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LEGISLATIVE ASSEMBLY

LAND (PLANNING AND ENVIRONMENT)
(AMENDMENT) BILL (No.4) 1993

EXPLANATORY MEMORANDUM

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Environment, Land and Planning

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LAND (PLANNING AND ENVIRONMENT) (AMENDMENT)
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Outline

The Land (Planning and Environment) (Amendment) Bill (No.4) 1993 ("Amendment Bill") amends the Land (Planning and Environment) Act 1991 ("the Land Act") to establish a Land and Planning Appeals Board.

The Principal Act, or "Land Act", establishes a regime for dealing with land, planning, heritage, and environment matters. Appeals against decisions under the Land Act are made to the Administrative Appeals Tribunal.

The Amendment Bill establishes the Land and Planning Appeals Board to replace the Administrative Appeals Tribunal as the body which will, generally, review decisions made under the Land Act.

The proposal to establish an alternative review body to hear appeals under the Land Act comes from the Legislative Assembly Standing Committee on Planning, Development and Infrastructure Inquiry into the Territory Plan. Concerns were raised during that inquiry that the appeals process was too formal and costly and there were delays in finalising appeals.

The concerns about improved access and informality in the review and appeals process are addressed in the Amendment Bill. In essence, the legislation seeks to establish a non-legalistic and non-adversarial approach to resolving as quickly as possible what are in the main disputes between

neighbours. This is achieved by putting into place a non-adversarial mechanism for dealing with appeals. The means by which this will be achieved include:

- . not making an oath or affirmation before giving evidence;
- . procedures adopted by the Board being as informal as possible;
- . parties generally being required to represent themselves;
- . making decisions quickly so as to avoid exhaustive and formal investigations;
- . conciliation meetings being held within 14 days of receipt of the application for review; and
- . decision makers being required to provide a statement of reasons and supporting documentation within 5 days of being subject to review.

Not all decisions under the Land Act will be subject to review by the Appeals Board. Where decisions are made on matters of valuation for land or improvements these will still be subject to review by the Administrative Appeals Tribunal. The Tribunal handles appeals on land tax and rating matters. To reduce any possibility of inconsistency in decision making occurring between the review bodies on similar matters, appeals on valuations should be handled by one review body, the Administrative Appeals Tribunal.

When notifying a decision the decision maker will be required to provide a statement of reasons that will set out the basis on which the decision was made.

The Amendment Bill also changes the arrangements for dealing

with orders.

Under the Land Act, the making of an order was a matter for the Minister. The Amendment Bill removes this responsibility from the Minister and gives the Registrar of the Appeals Board the power to consider applications for orders, and, where appropriate, make an order. Appeal of the Registrar's decisions on orders will be made to the Appeals Board. Because of this change in arrangements the Amendment Bill provides that the Executive can also make an order. The decision of the Executive will be non-reviewable.

The Amendment Bill also amends section 8 of the Land Act to make provision for a number of current applications for Design and Siting approval which, whilst being consistent with the Territory Plan in existence at the time ("the old Plan"), will be inconsistent with the new Plan.

Section 8 of the Land Act precludes approval of any activities that are inconsistent with the Territory Plan. Thus, if these applications were to be processed after the introduction of the Plan, they would have to be refused.

Given that refusal of such applications would be inequitable, it is proposed that the Amendment Bill contain a transitional provision to allow for applications which were submitted while the old Plan was in force, to be approved under the provisions of the old Plan, irrespective of any inconsistency with the new Plan.

Financial Implications

Funding for the Appeals Board has been provided for in the Budget process. The Amendment Bill enables fees to be levied.

Detail of Bill**Clause 1 : Short Title****Clause 2 : Commencement****Clause 3 : Principal Act****Clauses 1, 2 and 3**

Clauses 1, 2 and 3 are mechanical clauses that set out the title, commencement and principal legislation for the purposes of this Bill.

