

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) ACT 1989 No. 32**

NEW SOUTH WALES



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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) ACT 1989 No. 32**

NEW SOUTH WALES



**Act No. 32, 1989**

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to applications for the preparation of local environmental plans and certain development applications; and for other purposes. [Assented to 1 May 1989]

*Environmental Planning and Assessment (Amendment) 1989*

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

**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Amendment) Act 1989.

**Commencement**

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

**Amendment of Environmental Planning and Assessment Act 1979 No. 203**

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

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Part 3, Division 4A—

After Division 4, insert:

**Division 4A—Applications for the preparation  
of local environmental plans**

**Making of application**

72A. (1) A person may make an application under this Division to a council for the preparation of a local environmental plan by the council to enable the carrying out of any prescribed residential development on any prescribed land within its area.

(2) Such an application may only be made if the development the subject of the application is—

- (a) development which, but for this Division or sections 100A and 101, cannot be carried out either with or without development consent; or
- (b) development the carrying out of which, but for this Division or sections 100A and 101, is prohibited under this Act.

(3) Such an application—

- (a) shall be made in the prescribed form and manner; and
- (b) shall be accompanied by a development application made in accordance with section 77 for consent to carry out the development.

SCHEDULE 1—AMENDMENTS—*continued***Preparation of local environmental plan and advertising of development application**

72B. (1) Where an application is made under this Division, the council shall—

- (a) with respect only to the land the subject of the accompanying development application, prepare a draft local environmental plan to enable the carrying out, with the council's consent, of the development the subject of the application; and
- (b) prepare the draft plan in the terms determined by the Minister and notified to the council; and
- (c) provide in the draft plan, except where the development is designated development, that the provisions of sections 84, 85, 86, 87 (1) and 90 apply to and in respect of the development in the same way as those provisions apply to and in respect of designated development; and
- (d) not later than 14 days after lodgment of the application or after the Minister notifies the council of the terms of the draft plan, whichever is the later, exhibit the draft plan in accordance with section 66; and
- (e) if the development is not designated development—not later than 14 days after lodgment of the application, notify the accompanying development application in accordance with section 84 or 85 as if it was an application to carry out designated development; and
- (f) if the development is designated development—not later than 34 days after lodgment of the application, complete the notification of the accompanying development application in accordance with section 84 or 85.

(2) Any person may—

- (a) in accordance with section 67, make submissions with respect to the draft local environmental plan; and
- (b) in accordance with section 87 (1), inspect and make submissions with respect to the accompanying development application.

(3) Except in the case of a person making a submission in respect of an application to carry out designated development, a person making a submission is not an objector for the purposes of this Act.

*Environmental Planning and Assessment (Amendment) 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

**Consideration and making of plan**

72C. (1) The council shall consider—

- (a) any submission made in accordance with section 67; and
- (b) any matters prescribed by the regulations,

and shall decide whether, in its opinion, the draft local environmental plan should be made.

(2) If the council decides that the draft local environmental plan should be made, it shall, within 14 days of its decision, submit to the Director—

- (a) the draft plan; and
- (b) a statement to the effect that the provisions of section 72B relating to public involvement in connection with the draft plan have been complied with.

(3) On receipt of the draft local environmental plan and the statement, the Director shall arrange for the draft plan to be published in the Gazette, with such alterations as the Director thinks fit, being alterations that do not affect the substance of the provisions of the plan.

(4) The draft local environmental plan shall take effect on and from the date of its publication in the Gazette as if it were a local environmental plan made under section 70 by the Minister.

**Determination of development application by council**

72D. (1) If the council decides that the draft local environmental plan should be made, the council shall determine the accompanying development application as if the draft plan were in force.

(2) In determining the accompanying development application, the council shall take into consideration (in addition to the matters required to be considered under section 90 (1))—

- (a) any submissions made under section 72B; and
- (b) any matters prescribed by the regulations.

(3) If the council decides that the draft local environmental plan should not be made, the council shall refuse consent to the accompanying development application.

(4) Section 96 applies to the accompanying development application whether or not the council makes a decision about the making of the draft local environmental plan.

**SCHEDULE 1—AMENDMENTS—*continued***

(5) Nothing in this Act or in any environmental planning instrument prevents the council from determining the accompanying development application in accordance with this Division.

**Appeals**

72E. (1) If an appeal is made under section 97 (1) in respect of a development application to which this Division applies, each person who made a submission under section 87 in respect of the application shall be given notice by the council of that appeal and shall, on application made to the Court in accordance with rules of Court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if the person were a party to the appeal.

(2) The Court shall make its decision on an appeal under section 97 (1) or 98 (1) in respect of the development application as if the draft local environmental plan were in force.

**Making of local environmental plan following decision of Court**

72F. (1) If the decision of the Court on an appeal has the effect of granting consent either unconditionally or subject to conditions to the carrying out of the development the subject of the development application, the registrar of the Court shall notify the Director accordingly.

(2) If the Director has not already done so, the Director shall arrange for the draft local environmental plan which the development application accompanied to be published in the Gazette, with such alterations as the Director thinks fit, being alterations that do not affect the substance of the provisions of the plan.

(3) The draft local environmental plan shall take effect on and from the date of its publication in the Gazette as if it were a local environmental plan made under section 70 by the Minister.

**Date from which consent operates**

72G. A consent granted by a council or by a decision of the Court to a development application to which this Division applies shall be taken—

- (a) to have been granted under Division 1 of Part 4; and
- (b) to become effective in accordance with section 93 and to operate from the date on which it becomes effective in accordance with that section or the date on which the draft local environmental plan which the development application accompanied is published in the Gazette, whichever is the later.

*Environmental Planning and Assessment (Amendment) 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

**Application of Divisions 1 and 5 and Part 4**

72H. Divisions 1 and 5 and Part 4 apply to and in respect of a local environmental plan prepared under this Division and a development application made under this Division—

- (a) except to the extent provided by this Division; and
- (b) except to the extent of any inconsistency between a provision of those Divisions or that Part and a provision of this Division.

(2) Section 99 (**Lapsing of consent**)—

Section 99 (1) (a) (ii)—

Before “sections”, insert “Division 4A of Part 3 or”.

(3) Section 102 (**Amendment of consents**)—

Section 102 (2)—

After “designated development”, insert “or development which is required to be notified as if it were designated development”.

(4) Section 106 (**Definition of “existing use”**)—

Section 106 (a)—

After “but for”, insert “Division 4A of Part 3 or”.

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[Minister's second reading speech made in—  
*Legislative Assembly on 12 April 1989*  
*Legislative Council on 19 April 1989*]