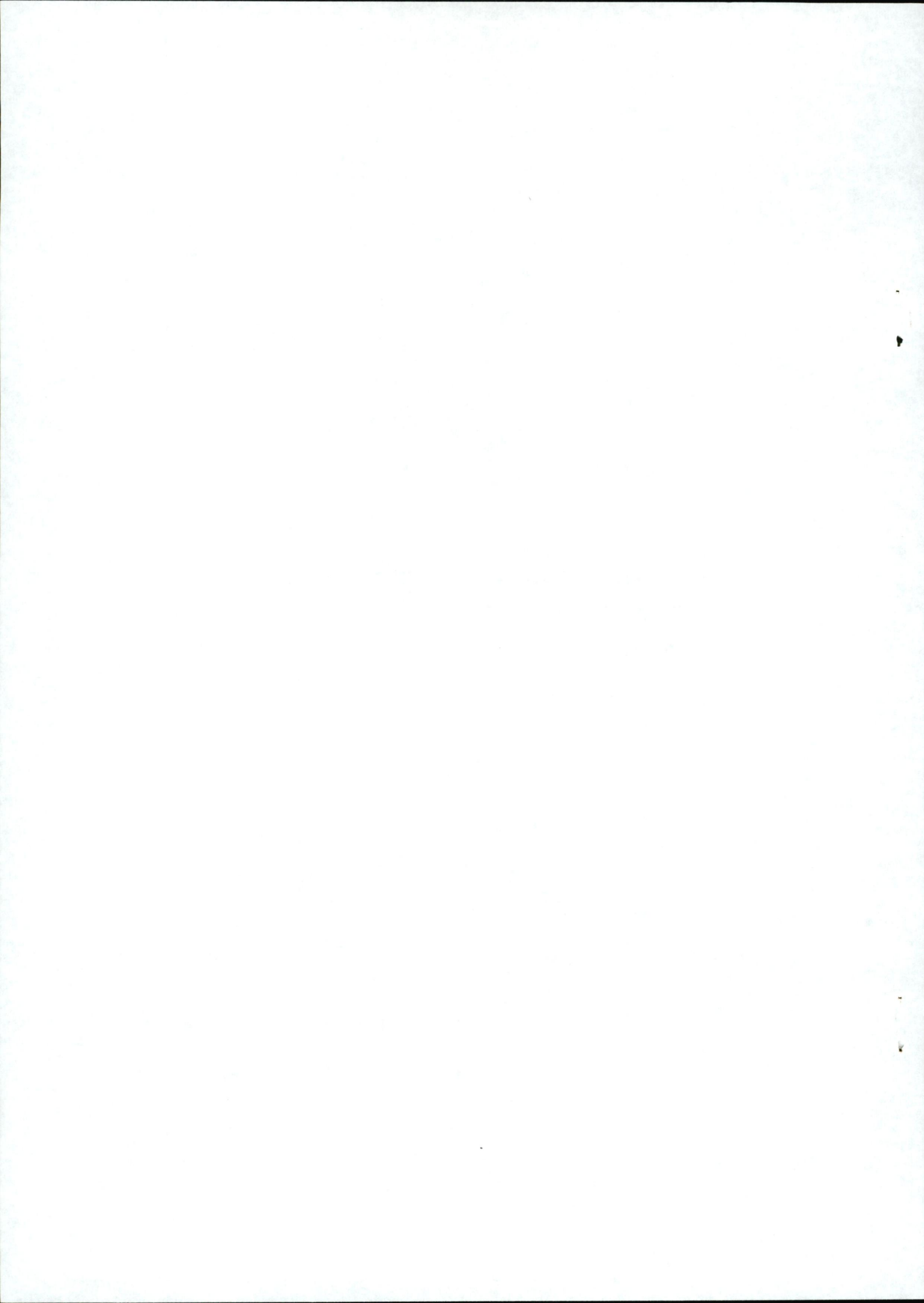
Environmental Planning and Assessment Legislation Amendment Bill 1997

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Environmental Planning and Assessment Legislation Amendment Bill 1997

Act No , 1997

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Land and Environment Court Act 1979* in relation to the validity of certain development consents; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Legislation Amendment Act 1997*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is 10
amended as set out in Schedule 1.

