NSW Legislative Assembly Hansard

Environmental Planning and Assessment Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 28 February 2006.

Second Reading

Mr FRANK SARTOR (Rockdale—Minister for Planning, Minister for Redfern Waterloo, Minister for Science and Medical Research, and Minister Assisting the Minister for Health (Cancer)) [7.58 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment Bill. The bill will amend three Acts to achieve important planning objectives, which include reducing delays and costs in the assessment of development applications, helping to co-ordinate local and State planning controls, and ensuring the timely and efficient supply of infrastructure and services to support growth and development in land release areas and other important sites.

This Government has undertaken the biggest overhaul of planning laws in 25 years, slashing red tape on development and encouraging jobs and investment in New South Wales. This bill is the next logical step in our program of planning reforms. When it comes to planning, the State is well advanced in putting its own house in order. In 2005 considerable changes were made to the way that State significant projects would be assessed. Changes included reducing the number of planning instruments into a single State environmental planning policy, removing the need for up to 15 different approvals and licences, to be replaced by one assessment and approval, handing back responsibility for hundreds of smaller decisions to local councils, and introducing concept approvals and independent hearing and assessment panels.

These changes demonstrated the Government's determination to take decisive action in ensuring that major projects in New South Wales can be assessed and determined in the most efficient and robust manner. But only about 400 major development and infrastructure projects are determined by the Minister in one year, while councils in this State are faced with 300 times that number. In New South Wales 152 councils deal with approximately 125,000 development applications [DAs] that are lodged every year. That is an average of 340 DAs a day. While most councils do a good job in dealing with these pressures, a small number do not. The State cannot stand idly by when some councils repeatedly fail to make timely and reasonable planning decisions. Good planning and environmental outcomes do not require interminable processes and delays. This bill is part of the Government's ongoing work to ensure that there is greater certainty and efficiency within all levels of the planning system.

I will now turn to each component of the bill. The bill expands the existing provisions for planning administrators and provide a new power to appoint planning assessment panels. These amendments will help the Government respond to community concerns about council performance in planning and development. One of the biggest concerns relates to increasing delays in the assessment of development applications by councils. Councils are meant to process most DAs within 40 days. In 2001-02 one-third of New South Wales councils took longer than 40 days on average and the worst performing council took an average of 116 days. By 2003-04 40 per cent of councils failed to meet the 40-day deadline. The worst performer took an average of 159 days. These delays create significant costs for developers and to the community in general.

There are also significant concerns with excessive legal expenses being incurred by many councils in relation to planning and development costs. The legal bill for New South Wales councils jumped by 40 per cent to over $33 million in the two years to 2003-04. In 2003-04 one council spent over 50 per cent of its planning budget on legal expenses. This is taking ratepayers' funds away from councils' other priorities. The misuse of planning controls also raises concerns. Some councils ignore development standards to approve inappropriate development, such as large waterfront houses that contravene development controls. Other councils refuse appropriate development, despite compliance with development controls and endorsement from council officers. Other councils inappropriately subdivide prime agricultural land for rural residential development, resulting in the loss of important farming land, which we need to sustain our economy.

There are also concerns about councils' local environmental plans [LEPs]. There is evidence that some councils have prepared LEPs to rezone land solely on the basis of requests from developers rather than the consideration of proper strategic planning work. Other councils have failed to prepare LEPs as directed by the State Government, while others have prepared LEPs that are too prescriptive, out of date or with insufficient regard to the correct process under the Environmental Planning and Assessment Act 1979. The bill will make it easier to address situations like these. If a council is failing in its planning and development responsibilities the Minister for Planning will be able to appoint a planning and assessment panel to perform the council's functions. Panels will be an additional option for intervening in local development and will only be used in exceptional

circumstances.

Panels may be used instead of or in addition to planning administrators, which the Minister can already appoint in certain circumstances. Panels will help improve the efficiency and effectiveness of local decision-making without having to bring developments into the State assessment process. This should reduce requests to the Minister to call in developments as major projects under Part 3A of the Environmental Planning and Assessment Act. There have been a substantial number of these requests in recent times. Planning assessment panels will consist of three to five people with skills and knowledge in planning and development matters and may include representatives from the local community and/or the local mayor. Panels will have procedures to ensure they are accountable for their activities. They will be able to perform a council's consent authority role or its role in preparing environmental planning instruments. Panels will be subject to the Minister's direction and control in all of these roles, except in the determination of development applications.

