conservation initiatives, which focus on ecosystem resilience and connectivity'.

The discussion paper can be downloaded from the Department of the Environment, Climate Change, Energy and Water website http://www.environment.act.gov.au/

Submission are due by 18 February 2011.

ACT Bans Plastic Bags

The ACT Government has recently passed legislation to ban retailers from supplying customers with plastic bags made from polyethylene. The Plastic Shopping Bags Ban Act is designed to restrict the supply of plastic shopping bags. The prohibition does not apply to biodegradable bags, barrier bags of the type dispensed from a roll to hold perishable items such as fruit or the heavier retail bags used in clothing stores.

The legislation will take effect from 1 July 2011 with a four month transitional period. During this time, any retailer who provides the regulated plastic bags must also supply alternatives and display signs informing customers of the new ban. No light-weight plastic bags will be able to be supplied after 1 November 2011.

The bill is available at:

http://www.legislation.act.gov.au/b/db_39968/default.asp

Public Consultation on the Future of Canberra

The ACT Government has recently concluded public consultation on how Canberra should look in 2030. The consultation has focused on a range of environmental and other themes including population, environmental sustainability, water, transport, and land use and planning.

The aim of the consultation, Time to Talk – Canberra 2030, is to inform future policy development and to help plan Canberra's future.

More information is available at www.canberra2030.org.au.

Namadgi National Park Management Plan Released

A management plan for Namadgi National Park has been released. Namadgi National Park is the largest conservation reserve in the ACT covering 46% of the Territory.

An interim arrangement for the cooperative management of Namadgi National Park with the Ngunnawal Aboriginal community provides for the participation of the Ngunawal people in the management of Namadgi.

The Plan sets out ways to protect the reserve, and sets out activities which are permitted and restricted in certain areas of the park.

The plan allows for certain recreational activities, such as horse riding, mountain biking and orienteering to be undertaken in the Park subject to certain restrictions. It allows areas of the Park to be used for orienteering, rogaining and mountain running events with certain restrictions but it has removed the restriction on the number of participants allowed for events in the park.

The Plan came into effect on 24 September 2010. A copy of the plan is available at http://www.tams.act.gov.au/play/pcl/parks_reserves_and_open_places/national_parks/namadgi_national_park/namadgi_national_park_plan_of_management_2010

NEW SOUTH WALES

Dr Nicholas Brunton

Planning Appeals Legislation Amendment Bill 2010

by Martin Watts, solicitor

The *Planning Appeals Legislation Amendment Bill 2010* (NSW) (the Bill) was introduced to the Legislative Council on 11 November 2010 and was passed with Opposition support on 23 November 2010. It received assent on 29 November 2010.

The Act makes several substantive amendments to the *Land and Environment Court Act 1979* (NSW) (the LEC Act) and the *Environmental Planning and Assessment Act 1979* (NSW) (the EP&A Act), as well as several other consequential amendments. The major amendments can be summarised as follows.

The Act introduces into the LEC Act mandatory conciliation and arbitration provisions in class one proceedings that relate to development applications (DAs), or modifications to development consents for detached single dwellings and dual occupancies (including subdivisions), or any other matter that the Court orders, on the application of a party to the proceedings; or on its own motion.

Where these circumstances arise, provisions relating to conciliation conferences will apply, with the following modifications:

- the Court must arrange a conciliation conference between the parties and their representatives, with or without their consent
- if no agreement is reached between the parties the Commissioner presiding must terminate the conference and dispose of the proceedings by holding a hearing, or if the parties consent, determine the matter on the basis of what occurs at the conciliation conference.

The Court or Commissioner is empowered to conclude that the circumstances of the case make it inappropriate to be dealt with by conciliation and arbitration, and may proceed to a full hearing at any time.

Conciliations are to be set down after the first callover and conferences will typically occur on site. Legal representatives are entitled to appear on behalf of parties, and experts will still be afforded a role in the conciliation and arbitration process. Once arbitration occurs, there will be no further right to a merits appeal. Any appeal of the Commissioner's decision at arbitration must be confined strictly to issues of law.

The rationale behind this amendment is the provision of a cost-effective and efficient method of reviewing council decisions on single dwellings and dual occupancies, which statistically make up a clear majority of the DAs that are considered by Councils. The Court will set a benchmark of 90 days for resolving 95% of matters. The proposed independent planning arbitrator provisions, that were introduced in 2008 but which have never commenced, will be repealed.

