ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (PART 3A REPEAL) BILL 2011

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Bill introduced on motion by Mr Brad Hazzard.

Agreement in Principle

Mr BRAD HAZZARD (Wakehurst—Minister for Planning and Infrastructure, and Minister Assisting the Premier on Infrastructure NSW) [7.17 p.m.]: I move:

That this bill be now agreed to in principle.

Today I implement one of the major election commitments of the Liberal-Nationals Government—to repeal part 3A of the Environmental Planning and Assessment Act 1979. In repealing part 3A the Liberal-Nationals Government is honouring two of its commitments for the New South Wales planning system: returning a broad range of decision-making powers to local communities and providing a planning framework for genuinely State significant development that provides certainty for investment and the efficiency needed to get this State moving again. The Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011 is a first step in the comprehensive review of the New South Wales planning system.

In that sense the bill I introduce today is an interim, but necessary, measure to rebuild confidence in a new planning system for New South Wales—a planning system based on the public interest, not private interests; a planning system that is transparent, where planning rules are certain and decisions are taken on merit and in a timely way. The Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011 provides the framework to correct the imbalance in the New South Wales planning system—delivering the balance between the decisions that should be made by local communities and the decisions that are genuinely of State significance.

Unlike part 3A, the bill provides that local environmental plans and council development standards will be an important consideration in the comprehensive environmental assessment of State significant development proposals. At the same time, the bill will honour the Liberal-Nationals Government's commitment to place the provision of major infrastructure at the centre of our program. The bill provides for a dedicated, comprehensive and independent environmental assessment regime for infrastructure that is genuinely of State significance. It is for these reasons that I introduce a bill today which will repeal part 3A in its entirety and replace it with an open, transparent and fair assessment process to deal exclusively with genuinely State significant development and infrastructure.

This assessment process for State significant proposals will be an interim measure until the comprehensive review and rewriting of the planning laws has been completed. Before I turn to the bill I must point out that it is merely the principal measure in a package of measures to give effect to the repeal of part 3A. The parts of the package include major amendments to State Environmental Planning Policy (Major Development) 2005 to remove all references to part 3A of the planning legislation, a new State environmental planning policy for State significant development, necessary changes to the Environmental Planning and Assessment Regulation 2000, delegation of the Minister for Planning and Infrastructure's determination role to the Planning Assessment Commission, new more transparent procedures for the

Planning Assessment Commission, and consequential changes to State Environmental Planning Policy (Infrastructure) 2007.
The explanatory note to the bill sets out the effect of the provisions of the bill in some detail and will assist members in understanding its provisions. The bill itself comprises two schedules. Schedule 1 contains amendments to the Environmental Planning and Assessment Act 1979 while schedule 2 contains consequential and other amendments to other Acts. Schedule 1.1 repeals part 3A of the Act in its entirety. Schedule 1.2 amends existing Act provisions and inserts a new division 4.1 under part 4 of the Act to establish the new assessment pathway for State significant development. These amendments set out a clear, accountable, and transparent assessment process for determining projects that have been classed as State significant development.
New division 4.1 to be inserted by the bill provides that State significant development applications will be assessed under part 4 of the Act, with the Minister for Planning and Infrastructure as the consent authority. The bill allows for classes or descriptions of development to be declared State significant development by a State environmental planning policy. The bill also provides that the Minister may declare by order other specified development on specified land as State significant development. This will only occur after the Minister has obtained, and made publicly available, advice from the Planning Assessment Commission about the State or regional significance of the development. I seek leave to table a policy statement entitled, "Ministerial 'call in' for State significant development", dated June 2011.

Leave granted.