The bill will allow the Minister to direct councils to submit reports on their performance. My department will consult with the Local Government and Shires Associations and other relevant stakeholders on the development of a performance reporting system for DA assessments and other relevant matters. This system will acknowledge that while most local DAs should be dealt with within one to two months, some DAs can be controversial or complex and require detailed assessment and considerable consultation. Any reporting system will need to reflect these variations and will enable the Minister to reach an informed view on a council's performance. It will also enable a targeted and practical response if performance is unsatisfactory.

The bill provides that panels may be appointed in a range of other circumstances, which include if a council has not complied with its obligations under the environmental planning legislation, if the Independent Commission Against Corruption [ICAC] recommends the appointment because of serious corrupt conduct by a councillor, or if the council agrees to the appointment, because some councils may themselves recognise that they need assistance. The bill also clarifies and expands the Minister for Planning's existing powers to appoint planning administrators. The Minister may already appoint a planning administrator if a council does not comply with its obligations under the planning legislation or if the ICAC recommends it. The bill provides that, as with panels, a planning administrator may also be appointed if a council is performing poorly or if the council agrees. Administrators may perform any of a council's functions under the Environmental Planning and Assessment Act.

If a planning assessment panel or administrator is appointed, the Minister will be able to specify matters that must be administered, along with their priority. This will enable the Minister to target the panel or administrator's work to particular areas. For example, a panel could be appointed to look at large-scale development or to assess applications that have not been determined after a certain period of time. The bill also includes provisions to ensure that panels and administrators have sufficient resources and powers to be effective. The Minister will be able to direct councils to provide panels or administrators with staff and facilities. It will also be possible to make regulations regarding the appointment of staff or the payment by the relevant council of the panel or administrator's costs. The bill also provides that a penalty may be imposed if a councillor or a council staff member obstructs a panel or administrator.

I now turn to the bill's amendments to strengthen the Government's ability to deliver infrastructure, amenities and services in new land release areas and other areas where there will be co-ordinated growth and development. In such areas, developers may undertake intensive, simultaneous development. This creates a need for councils and the State to concentrate funds to ensure that infrastructure and amenities are available to complement such development. The bill will ensure that communities that are established as a result of such development are supported by appropriate and timely services and facilities. The amendments will allow the Minister to specify areas where infrastructure and services must be delivered hand in hand with development.

In these areas the State Government will be able to raise a development contribution, known as a special infrastructure contribution. Special infrastructure contributions will be collected in special contributions areas, which will initially consist of land in any growth centre declared under the Growth Centres (Development Corporations) Act 1974. These areas will be listed in a schedule to the Environmental Planning and Assessment Act, which can be amended at any time to create, amend or repeal a special contributions area. The Minister for Planning will set the nature and level of special infrastructure contributions. The level of each contribution will reflect the cost of providing infrastructure, services and amenities in an area. The Minister will consult with the Treasurer if the cost of a particular infrastructure item exceeds $30 million.

The contribution may also be a percentage of the cost in respect of development or a class of development. As with section 94 contributions, developers will be able to provide the levy as a monetary contribution, works in kind or by dedicating land. The State Government may spend special infrastructure contributions on the capital and recurrent cost of public amenities and services, affordable housing, transport and other infrastructure, as well as environmental conservation. Importantly, the bill provides that special infrastructure contributions may be spent on the provision of infrastructure outside a special contributions area, but only if the infrastructure and amenities provided arise as a result of development within the special area. This is necessary to provide sufficient legal certainty that special infrastructure contributions can be used by the State Government to provide infrastructure outside the locality of a development, such as public transport or environmental offsets that are

required because of the development within a special area.

The ability to use special infrastructure contributions for infrastructure beyond the boundaries of a special contributions area is an extension of existing arrangements. These already enable the Minister to fund regional infrastructure through environmental planning instruments that require satisfactory arrangements for infrastructure to be reached before the development can proceed. Usually, developers meet the satisfactory arrangements test by entering into a planning agreement, but these existing measures may not be sufficient to meet all of the infrastructure needs in some areas. For example, planning agreements are most effective for large parcels of land owned by one or only a few owners. They are cumbersome when land ownership is fragmented, such as in the land release areas. Reliance on negotiating planning agreements could delay the provision of infrastructure.

Special infrastructure contributions will be in addition to contributions that may be levied by councils under section 94 or section 94A of the Environmental Planning and Assessment Act. They will be collected only when it is reasonable to impose an additional levy because of the extent and urgency of the area's infrastructure requirements. For example, special infrastructure contributions will be collected for the major infrastructure and services needed in the north-west and south-west growth centres. In those areas, immediate and significant infrastructure expenditure will be required. Special infrastructure contributions will provide the Government with a secure source of funds to provide infrastructure at the right time and in the right sequence. This is about planning for growth in a more effective way, especially in areas where public services and amenities are needed before residents and businesses start moving in.

