

1993

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendment to be moved on behalf of the Government

Circulated by authority of

Bill Wood MLA

Minister for the Environment, Land and Planning

Outline

The proposed Government amendment to the *Land (Planning and Environment) (Amendment) Bill (No. 4) 1993* (the Bill) proposes a number of amendments.

Amendment No 1

In the Land Act, section 249 sets out when an approval of an application to conduct a controlled activity comes into effect. It is proposed to amend section 249 to clarify when an approval of an application will take effect. It will also provide that where no objections to an application have been made, the approval will come into effect on the date of approval.

Where an application to conduct a controlled activity is approved, the decision takes effect either 7 days after the last day on which a person may apply to the Land and Planning Appeals Board for a review of decision, or if the applicant is notified before the end of the seven days by the Minister that no application has been made to the Appeals Board, the day on which that notice is given. In either case, the date of effect is at least 28 days after the approval to the application is given.

If application is made to the Appeals Board for a review of the decision, the approval takes effect on the date the Tribunal's decision either affirming or varying the decision comes into operation.

The proposed Government amendment will specify that where no objections are made to an application to conduct a controlled activity, within the period for making such an objection it is proposed that the decision should come into effect from the date of approval. Presently, a person who does not object to an application cannot appeal the decision, unless they can convince the Appeals Board that they were

unable to object to the making of the decision.

The proposed amendment does not remove the right of appeal to the Appeals Board nor affect the situation where the Appeals Board is asked to review a decision.

Amendment No 2

This amendment corrects a typographical error in subclause 22(c) where the "Registrar" should be substituted instead of the "Executive".

Amendment No 3

This amendment to section 282ZF will clarify that the Appeals Board shall not exercise its powers to dismiss an application or direct that a person shall not be a party to the hearing until it has considered any submissions made to it.

Amendment No 4

This amendment will provide that notices from the Appeals Board may be served on or to the Secretary to the Department of the Environment, Land and Planning.

Notes on clauses

Proposed clause 19A

A clause 19A is inserted in the Bill. Clause 19A repeals section 249. Section 249 provides that a decision does not come into effect until at least 28 days after the decision is made to approve the application to conduct a controlled activity.

A new section 249 will be substituted which will provide that an approval of an application under sections 240 and 241 will take effect:

- (a) if no objection is made to the application – on the day on which approval is given;
- (b) if an objection is made to the application and no application is made to the Appeals Board for a review of the decision – on the day following the expiry of the period of 28 days; or
- (c) if an application is made to the Appeals Board for a review of the decision – the day on which the appeals Board decision is made varying or affirming the decision is made.

Clause 22

Clause 22 of the Bill amends section 258. Section 258 specifies when the order will take effect. The reference in subclause 22(c) to "Executive" should be "Registrar".

Clause 28

An amendment is proposed to section 282ZF. Subsection 282ZF(2) provides that where a party to a proceeding fails to appear at a preliminary conference or a hearing the Board may, depending on the circumstances, dismiss the application or direct that the person who failed to appear shall cease to be a party to the proceedings.

New subsections (3) and (4) are inserted. Subsection (3) will provide that the Appeals Board is not to take action under subsection 282ZF(2) unless it has considered any submissions that may be made by a party in respect of it failing to

appear. Subsection (4) will provide that the Appeals Board is not required to seek submissions from a party.

Clause 28

An amendment is proposed to section 282ZU. Section 282ZU provides that a notice from the Appeals Board to the person who made a decision can be served on the Head of Administration or such person that may be nominated. Subsections 282ZU(1) and (2) are amended so that the reference to "Head of Administration" is changed to "Secretary to the Department of the Environment, Land and Planning".

Schedule

An amendment is proposed to the Schedule. The Schedule amended the Land Act as a consequence of the changes required by the introduction of the Appeals Board. Amendments were proposed to subsections 249(1) and (2). These are not necessary given the proposed amendment to section 249.