Clause 4 : Interpretation

Clause 4 amends section 4 of the Land Act. Section 4 defines terms for the purposes of the Land Act. Section 4 is amended by omitting the definition of Administrative Appeals Tribunal and inserting a definition of 'Appeals Board' and 'Registrar'.

Clause 5 : Effect of the Plan

Clause 5 amends section 8 of the Principal Act. Section 8 provides that the Territory, the Executive, the Minister or a Territory Authority shall not do an act, or approve the doing of an act, that is inconsistent with the Territory Plan. Clause 5 amends section 8 by adding a new subsection (2).

The new subsection (2) will provide that subsection (1) does not apply to an application that is made pursuant to the Buildings (Design and Siting) Act 1964 where the application is received before the 18 October 1993, the ACT Planning Authority has not refused to approve the application and the application is consistent with the Territory Plan as at 17 October 1993.

The new subsection (2) is intended to provide that applications received before the 18 October 1993, when the new Territory Plan commences, and which are consistent with the Territory Plan as at 17 October 1993, can be approved irrespective of any inconsistency with the new Plan.

- Clause 6** **Application for inclusion of places in interim Register**
- Clause 7** **Public Notification**
- Clause 8** **Revision of Interim Register**
- Clause 9** **Notice of Acquisition**
- Clause 10** **Aboriginal heritage discoveries - Ministerial directions and declarations**
- Clause 11** **Orders - Ministerial directions and declarations**
- Clause 12** **Notice of decisions about compensation**
- Clause 13** **Restricted information**
- Clause 14** **Publication of restricted information generally**
- Clause 15** **Review of decisions**
- Clause 16** **Public inspection**
- Clause 17** **Environmental impact Statements - consultation and public inspection**
- Clause 18** **Notice of various decisions**

The Bill provides for the establishment of a Land and Planning

Appeals Board that will generally be responsible for dealing with appeals, where provided, under the Land Act. As such, it is necessary to amend the Land Act to provide that the Appeals Board is provided with the power to hear an appeal and that applications for review are to be made to the Appeals Board.

Clauses 6 - 18 amend sections 59, 60, 62, 65, 69, 73, 80, 82, 84, 86, 117, 125, and 212 of the Land Act. Those sections provide that the Administrative Appeals Tribunal is the body responsible for dealing with appeals made under those sections and is the body to which applications for review should be made. Clause 6 - 18 replace the Tribunal with the Land and Planning Appeals Board as the review agency and the body to which applications for review should be made and imposes an obligation on the decision maker to supply a statement of reasons when advising the applicant of the decision.

Clause 19 Substitution

Clause 19 repeals section 213 of the Principal Act. Section 213 provides that where review of a decision under Part V is provided, as set out in section 212, the review is heard by the Administrative Appeals Tribunal. Section 213 is repealed and a new section 213, 213A and 213B substituted.

The new section 213 provides that where a decision, referred to in subsection 212(1) or (2) is made, then application for review of the decision shall be made to the Appeals Board.

The new section 213A provides that where a decision is made under sections 174, 177(3), 178(1) or 184 then within 28 days after the decision is made, notice of the decision is to be given.

Subsection 213A(3) provides that the notice under subsections (1) and (2) shall include a statement to the effect that application for review of the decision may be made to the

Administrative Appeals Tribunal and that a statement of reasons may be requested. Subsection 213A(4) provides that a failure to comply with 213A(3) does not affect the validity of a decision in 213A(1) or (2).

Section 213B provides that the Administrative Appeals Tribunal is the appeals body for decisions referred to in subsection 213A(1) or (2).

In effect, where a decision is made that requires a valuation of land or improvements, the Administrative Appeals Tribunal is the body to which applications are to be made for review of the decision. The Tribunal deals with rating and land tax appeals, which raise questions of valuations. It is inappropriate to split the function between two agencies as the outcome of an appeal on a rating valuation may have implications for a land rent matter. Such matters should be handled by one body to ensure consistency in decision making.