The second reading speech also foreshadows the introduction of a court practice note, to facilitate the implementation and management of the scheme.

It is also proposed that s 97B(2) of the EP&A Act will be replaced with a new section that obliges the Court to make a mandatory costs order against an applicant for costs thrown away as a result of the applicant amending the DA or plans during the proceedings.

Appeals under s 97

The statutory limitation period for commencing merit appeals under s 97 of the EP&A Act will be reduced from 12 months back to six months.

Section 97AA will be added to the EP&A Act. This section allows applicants a period of six months to appeal against the decision of a consent authority in relation to the modification of a development consent under ss 96 or 96AA.

Section 97A will also be introduced, providing that a consent authority must, upon the lodging of an appeal under either ss 97, 97AA or 98, give notice of that appeal to:

- an objector (in the case of a DA in respect of which the objector may appeal under s 98)
- the relevant minister or public authority (in the case of a DA in respect of which the concurrence of that minister or public authority is required)
- the relevant approval body (in the case of a DA to carry out integrated development that involves that approval body)
- the joint regional planning panel (JRPP) or the Planning Assessment Commission, where the appeal concerns a determination made by one of those bodies.

Any person given notice under this section has 28 days to apply to the Court to be heard on the appeal as if they were a party to the matter.

Internal review procedures

The internal review rights provided for in s 82A of the EP&A Act will be expanded under the Act. Section 82B will be introduced, which will allow for an applicant to request a review of Council's decision where a development application is

rejected without being determined. Sections 82C and 82D are also being inserted to provide further guidance on the management of review procedures under ss 82A and 82B, and to clarify the effect of decisions made by the reviewing body under these sections.

Review of application to modify a development consent

Sections 96(6)–(7) and 96AA(3)–(4) of the EP&A Act which deal with the deemed refusal period and appeals to the Court will be repealed and replaced. The deemed refusal period will be moved to the regulations.

Section 96AB is being inserted into the EP&A Act. This will allow for an applicant to seek Council's review of their own decision in relation to the modification of a development consent.

It should be noted that several determinations (for example, modification of a complying development certificate, designated developments and integrated developments) will not be subject to review by Council under s 96AB.

The Bill was introduced by the Government and was supported by the Opposition. It has recently just passed and is now awaiting assent.

Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

by Ashleigh Egan, solicitor

The Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 (EUA Bill) seeks to amend the *Local Government Act 1993* (NSW) to make provision for environmental upgrade agreements (EUAs).

The legislation is intended to allow businesses to access capital to implement larger projects over a timeframe that may be longer than many businesses' usual investment timeframe. Longer term loans at lower interest rates can be provided because the loan becomes a charge fixed to the land, rather than to the building owners' businesses.

The scheme may provide a split incentive to landlords and tenants. Currently, in most circumstances, a building owner makes the decisions about implementing energy efficiency upgrades but the tenants often receive the most benefits through lower power bills etc.

EUAs can overcome this through lease provisions that provide for proportional pass-through of local council rates and changes. This will mean that tenants may pay a smaller power bill but also pay a contribution to repaying the costs of the upgrade works.

To protect the tenant, the EUA Bill provides that the amount recoverable by the lessor as a contribution must not exceed a reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the EUA.

The scheme aims to complement Commonwealth measures such as measures under the *Building Energy Efficiency Disclosure Act 2010* (Cth) and the commencement of additional tax benefits for building owners who upgrade their building's environmental performance from 1 July 2011.

EUAs facilitate the funding of environmental upgrades of commercial buildings with the aim of improving energy efficiency in the building sector.

This Bill was passed on 29 November 2010 and is now awaiting assent.

VICTORIA

Barnaby McIlrath & Wayne Gumley

The Traditional Owner Settlement Act 2010 (Vic)

The *Traditional Owner Settlement Act 2010* was passed on 14 September 2010 and came into force 23 September. It introduces a process to resolve native title in respect of Crown land in Victoria under a mediation framework.

The first agreement signed under the Act brought to an end a 13-year native title court battle. The $12m agreement between the Gunaikurnai people and the Victorian and federal governments was signed at Knob Reserve in Stratford. It formally recognises the Gunaikurnai as traditional owners