The bill also prevents the imposition of section 94 contributions for the same purpose as special infrastructure contributions. This will prevent any double dipping for the same infrastructure and services, and ensure that the combined total of local and State contributions in these special areas is fair, balanced and reasonable. In special contributions areas it will not be possible to raise fixed development consent levies under section 94A of the Environmental Protection and Assessment Act, or to enter into planning agreements, without the consent of the Minister for Planning or the relevant development corporation, nor will it be possible to levy contributions for affordable housing, under section 94F of the Act, in the special contributions areas. This is because special infrastructure contributions may be used to fund affordable housing.

Special infrastructure contributions will be imposed as a condition of consent by the Minister, or by another consent authority at the Minister's direction. This means that councils will be able to collect special infrastructure contributions along with their own section 94 and section 94A contributions. This means that councils can collect development contributions, on the Government's behalf, using the streamlined and efficient system that councils and the development industry have used for many years. In the event that a council neglects to impose a special infrastructure contribution as a condition of consent, the Minister will be able to impose the condition on the council's behalf. In addition, a consent authority will not be able to modify a condition requiring the payment of a special infrastructure contribution, unless the Minister approves the change.

A Special Contributions Areas Infrastructure Fund will be set up to receive and distribute special infrastructure contributions. That fund will be administered by the director general of the Department of Planning in consultation with the Secretary of NSW Treasury. Deposits into the fund will include monetary special infrastructure contributions, the proceeds of the sale of any land dedicated as contributions, any money appropriated by Parliament and the proceeds of investing the fund's money. The pooling of contributions in the fund will enable the Government to take advantage of economies of scale in providing infrastructure. Payments from the fund will be permitted only for public authorities that provide infrastructure or for administrative purposes.

The ability of the fund to pay public authorities for providing infrastructure is an important change. This is because it will allow special infrastructure contributions to be transferred directly to the relevant body that has, or will, provide infrastructure. For example, funds for roads can be provided directly to the Roads and Traffic Authority, funds for hospitals can be provided directly to NSW Health and funds for environmental conservation can be provided directly to the Department of Environment and Conservation. While this makes sense, the Act does not currently allow contributions to be transferred like that.

It will not be possible to appeal to the court against the nature and level of special infrastructure contributions, or against a condition of consent that requires the payment of a special infrastructure contribution. This is necessary to ensure the security of funds for essential infrastructure. Challenges can delay the flow of contributions and, if successful, affect the State's capacity to provide infrastructure. It is important to note, however, that the bill requires the level of special infrastructure contributions to be reasonable, having regard to the cost of infrastructure required as a result of development. Also, nothing in the bill affects the jurisdiction of the Supreme Court to hear appeals. This means that a person may still have an action to initiate in the Supreme Court, for example, based on a matter of administrative law.

I now turn to the proposed amendments relating to contributions plans. Contributions plans must be prepared by councils before they can collect development contributions under section 94 or section 94A of the Environmental

Planning and Assessment Act. The bill will enable the Minister to direct a council to make, amend or repeal a contributions plan within a certain time. The Minister will also be able to make, amend or repeal a contributions plan on a council's behalf if it does not act as directed, or if the council agrees. To help the Minister determine whether to intervene in a contributions plan, the bill also requires councils to submit a copy of each contributions plan as soon as practicable after it has been approved by council.

These amendments will help ensure that contributions plans are in place to complement the timing of development. They will also help co-ordinate infrastructure provision between neighbouring councils and with development corporations. They will maximise efficiencies in the use of contributions by enabling funds to be pooled and applied progressively to different purposes, and they will prevent contributions being used for inappropriate purposes, and ensure a reasonable total of local and State contributions. It will not be possible to appeal to the Land and Environment Court against contributions determined under a contributions plan if that plan is made or amended by, or at the direction of, the Minister.

The bill also excludes appeal rights against the process for making, amending or repealing a contributions plan by, or at the direction of, the Minister. This will help secure the certainty of funds so that important infrastructure programs can be implemented. It will also prevent councils being challenged on matters that are beyond their control. As with special infrastructure contributions, the bill does not affect the ability to appeal to the Supreme Court.

The bill also contains amendments relating to development control plans [DCPs]. The amendments will enable the Minister to direct a council to make, amend or revoke a DCP. If the council fails, or is unable, to act as directed, the Minister may make, amend or revoke the DCP. This reinforces recent legislative initiatives to streamline planning controls and introduce greater certainty for communities and developers. The Minister's ability to intervene in a DCP will also introduce greater certainty. At present, the Government prepares regulatory impact statements when it introduces new regulations. However, councils can introduce new development standards without the same level of analysis. This means that councils can use DCPs to introduce onerous and inappropriate controls without sufficient public scrutiny and, at times, in conflict with other planning and development objectives.

