



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: MM:lb:PlaningAppeals  
Direct Line: 9926 0202

22 November 2010

The Hon Tony Kelly MLC  
Minister for Planning  
Level 34, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

### **Planning Appeals Legislation Amendment Bill 2010**

The Law Society's Environmental Planning and Development Committee (Committee) has a number of concerns in relation to this Bill.

The Committee raised these matters with your Department after a briefing on the main features of the Bill. A copy of the letter forwarded to your Department outlining the Committee's concerns is attached.

The Committee has now had the opportunity to read the provisions of the Bill and repeats its concerns in relation to the amendments referred to below.

#### **Section 97 appeal period**

The Bill provides for a reduction of the time to lodge an appeal under section 97 of the *Environmental Planning and Assessment Act 1979* (Act) from 12 months to 6 months from the date of refusal or deemed refusal of the development application (the 2008 amendment proposed to reduce this period to 3 months).

The Committee does not support any reduction in the right to appeal and considers that the current period of 12 months should be maintained.

#### **New Conciliation Arbitration Scheme**

The Committee has grave concerns regarding this proposal for compulsory conciliation / arbitration. While the Committee supports the removal of the planning arbitrator provisions, those provisions did allow dissatisfied applicants a merit appeal in the Land and Environment Court after a determination by a planning arbitrator. The "con-arb" model restricts appeals to questions of law. The Committee does not support such restricted appeal rights if the arbitration process is compulsory.

The Committee also strongly objects to introduction of compulsory arbitration following conciliation with immediate determination by the same Commissioner who dealt with the conciliation.

Under the existing regime in Class 1 appeals to the Land and Environment Court, a Commissioner presiding over an unsuccessful conciliation conference does not deal further with the matter, unless the parties consent to the Commissioner doing so. It is highly undesirable, in the Committee's view, to introduce a system of compulsory conciliation / arbitration which provides for the same Commissioner that deals with the conciliation to conduct the arbitration, without allowing the parties a right to both object to the Commissioner presiding at the arbitration and to appeal the determination on a merits basis.

I would welcome an opportunity to discuss these issues further.

Yours sincerely



**Mary Macken**  
President