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out
in Schedule 2.

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

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

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advertised development means development (not being designated development) to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90 apply by virtue of an environmental planning instrument, as referred to in section 30 (4).

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[2] Section 75 Definitions

Insert after section 75 (2):

(3) In this Part:

application determination authority, in relation to a development application, means:

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(a) subject to paragraph (b), the council having the function to determine the application, or

(b) the Minister or public authority determining or having the function to determine the application under this Act or an environmental planning instrument.

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[3] Sections 104B–104D

Insert after section 104A:

104B Non-compliance with certain provisions regarding certain development consents

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(1) This section applies to a development consent granted, or purporting to be granted, by an application determination authority, whether before or after the commencement of this section.

(2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which this section applies are as follows:

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- (a) A requirement that a development application to carry out designated development and its accompanying documents be publicly exhibited for the minimum period of time.
- (b) A requirement that a development application to carry out advertised development and its accompanying documents be publicly exhibited for the minimum period of time. 5
- (3) A failure to comply with a requirement of this Act, the regulations or an environmental planning instrument (including a requirement referred to in subsection (2)) does not affect the validity of a development consent to which this section applies, if the Court determines that the failure was of a technical or non-substantial nature and did not materially affect the rights or interests of any party. 10 15

104C Revocation or regrant of development consents after order of Court

- (1) This section applies to a development consent granted, or purporting to be granted, by an application determination authority, whether before or after the commencement of this section, being a development consent to which an order of suspension under section 25B of the *Land and Environment Court Act 1979* applies. 20
- (2) The application determination authority may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with. 25
- (3) However, if the terms imposed by the Court have been substantially complied with, the application determination authority may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the authority thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a *regrant* of the consent. 30 35

(4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.

(5) Section 92 and such other provisions of this Act as may be prescribed by the regulations extend to development consents regranted under this section with such modifications (if any) as may be prescribed. 5

104D Appeals and other provisions relating to development consents after order of Court 10

(1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:

(a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and 15

(b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.

(2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted: 20

(a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and

(b) takes effect from the date of the declaration or another date specified by the Court. 25

[4] Section 124 Orders of the Court

Insert after section 124 (4):

(5) Nothing in this section affects the provisions of Division 3 of Part 3 of the *Land and Environment Court Act 1979*.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

Part 3, Division 3

Insert after Division 2 of Part 3:

5

Division 3 Orders of conditional validity for certain development consents

25A Application of Division

- (1) This Division applies to a development consent granted, or purporting to be granted, by an application determination authority under the *Environmental Planning and Assessment Act 1979* whether before or after the commencement of this Division. 10
- (2) This Division extends to invalidity arising from any steps preliminary to the granting of a development consent to which this Division applies, whether those steps were taken, or should have been taken, by the application determination authority or by any other person or body. 15
- (3) In particular, this Division extends to invalidity arising from non-compliance with requirements declared to be mandatory requirements under section 104B of the *Environmental Planning and Assessment Act 1979*. 20
- (4) In this Division, *application determination authority* has the same meaning as in section 75 of the *Environmental Planning and Assessment Act 1979*. 25

25B Orders for conditional validity of development consents

- (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
 - (a) suspending the operation of the consent in whole or in part, and 30
 - (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).

-
- (2) Terms may include (without limitation):
- (a) terms requiring the carrying out again of steps already carried out, or
 - (b) terms requiring the carrying out of steps not already commenced or carried out, or 5
 - (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.