Clause 20 Application for order

Clause 20 amends section 256 of the Principal Act. Section 256 provides for the making of an application for the making of an order to the Minister in respect of controlled activities. It enables a person to seek to have the Minister take action to ensure a controlled activity is being conducted in accordance with an approval. The Minister can decide whether or not to issue an order. If an order is issued it has to specify in what manner the controlled activity is not being conducted in accordance with an approval.

This Bill proposes to make the Registrar of the Appeals Board responsible for dealing with applications for an order. A decision of the Registrar is reviewable by the Appeals Board. A number of changes have to be made to section 256 so that a mechanism for dealing with orders is established.

In subsection 256(1) the Registrar is substituted for Minister. Thus applications for orders are to be made to the Registrar. Subsections 256(3) and (4) are omitted and new subsections (3) and (4) substituted. Existing subsections 256(3) and (4) provide that the Minister may make an order on his or her own motion and set out on what grounds it is made and when it comes into effect.

The new subsection 256(3) provides that where the Registrar receives an application for an order a notice shall be given in writing of the application to the Minister and the person against whom the order is sought. The notice shall attach a copy of the application and contain a statement that a person may, within seven days, make a submission on the making of an order to the Registrar, [new subsection 256(4)]. The Registrar is to consider any submissions made before deciding whether to make an order [new subsection 256(4A)].

New subsection 256(4B) provides that the Registrar shall either make or refuse to make an order. A copy of each order made by the Registrar is to be given to the Minister, [subsection 246(4C)].

New subsection 256 (4D) enables the Executive, of its own motion, to make an order. A decision by the Executive to make an order is not reviewable.

Clause 21 Notice of making an order

Clause 22 Effect of order in certain circumstances

Clause 23 Future owners and occupiers

As a consequence of the provisions in clause 20 consequential changes are required to sections 257, 258 and 260 of the Principal Act so that the new arrangements for making of orders by the Registrar or Executive are consistent with the

existing requirements.

Clause 24 Review - applicants

Clause 25 Review - objectors

Given that the Appeals Board is generally responsible for dealing with appeals under the Land Act, consequential changes need to be made to sections 275 and 276 of the Principal Act so that references to Tribunal are replaced with Appeals Board. Sections 275 and 276 provide for review of decisions by the applicant and third party to the Administrative Appeals Tribunal.

A further change is made to subsection 276(1) which provides that where an objector is notified of a decision, they have 14 days within which to appeal the decision. The new subsection 276(1) omits the 14 days and substitutes 28 days. This period is consistent with the period allowed to applicants to appeal a decision on their application for approval.

Clause 26 Review - orders

As a consequence of the provisions in clause 20 consequential changes are required to section 277 of the Principal Act [Section 277 provides that where an order is made it is subject to review.]. The change gives effect to the new arrangements for making of orders by the Registrar.

Clause 27 Substitution

Clause 27 amends section 280 of the Principal Act. Section 280 establishes the manner in which applicants and objectors can be made parties to a proceeding before the Tribunal. Clause 27 repeals section 280 and substitutes a new 280 which gives effect to the Appeals Board being the review agency generally for decision under the Land Act.

Clause 28 Insertion

Clause 28 inserts a new Part into the Land Act - "**PART VIA - LAND AND PLANNING APPEALS BOARD**". Part VIA consists of five Divisions and establishes and provides for the operation of the Appeals Board.

Division 1

Division 1 consists of 1 section. **Section 282A** is an interpretation section that defines terms for the purposes of Part VIA.

Division 2

Division 2 consists of 11 sections and deals with the establishment of the Land and Planning Appeals Board.

- 282B** - Establishes the Appeals Board. The Appeals Board shall consist of a Chairperson, Deputy Chairperson and not more than 5 other members.
- 282C** - Specifies how the Appeals Board's members are appointed.
- 282D** - Deals with remuneration and allowances.
- 282E** - Specifies that the Minister may appoint people to act on the Appeals Board, and the conditions pertaining to such an appointment.
- 282F** - Specifies that the Deputy Chairperson may act in the Chairperson's place during a vacancy in the office of the Chairperson or during any period when the Chairperson is absent.