The community expects the Government to prevent councils from implementing regulatory requirements that have not been properly analysed. However, at the moment, the Government is powerless to do that. The amendment will allow the Government to act to prevent adverse outcomes of inappropriate regulatory controls. For example, a council's DCP may be amended because it conflicts, or prevents compliance, with government policies. I am aware of a recent example where a council implemented a DCP that circumvented nationally agreed building standards. These amendments may also help ensure consistency in development controls across council borders as the new sub-regional and regional strategies are developed.

The bill contains further amendments to support the provision of infrastructure and services in growth centres. These changes will amend the Growth Centres (Development Corporations) Act 1974 to require a development corporation to submit an annual statement of business intent for the approval of the Treasurer and the Minister for Planning. The statement will set out the corporation's business plan for the year ahead, including its objectives, proposed activities, performance targets and accounting policies. It will also set out the corporation's proposed activities in relation to special infrastructure contributions. Development corporations may also be required to submit occasional reports on other matters. Those changes will ensure better accountability for development corporations and assist the Government to monitor and approve arrangements for the timely and co-ordinated provision of infrastructure and amenities in the growth centres. While a minor change, I note that the bill enables the Minister to appoint a chief executive of a development corporation that is not the director general of the Department of Planning.

I now turn to some amendments to the Redfern-Waterloo Authority Act 2004. That Act includes provisions relating to major projects subject to part 3A of the Environmental Planning and Assessment Act. These provisions relate to the delegation of consent authority functions, development contributions and the application of the Heritage Act. However, development that is not subject to part 3A will also occur in Redfern-Waterloo. Therefore, the bill will extend these provisions to development subject to part 4 of the Environmental Planning and Assessment Act, that is, development worth less than $5 million. These amendments are consistent with provisions in the bill that were inadvertently amended by the planning reform legislation last year. The Redfern-Waterloo Authority Act allows the Minister for Redfern Waterloo to sub-delegate approval and consent authority functions to the authority or the City of Sydney Council. The bill will also enable these functions to be sub-delegated to an employee of the authority. While minor, these amendments will enable the efficient and expedient assessment of development applications.

The bill also amends arrangements for consultation with the Heritage Council regarding the alteration of any item on the State Heritage Register. Currently the Minister must consult the Heritage Council before determining that a proposed alteration is necessary. At present the Minister cannot delegate this function. This is not a practical or efficient means of rejuvenating Redfern-Waterloo. The bill will therefore allow these consultation and assessment functions to be delegated. This will not detract from the existing arrangements for consultation,

assessment and decision-making on heritage matters.

The bill also clarifies the Minister's powers of land acquisition regarding Crown land. Currently the Act only permits the authority to acquire Crown land vested in public authorities. However, some Crown land is vested in the relevant Minister, and a Minister is not generally considered a public authority. Therefore the bill clarifies that the Minister administering the Crown Lands Act 1989 may transfer the ownership of Crown land within the Redfern-Waterloo Authority's area of operations to the authority.

The amendments also expand the public authorities from which the Minister is empowered to acquire land to include government departments, state-owned corporations, statutory bodies, public authorities and chief executives officers as defined by the Public Sector Management Act. This will help prevent any limitation to the Redfern-Waterloo Authority's ability to achieve its objectives to revitalise Redfern-Waterloo. It should be noted that the amendments do not extend the authority's powers to acquire lands vested in a council. Finally, the bill makes some consequential amendments relating to special infrastructure contributions.

The Environmental Planning and Assessment Amendment Bill comprises a range of practical and reasonable measures designed to improve efficiency, promote consistency and further streamline planning and development. The Government is a strong defender of the role of local government in this State. New South Wales councils provide important services to ratepayers and employment for 40,000 people. However, the State should not stand idly by when some councils repeatedly fail to make timely and reasonable planning decisions. Delays in particular have been creeping up in some areas and this is causing frustration on the part of residents wanting answers on simple home renovations, and investors who want to create more jobs and prosperity for New South Wales.

Council development applications are the building blocks of our economy. The Iemma Government wants more building and less blocking by councils. That is why these reforms are necessary, and we make no apologies for continuing this push to cut red tape, improve efficiency and create a sound basis for business and investment in New South Wales, while at the same time ensuring that our environment is developed in a sensible, co-ordinated and balanced fashion. I commend the bill to the House.