25C Orders for validity of development consents 10

- (1) On application by the application determination authority for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order: 15
 - (a) declaring that the terms have been substantially complied with, and
 - (b) declaring that the consent is valid, and
 - (c) revoking the order of suspension. 20
- (2) On application by the application determination authority for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 104C of the *Environmental Planning and Assessment Act 1979*, the Court may make an order: 25
 - (a) declaring that the terms have been complied with, and 30
 - (b) declaring that the development consent has been validly regranted, and
 - (c) declaring that the suspended development consent has been revoked, and
 - (d) revoking the order of suspension. 35

25D Power to grant another development consent

Nothing in this Division prevents the grant of another development consent in relation to the same matter, during or after the period of suspension, pursuant to a development application duly made.

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25E Duty of Court

It is the duty of the Court to consider making an order under this Division instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part.

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New South Wales

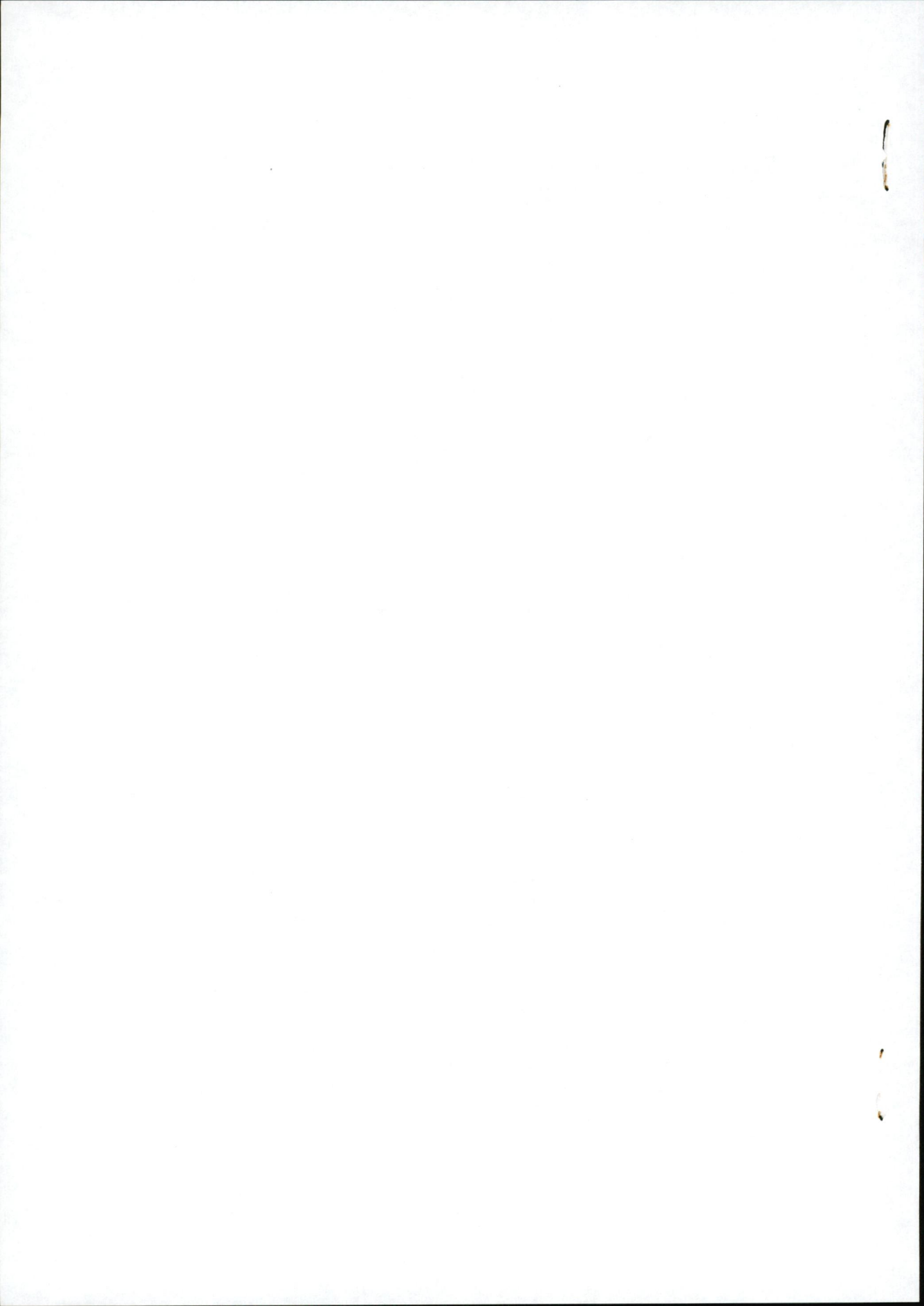
Environmental Planning and Assessment Legislation Amendment Act 1997 No 81