- 282G** - Empowers the Chairperson to delegate his or her powers to a member of the Board.
- 282H** - Empowers the Minister to grant members of the Appeals Board leaves of absence on such terms and conditions as to remuneration, or otherwise as the Minister determines.
- 282I** - Specifies that members of the Appeals Board hold office on such terms and conditions as determined by the Minister in writing.
- 282J** - Specifies that members may resign from the Appeals Board by written notice delivered to the Minister.
- 282K** - Provides for the removal by the Executive of members of the Appeals Board on the grounds of proved misbehaviour or incapacity being presented to the Executive by the Legislative Assembly. Section 282K also specifies that the Executive shall suspend a member from the Board for bankruptcy.
- 282L** - Imposes a duty on a member of the Appeals Board to disclose any interests that could affect his or her performance in relation to a proceeding before the Appeals Board.

Division 3

Division 3 consists of 5 sections and deals with the organisation of the Appeals Board.

- 282M** - Empowers the Chairperson to nominate who are to constitute the Appeals Board for a particular hearing and give directions as to the arrangements of business before the Appeals Board.

282N - Specifies that for a hearing the Appeals Board shall consist of three members: the Chairperson or Deputy Chairperson, plus two other members.

282P - Specifies that the Chairperson or, when the Chairperson is not a member, the Deputy Chairperson is to preside at a hearing.

282Q - Outlines what happens if a member of the Appeals Board ceases to be available during a hearing.

If a member of the Appeals Board ceases to be available before a proceeding has been determined, and if the parties are agreeable, the remaining members can still proceed with the matter on hand. Otherwise the matter has to be re-heard by another Appeals Board. If the Presiding member ceases to be available, the matter has to be re-heard. If a proceeding is re-heard, the new Appeals Board may use any evidence or material that came before the previous Appeals Board.

282R - Specifies that the Appeals Board can sit at such times and places as determined by the Chairperson.

Division 4

Division 4 consists of 20 sections and deals with reviews by the Appeals Board of decisions.

282S - Specifies what are reviewable decisions.

Section 282S specifies that an enactment, including the Land (Planning and Environment) Act 1991, may make provision for a decision made under that

enactment to be reviewable by the Appeals Board.

Section 282S also specifies that where an enactment makes provision for review that enactment shall specify the decision maker affected, whether all decisions of that decision maker are affected and whether conditions apply.

Section 282S also provides that an enactment may add to, exclude or modify the operation of provisions of the Land (Planning and Environment) Act 1991 relating to persons who may apply to the Appeals Board or parties to a proceeding before the Appeals Board.

282T - Specifies that where an application may be made to the Appeals Board for a review of a decision that application may be made by any person, Government or Government authority, or any organisation or association (whether incorporated or not) whose interests are affected by a decision.

282U - Outlines the procedure for applying for review of a decision.

An application for the review of a decision must be in the appropriate form; lodged with the Registrar within 28 days of the decision; set out a statement of the reasons for applying; and accompanied by the determined fee. A copy of the application has to be given to the decision maker.

Section 282U also provides that the time for the making of an application may be extended.

282V - Specifies that the parties to proceedings before the Appeals Board shall be the applicant for review and

the decision maker.

282W - Deals with representation before the Appeals Board.

Section 282W specifies that a party to a proceeding before the Appeals Board may, with the written consent of the Chairperson, be represented by another person. This could include representation by a legal qualified person.

Section 282W also specifies that the Chairperson shall not consent to a party being represented by another person unless the Chairperson is satisfied that it is in the interests of the party to be represented.

The section outlines some circumstances that the Chairperson is to have regard to when deciding whether to consent to a party being represented.

