## ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2014

**Bill introduced on motion by Ms Pru Goward, read a first time and printed.**

### Second Reading

**Ms PRU GOWARD** (Goulburn—Minister for Planning, and Minister for Women) [10.42 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment Bill 2014. This bill introduces important reforms to strengthen the enforcement regime under the Environmental Planning and Assessment Act, including setting tough new penalties for breaches of the Act, giving councils increased investigative powers and providing the court with new powers to make offenders more accountable when they cause environmental harm. These reforms will mean New South Wales has one of the toughest enforcement regimes in the country, helping to restore public confidence in the planning system.

The bill also includes provisions to facilitate the introduction of ePlanning, which will bring enormous economic benefits to the State by simplifying the planning system and making it easier to do business whilst also increasing transparency and access to information. The bill provides for the introduction of a three-tier offence regime, consistent with the recommendations of the independent review of the planning system led by the Hon. Tim Moore and the Hon. Ron Dyer in 2012. The three-tier regime is modelled on a similar approach under the Protection of the Environment Operations Act and will mean that the maximum penalty is clear on the face of the legislation, unlike the current system where there is only one maximum penalty for all offences.

Under the current Environmental Planning and Assessment Act, offences are subject to a maximum penalty of $1.1 million, irrespective of whether the offence is of a serious or minor nature or whether it was committed by a corporation or an individual. The $1.1 million penalty has not increased since 1999. Clearly, the Land and Environment Court has been reluctant to impose the $1.1 million penalty. The introduction of a three-tier offence regime will provide greater guidance to the court on the appropriate penalty to be imposed, according to the seriousness of the offence. The maximum penalty is one of the factors to be taken into account by the court in sentencing, along with other factors such as the nature of the offence, the actual harm caused and the offender's prior criminal record. These strengthened penalty provisions will be more in line with community expectations. The community rightly believes the punishment should better fit the crime, and while most businesses are law-abiding corporate citizens, current fines are no longer a strong enough deterrent. That is why we are increasing the maximum penalty the court can impose to $5

million.

The bill provides tier 1 offences as the most serious offences, such as carrying out development without approval or contrary to existing approvals, or contravening a development control order. The offence must also have been committed intentionally and caused, or was likely to cause, significant harm to the environment or the death of or serious injury or illness to a person. If a corporation commits a tier 1 offence the maximum penalty will be $5 million. This is more than four times the current penalty for equivalent offences under the Act and is in line with penalties under State environment protection legislation, such as the New South Wales Protection of the Environment Operations Act. The maximum penalty for an individual will be $1 million.

The inclusion of the aggravating factors in tier 1 offences will act as a deterrent to serious deliberate breaches of the planning legislation, including where corporations make large financial gains by committing offences. It is appropriate to provide higher penalties for corporations to send a clear message to industry about the seriousness of committing offences under the Act. Tier 2 applies to tier 1 offences that were unintentional or did not cause, or were not likely to cause, significant harm to the environment or the death or serious injury of a person. For corporations that commit a tier 2 offence the new maximum penalty of $2 million will almost double the current penalty for equivalent offences under the current Act. The maximum penalty for an individual will be $500,000.

Tier 3 offences are lesser procedural or administrative offences and carry a penalty of $1 million for corporations. The maximum tier 3 penalty for an individual will be $250,000. An example of a tier 3 offence is providing false or misleading information in connection with a planning matter. This offence will now extend to applicants as well as their consultants, who provide false or misleading information in environmental impact statements. The $1 million maximum penalty for corporations will act as an effective deterrent and will improve the standard and integrity of environmental assessments. The bill also clarifies that it is an offence not to disclose political donations made by directors of companies related to applicants for planning approval or who request changes to planning controls. By removing any doubt from disclosure requirements, political donations can no longer be hidden away in chains of subsidiary companies.