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New South Wales

Environmental Planning and Assessment Legislation Amendment Act 1997 No 81

Act No 81, 1997

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Land and Environment Court Act 1979* in relation to the validity of certain development consents; and for other purposes. [Assented to 10 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

advertised development means development (not being designated development) to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90 apply by virtue of an environmental planning instrument, as referred to in section 30 (4).

[2] Sections 104B–104D

Insert after section 104A:

104B Non-compliance with certain provisions regarding certain development consents

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section.
- (2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which this section applies are as follows:
 - (a) A requirement that a development application to carry out designated development and its accompanying documents be publicly exhibited for the minimum period of time.
 - (b) A requirement that a development application to carry out advertised development and its accompanying documents be publicly exhibited for the minimum period of time.

104C Revocation or regrant of development consents after order of Court

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section, being a development consent to which an order of suspension under section 25B of the *Land and Environment Court Act 1979* applies.
- (2) The Minister may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with.
- (3) However, if the terms imposed by the Court have been substantially complied with, the Minister may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the Minister thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a **regrant** of the consent.
- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.
- (5) Section 92 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

104D Appeals and other provisions relating to development consents after order of Court

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and

- (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
 - (b) takes effect from the date of the declaration or another date specified by the Court.

[3] Section 124 Orders of the Court

Insert after section 124 (4):

- (5) Nothing in this section affects the provisions of Division 3 of Part 3 of the *Land and Environment Court Act 1979*.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

Part 3, Division 3

Insert after Division 2 of Part 3:

Division 3 Orders of conditional validity for certain development consents

25A Application of Division

- (1) This Division applies to a development consent granted, or purporting to be granted, by the Minister under the *Environmental Planning and Assessment Act 1979* whether before or after the commencement of this Division.
- (2) This Division extends to invalidity arising from any steps preliminary to the granting of a development consent to which this Division applies, whether those steps were taken, or should have been taken, by the Minister or by any other person or body.
- (3) In particular, this Division extends to invalidity arising from non-compliance with requirements declared to be mandatory requirements under section 104B of the *Environmental Planning and Assessment Act 1979*.
- (4) A reference in this Division to the Minister is a reference to the Minister responsible for the administration of the *Environmental Planning and Assessment Act 1979*.

25B Orders for conditional validity of development consents

- (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
 - (a) suspending the operation of the consent in whole or in part, and
 - (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).

- (2) Terms may include (without limitation):
- (a) terms requiring the carrying out again of steps already carried out, or
 - (b) terms requiring the carrying out of steps not already commenced or carried out, or
 - (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.

25C Orders for validity of development consents

- (1) On application by the Minister for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order:
- (a) declaring that the terms have been substantially complied with, and
 - (b) declaring that the consent is valid, and
 - (c) revoking the order of suspension.
- (2) On application by the Minister for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 104C of the *Environmental Planning and Assessment Act 1979*, the Court may make an order:
- (a) declaring that the terms have been complied with, and
 - (b) declaring that the development consent has been validly regranted, and
 - (c) declaring that the suspended development consent has been revoked, and
 - (d) revoking the order of suspension.

25D Power to grant another development consent

Nothing in this Division prevents the grant of another development consent in relation to the same matter, during or after the period of suspension, pursuant to a development application duly made.

25E Duty of Court

It is the duty of the Court to consider making an order under this Division instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part.

[Minister's second reading speech made in—
Legislative Assembly on 28 May 1997
Legislative Council on 19 June 1997]

BY AUTHORITY