282X - Specifies that the Appeals Board may, subject to any enactment, adopt any procedure it wishes.

Section 282X specifies that proceedings of the Appeals Board shall be conducted with as little formality and technicality as possible, and that proceedings must be completed as expeditiously as possible. The section also specifies that the Chairperson or an authorised member of the Appeals Board nominates the procedure at the beginning of a review, but this can be varied at any time.

282Y - Section 282Y specifies that the Chairman may direct the parties to attempt to settle their differences in a conference. If they succeed, and the terms of agreement are put in writing and signed by all parties and are acceptable to the Appeals Board, the

Appeals Board may make a decision in those terms.

If the conference fails to settle the matter, and it progresses to a hearing, the parties may object to the member who presided over the conference taking part in the hearing.

282Z - Specifies that hearings before the Appeals Board are to be public.

282ZA - Deals with the lodging of documents with the Appeals Board.

When the decision maker is advised of an appeal, he or she has 5 days to prepare a statement of reasons (based on material questions of fact), and to produce all documentation relevant to the decision for the Appeals Board. If the Appeals Board thinks that something has not been provided, it may serve a notice on the decision-maker to do so within a specified time, regardless of any rule of law relating to privilege or public interest in relation to the production of documents.

282ZB - Empowers the Appeals Board to order the production of documents.

Section 282ZB specifies that if the Appeals Board considers that the statement of reasons provided by the decision-maker is inadequate, it may order that person to provide an additional statement with more particulars.

282ZC - Imposes an obligation on the Appeals Board to ensure that all relevant parties to a proceeding are given the opportunity to present a case, to inspect any relevant document and to make a submission in

relation to that document.

282ZD - Specifies that the Appeals Board may, in relation to a hearing:

- proceed in the absence of a party who had reasonable notice of the hearing;
- adjourn the proceeding; and
- summon a person to appear to give evidence or produce documents;

282ZE - Deals with the operation and implementation of a decision that is subject to review.

An application for review of a decision does not prevent the decision from being implemented, but the Appeals Board can make an order to stay the implementation of the decision if the Board thinks it is desirable to do so. The Appeals Board can alter or revoke the stay as it wishes.

All parties have to be given the opportunity to make submissions, unless the Appeals Board is convinced that the urgency of the situation makes this impracticable. In this case the order does not come into effect until the decision-maker has been served with a notice setting out the terms of the order. The order may be for a specified period, otherwise it lasts until the Appeals Board makes a decision.

282ZF - Empowers the Appeals Board to dismiss an application or strike out a party.

The Appeals Board may dismiss an application at any time if all parties agree.

If a party to a proceeding (other than the decision-

maker) fails to turn up for either a preliminary conference or a hearing, if they are the only party, the Appeals Board may dismiss the application. If there are other parties, the Appeals Board may direct that the person who failed to appear is no longer a party to the case.

282ZG - Outlines the powers of the Appeals Board.

The Appeals Board may affirm the decision under review, vary it, set it aside and replace it with another decision, or remit it for further consideration as directed or recommended by the Appeals Board.

The Board shall attempt to give its decision within 5 days of the completion of the hearing.

The Appeals Board may give its decision orally or in writing. The decision comes into effect at the time the decision is given unless another time is specified. If a decision is given orally, it must, as soon as possible, be given in writing, including the reasons for the decision.

The Appeals Board must give a copy of the decision, certified by the Registrar as being a true copy, to all relevant parties.

Where the Appeals Board varies or substitutes another decision for the original decision, the Appeals Board's decision shall be taken to have come into effect from the date the decision-maker made the original decision.

282ZH - Provides for the return of documents at completion of proceedings.

When the Appeals Board has concluded a proceeding and the appeal period is over, the Chairperson may return all documents to their sources.

- 282ZI** - Provides for appeals to Supreme Court from decisions of the Appeals Board.