To support the three-tier offence regime, the bill also gives the Land and Environment Court alternative sentencing options when dealing with criminal proceedings. This was another key recommendation of the independent review by the Hon. Tim Moore and the Hon. Ron Dyer. Alternative sentencing options provide courts with a range of responses to offences beyond monetary penalties. Consistent with the Protection of the Environment Operations Act, the bill will allow the court to make orders requiring the offender to publish details of the offence; to name and shame companies that flout planning controls; to require the

offender to restore damage done to the environment or to provide additional environmental enhancement; to recover any monetary benefits an offender might have received from committing the offence, such as profits gained by a mining company from exceeding approved extraction limits; and to force offenders to attend training courses so they better understand their environmental obligations and how to do the right thing.

The court's powers to make utility orders will also be extended to residential or tourist development, such as backpacker hostels or student accommodation.

Currently these powers apply only to brothels. This will enable the court to direct utility providers to cut off gas, water and electricity supply to premises where operators of residential or tourist premises have failed to comply with orders to stop work, or stop using premises in breach of planning rules.

The bill also will increase local councils' investigation and enforcement powers, which will better equip them to respond to suspected breaches of the planning legislation. Under the new investigation provisions, local councils will be able to enter non-residential premises without first giving written notice to the owner or occupier. This will enable councils to gather evidence without tipping off illegal operators. Councils also will have the power to require information or records before entering premises and to seize items that enforcement officers suspect are connected with an offence. These new powers will greatly assist councils in carrying out their enforcement role and allow them to build cases against suspected offenders. Councils now will be able to prosecute offences within two years of an offence coming to the council's attention, rather than within two years of the offence being committed. This provides councils with greater flexibility to take appropriate action when the planning laws have been breached.

The bill also brings the planning system into the twenty-first century by introducing ePlanning, which will give people better access to planning information and decisions anywhere and at any time. The Environmental Planning and Assessment Act is currently based on a system of paper plans and maps, with important planning information required to be published in weekly newspapers. New South Wales needs a modern planning system that is up to date with the way people do business and communicate with one another. In July this year I had the opportunity to launch a range of free online tools as the first step towards modernising the planning system. The release of those tools was made possible by this Government's $30 million commitment to deliver a range of online planning services and information, announced as part of the 2014-15 budget. In the first two months, over 35,000 visitors have gone online to use the ePlanning tools. The department also has held a series of sessions with council representatives and industry professionals across the State. Those sessions were well attended and again the feedback has been overwhelmingly positive.

The next step is to provide the necessary statutory backing for ePlanning. The bill establishes the New South Wales planning portal, where people can access information and interactive maps to help them understand the planning system, and how they might be affected by planning decisions. The planning portal will be the one place where both State and local government information will be available at the click of a button. Applicants will be able to take advantage of online lodgement and tracking of planning applications, which will dramatically reduce the time and resources currently spent on producing hard copy volumes and make it easier to do business. Using three-dimensional [3D] visualisation tools, ePlanning will allow the community to see how a proposed precinct actually will look and give them the tools they need to contribute to the planning process.

Greater public access to information is one of the goals in the Government's NSW 2021 plan. Providing people with better access to planning information will mean that more people get involved in the planning process. This ultimately leads to improved planning decisions. The bill also resolves copyright issues that arise when planning information is published online. Local councils have long expressed concern about their ability to reproduce plans and other documents submitted with a development application. The bill will enable councils to be protected from breaching copyright laws, without disadvantaging copyright owners, by enabling planning applications to include a licence to use copyright material and a warranty that the applicant has a licence from the copyright owner. These protections will be limited to local government and the State Government and will not enable third parties to use or reproduce publicly available planning information without the express approval of the copyright owner. Finally, the bill will make a number of other minor amendments such as updating references in the Act to the director-general of the department to the secretary of the department. I commend the bill to the House.

**Debate adjourned on motion by Mr Ron Hoenig and set down as an order of the day for a future day.**