NSW Legislative Council Hansard

Environmental Planning Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 November 2006.

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [11.47 p.m.], on behalf of the Hon. Michael Costa: I move:

That this bill be now read a second time.

This bill is largely a housekeeping measure comprising targeted amendments that will improve the operation of the planning system. The bill has been developed to address issues raised by stakeholders, the courts and practitioners in eight separate areas of the planning and building system. First, the bill strengthens the existing enforcement provisions for development, including the development of major projects. Second, the bill clarifies certain provisions relating to developer contributions that will enable the construction of an overpass between New South Wales and Queensland. Third, the bill makes clear that in issuing certificates under the Environmental Planning and Assessment Act to accredited certifiers, councils must have regard to an objective test based on reasonableness rather than a subjective test. Fourth, the bill reduces the time limits for Crown development applications under part 5A of the Environmental Planning and Assessment Act to speed up the delivery of government infrastructure. The time limit will be reduced from 100 days to 61 days. Fifth, the bill amends the City of Sydney Act to make a number of commonsense changes to the planning provisions of that Act.

Before I come to what the bill does, I will correct the record on the question of the appointment of the Government Architect to the City of Sydney Planning Committee [CSPC]. The existing legislation does not prescribe the Government Architect as a member of the CSPC. However, the Government chooses to appoint the Government Architect as one of its senior employee appointments. This Minister has advised me that he has no intention of removing the Government Architect from this appointment. The bill does the following things in relation to the CSPC. It makes the conflict of interest provisions under the City of Sydney Act consistent with those under the Local Government Act. Regarding the appointment of non-council members to the CSPC, the bill provides for some flexibility as to who the senior government officials are and makes it easier to appoint alternates rather than having an alternate for each non-council member. The bill enables two Government members of the CSPC to put items on the agenda. Surely it is reasonable to allow members of a committee to place items on a meeting agenda.

The sixth matter the bill deals with relates to amendments to the Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 that will enable reform of regulations for places of public entertainment and temporary structures to be completed. This reform is overdue and will be extremely good news for the music industry. Seventh, the bill makes minor amendments to the Environmental Planning and Assessment Act, including amendments to the deferred commencement consent provisions. A development consent that does not have deferred commencement approval lapses after a maximum of five years. If it is given a deferred commencement consent it does not lapse at all. The amendment proposed in the bill will ensure that it will lapse after five years. This fixes an anomaly in the Act.

The bill clarifies the fee powers of the Department of Planning. If it is a project application, fees can currently be levied, but if it is a concept application fees cannot be levied. The amendment proposed in this bill ensures there is a consistent approach to how fees are levied for applications—again, an operational change. Finally, the bill makes a range of amendments relating to major projects—an area which has been the subject of much public comment. The amendments are operational. They will simplify the administration of major project environmental assessments. The bill makes a number of operational changes to the major projects system under part 3A of the Act following the review of the new part after its first year of operation.

The bill will ensure that there is a single assessment process for major projects where a project and a concept plan are being assessed concurrently. This will operate in a similar way to the staged approvals procedures that already apply under part 4 of the Act. The change will make it easier for proponents and the department by minimising duplication and will also reduce confusion during the public consultation stage, as only one exhibition process will apply to the proposal. On a related issue, the bill also gives the Minister the ability to consider and determine major projects and concurrently amend the zoning. These powers are comparable to current powers of councils to undertake a joint development application and rezoning. This provision will not apply to developing environmentally sensitive areas of State significance or sensitive coastal locations.

The bill provides for the Minister to ensure that satisfactory arrangements are made to establish whether

developers have fulfilled their obligations when they have made a statement of commitment applying for a concept plan. The bill enables the Minister to impose as part of the concept plan preconditions that must be complied with as part of the assessment requirements for any subsequent project approval. The experience of the past year has shown a need to tighten up the Minister's ability to manage the outcomes arising from a concept approval.

The bill clarifies transitional arrangements for projects which were previously approved under the old part 4 or part 5 of the Act. The Minister for Planning has been advised by his department that some mines have been approved to various stages under various different approval processes. Up to a dozen different types of controls might apply. When there is a subsequent application for augmentation, those controls need to be streamlined so that from an enforcement point of view it is much more feasible to enforce conditions. Conditions have typically been tightened over the past 30 years. This amendment allows for old conditions to be updated to meet current standards.

I turn to the proposed amendments to section 75J (1) and section 75O (1). These amendments are specifically designed to address comments made on 14 July by Justice Jagot in the Land and Environment Court case *Tugun Cobaki Alliance Inc. v Minister for Planning and Roads and Traffic Authority*, which raised legal uncertainty about the circumstances in which applications for project approval can be determined. They are clarifying amendments; they are not substantive policy changes. These amendments have nothing to do with the Anvil Hill coalmine. The Minister has given me a copy of a letter from Peter Gray—the applicant in the court case currently being considered in the Land and Environment Court—which acknowledges this point. I seek leave to table the letter.

Leave granted.

Document tabled.

I am advised that those proceedings had been heard by Justice Pain on 6 and 7 November 2006 and the parties are awaiting judgment. The bill remains before Parliament and the relevant provisions will not be operative until the bill is passed, assented to, and commenced. Notwithstanding this point, these provisions are not intended to change the robust environmental assessment that takes place for major projects as a result of the issue by the director general of the environmental requirements for a project or concept plan. Rather, the provisions are intended to clarify the respective roles of the director general and the Minister for Planning in the assessment and approval process in light of the comments made in the case to which I have referred.

Importantly, the bill will not change the current requirements for the mandatory public exhibition of a proponent's environmental assessment, the procedures for public submissions, or the matters that the Minister must take into account in determining a project application—safeguards that are already in the legislation. I note the Government successfully moved amendments to the bill in the other place to ensure that environmental assessment requirements are expressly made a consideration in the determination of major project applications. The bill now requires the director general to include in his report to the Minister a statement on compliance with the environmental assessment requirements applying to the project. A statement from the director general will be one of the matters the Minister must take into account before determining the relevant project or concept plan application. I commend the bill to the House.