A person may appeal a Board decision to the Supreme Court on a question of law, on a decision that a person is not entitled to apply for review, or if the Board has decided that they are not entitled to be a party to a proceeding of the Board. They must submit their appeal within 28 days of receiving the Appeal Board's written decision, or within such further time as the Supreme Court allows, and in such form as is required.

The Supreme Court may affirm or set aside the Appeals Board's decision, remit the case back to the Board to hear it again, or take any other action it thinks appropriate.

- 282ZJ** - Deals with the operation and implementation of a decision that is subject to appeal to the Supreme Court.

An appeal of a Board decision to the Supreme Court does not prevent the decision from being implemented, but the Court can make an order to stay the implementation of the Appeals Board's decision if it thinks it is desirable to do so. The Court can alter or revoke the stay as it wishes. The order may specify conditions and be for a specified period. If no period is specified, it lasts until the Court makes a decision on the appeal.

- 282ZK** - Deals with the reference of questions of law to

Supreme Court.

The Appeals Board may refer a question of law to the Supreme Court if the Chairman agrees. In such cases, the Board must wait for the Supreme Court's response before making a decision, and the decision must not be inconsistent with the Court's advice.

282ZL - Deals with the sending of documents to, and disclosure of documents by, the Supreme Court:

When an appeal of a decision of the Appeals Board is made to the Supreme Court, or the Board seeks the Court's advice on a point of law, the Board must ensure that all relevant documents are provided to the Court. The Court is under an obligation to return the documents when it is finished.

Division 5

Division 5 consists of 11 sections and deals with miscellaneous matters.

282ZM - Gives immunity to members of the Appeals Board, parties appearing before the Appeals Board, and witnesses.

Members of Appeals Boards have the same immunity as Judges of the Supreme Court. A person taking part in Appeals Board proceedings has the same protection and immunity as a barrister would have if appearing in the Supreme Court, and parties to the proceedings (witnesses, etc) have the same protection, penalties and liabilities, as if they were appearing as a witness before the Supreme Court.

282ZN - Creates an offence in respect of a failure of a

witness to attend a hearing of the Appeals Board.

Any person summonsed to appear before the Appeals Board who fails to appear is liable to a fine of \$1,000.00 or 3 months imprisonment.

282ZP - Creates an offence of refusing to answer questions or produce documents.

Any person refusing to answer a question of a presiding member of the Appeals Board, or refusing or failing to produce documents as required under a summons, is liable to a fine of \$1,000.00 or 3 months imprisonment.

282ZO - Creates an offence of giving false or misleading evidence at a hearing of the Appeals Board.

Anyone giving false or misleading evidence is liable to a fine of \$1,000.00 or 3 months imprisonment.

282ZR - Creates an offence of contempt of the Appeals Board.

Anyone obstructing, hindering or disrupting the proceedings of the Appeals Board is liable to a fine of \$1,000.00 or 3 months imprisonment.

282ZS - Provides for the setting up of a Registry.

The Minister shall ensure that a Registry of the Appeals Board is set up.

282ZT - Appointment of Registrar.

Section 282ZT empowers the Minister to appoint a Registrar of the Appeals Board, who shall be a public servant, and who shall have duties, powers

and functions as set out in this Act and as the Chairperson directs. The Minister may appoint another public servant to act in the Registrar's place when he or she is absent from duty.

282ZU - Deals with the giving of Notices.

A notice served on the decision-maker can be served on the Head of Administration or someone nominated by him or her. A copy of any such nominations must be given to the Registrar.

282ZV - Deals with the lodging of Documents.

Any documents lodged with the Appeals Board must go to the Registry.

Clause 29 repeals section 284 of the Principal Act and substitutes a new section 284.

New section 284 provides that where an appeal has been made to the Appeals Board, the Administrative Appeals Tribunal or the Supreme Court then the body may, where it appears to that body that it would not be unjust or inequitable, excuse a failure to comply with a requirement of the Act.

Schedule

The schedule to the Amendment Bill specifies a number of consequential amendments to the Land Act.