



## REVIEWS AND APPEALS

### Background

Section 82A of the Act currently allows for a review of a council determination and the review is undertaken by council.

Council has discretion to undertake the review after taking into consideration any submissions made concerning the request for review and after complying with notification provisions set out in the Regulations.

### Proposals

#### Planning Arbitrators and Planning Panels

##### *Review and appeals – Planning Arbitrators*

The applicant in a Planning Arbitrator matter may apply to the council for a review of the determination and the council must appoint a Planning Arbitrator to determine the review.

Appeals to the Land and Environment Court from a Planning Arbitrator matter will be available but not where a review by a Planning Arbitrator has already been undertaken, unless the council agrees to the applicant appealing to the Court or the Planning Arbitrator has not dealt with the application within the specified time.

##### *Review or appeal where the council is the consent body*

An applicant may either seek a review by a Joint Regional Planning Panel (JRPP) or may appeal to the Court.

##### *Review or appeal where the consent authority is a JRPP*

An applicant may request a review by the Planning Assessment Commission (PAC) or may appeal to the Court but are limited in the types of determinations that may be reviewed, for example:

1. Determination of a development application (including deemed refusals).
2. Determination of an application to modify consent (including deemed refusals).

##### *Planning Assessment Commission*

There are no rights of review from the determination of a PAC.

##### *Applications not accepted by council*

Where a Planning Arbitrator determines that council should deal with an application that it had not accepted, the council must determine the application.

### Objector Reviews

The classes of matters that can be reviewed after an application for review by an objector are to be set out in the Regulations. The Regulations may also set out what classes of people are unable to use these sections e.g. who will be deemed not to be an objector.

An objector may seek a review by a JRPP of a council determination to grant consent.

Further, an objector may seek a review of a JRPP determination by the PAC.

Objectors have no right of review where the matter has been determined by a PAC or the matter may be appealed as a designated development.

There are no rights of appeal to the Court against a determination of a PAC where the PAC is exercising its functions or exercising delegated functions under the Act and the PAC has held a public hearing.

### **Appeals to the Court**

All appeals are to be made within three months of the applicant receiving notice of the determination. Currently the time allowed to make an appeal is 12 months.

An applicant who is dissatisfied with a Planning Arbitrator determination may appeal to the Court but only with the consent of the consent authority.

An applicant who is dissatisfied with a determination of a consent authority relating to a modification of consent may appeal to the Court but not where the determination is from a Planning Arbitrator.

An applicant who is dissatisfied with the determination of a consent authority in relation to a modification of consent application relating to a Planning Arbitrator matter may appeal to the Court but only with the approval of the consent authority.

An applicant that is dissatisfied with the determination of a Planning Arbitrator with respect to a reviewable decision may appeal to the Court.

Where a consent authority is not satisfied with a specified aspect of the development that needs to be carried out to the satisfaction of the consent authority, an applicant may appeal against the decision of the consent authority.

The Court may not hear an appeal relating to designated development before the time allowed for appeals to be lodged has expired.

There is no appeal to the Court once an application for review of a determination has been made.

Applications for merit reviews may be made by way of Division 7A in relation to decisions by councils and JRPPs. There is no mention here with regard to merit appeals against determinations of Planning Arbitrators.

All persons that have been given notice of an appeal e.g. objectors, the Minister and the relevant approval body, have the right to be heard in Court as if they were a party to the appeal.

Where the Court makes significant amendments to a development application at the request of the applicant, the Court must make an order for costs against the applicant, for the whole of the costs of any other party to the proceedings.

### **Assessment**

The bill proposes a raft of changes to the existing system of reviews and appeals that reflect the proposed new decision-making and review bodies. The new system provides for a complex set of arrangements of reviews and appeals depending on:

- the type of development;
- whether you are an applicant or objector;
- the consent authority for the application;
- whether a public hearing has been held (in the case of the PAC);
- whether a JRPP has been established for the area in which the application is lodged;
- in the case of planning arbitrators, the particulars of the review process and whether council supports an appeal to the court.

The time allowed to make an appeal to the Land and Environment Court has been significantly shortened from 12 months to 3 months. This would appear to seriously disadvantage applicants who are more likely, due to the short time frames, to lodge an appeal before full consideration of the value of appealing. This will also be the case for objector appeals where these are allowed. The new system will lead to a significantly greater number of reviews and appeals and significantly higher costs for councils and the Court than under the current legislation.

**Recommendation**

The Associations oppose the proposed system of appeals and reviews as unnecessary, costly and open to corruption risks.