Document tabled

It is proposed these classes be listed in a State environmental planning policy to be entitled the State Environmental Planning Policy (State and Regional Development) 2011 to provide both transparency and certainty for the development industry, councils and the public. As has traditionally been the case with part 4 applications, these developments are predominantly by private developers and will include types of major employment generating industrial development that were previously determined by the Minister for Planning under part 4 prior to the introduction of part 3A. This includes coalmining and other large-scale mining resource and primary industry projects such as petroleum and extractive industries. It includes projects such as timber milling, intensive livestock industries, aquaculture, agricultural and food processing, as well as metal and chemical processing and major industrial manufacturing, storage and distribution facilities.
Development involving category 1 remediation of contaminated land will also be dealt with as State significant development. State significant development will also pick up major social infrastructure projects valued over $30 million, including such projects as large-scale hospitals and medical facilities, correctional centres, schools, TAFEs and universities, major sporting facilities and cultural facilities such as performing arts centres, museums and exhibition and convention centres. State significant development will also include certain infrastructure projects over $30 million—mainly undertaken by private proponents such as electricity generation, port and wharf facilities, water supply works, sewage and wastewater treatment plants, private road and bridge projects, industrial heavy rail lines, rail freight and intermodal terminals and related rail corridor developments.
Certain infrastructure such as electricity generation, sewage treatment, water supply works and resource recovery and waste facilities such as landfills will also be listed as State significant development depending on their scale and whether they are located in

environmentally sensitive areas. For some classes of development we have removed employment generating numbers and significantly increased financial thresholds, for example, from $15 million to $30 million for health facilities and from $20 million to $50 million for large warehouse and distribution centres to cut back on the number of medium-scale or less-significant proposals that would otherwise have been dealt with by the State. We have also continued to honour our commitment to exclude residential, commercial, retail and coastal subdivision projects from being specific classes as State significant development and we have expanded the exclusions to cover marinas as well. These types of part 3A proposals have caused significant community concern over the past six years and will no longer be considered State significant development, regardless of their scale. The removal of these classes of development and increase in the capital investment value thresholds for remaining classes will result in around a 50 per cent reduction in the number of matters that will be considered State significant when compared with projects previously assessed under part 3A.

The new State environmental planning policy will also include a schedule for listing specified sites and will initially carry across several sites from the Major Development State Environmental Planning Policy. These specified sites are of major significance in terms of delivering the Government planning agenda and will continue to be dealt with by the Minister but under the new State significant development provisions in part 4 of the Act. These sites include the Sydney Opera House, Luna Park, Barangaroo, Sydney Olympic Park, the Bays Precinct, Honeysuckle, Warnervale, The Rocks, Darling Harbour, Taronga Zoo, Fox Studios, Moore Park and Sydney Sports Stadiums, Redfern Waterloo sites and Penrith Lakes. While as Minister for Planning and Infrastructure I will be the consent authority for State significant development, I will delegate these functions to the Planning Assessment Commission, for example, for proposals by private developers.

As State significant development will largely be undertaken by private developers, it is anticipated that the majority of these projects—over 80 per cent of State significant development—will not be determined by the Minister. For public authority projects such as schools, hospitals and other public infrastructure, it would be appropriate for the Minister to retain the consent authority function. However, I will delegate my approval role to senior officers of the Department of Planning and Infrastructure where appropriate, especially for minor or non-controversial matters that the relevant local council does not oppose. In addition to making the Minister for Planning and Infrastructure the consent authority, the bill also allows the Minister to return the assessment of subsequent stages of a development to the relevant council.

The Minister for Planning will not be able to grant consent to a development that is wholly prohibited by an environmental planning instrument, but consent for partly prohibited development may be granted. In instances where a proposed development is wholly or partly prohibited, a development application may be considered in conjunction with a proposed environmental planning instrument to remove the prohibition, for example, a rezoning by a local environmental plan.

In such instances, the Director General of the Department of Planning and Infrastructure will become the relevant planning authority under part 3 of the Act and where the proposed local environmental plan relates to a State significant development that is wholly prohibited, only the Planning Assessment Commission can make the proposed local environmental plan and determine the related development application. I seek leave to table a policy statement

entitled, "Proposed State significant development and infrastructure classes", dated June 2011.

Leave granted.

Document tabled.

All State significant development applications will be subject to a mandatory minimum 30-day public exhibition period, which will be extended in the regulations to a minimum of 45 days during school holiday periods. The bill also provides that if following public exhibition a State significant development application is amended, substituted or replaced by a later application, and the director general determines that it substantially differs from the original application, then the application must be placed on further public exhibition. One of the main features of the State significant development system will be heightened transparency and disclosure of decision-making.

This will include requiring the Department of Planning and Infrastructure to publish on its website State significant development applications, environmental assessment requirements, environmental impact statements, public submissions, and other related documents and reports relevant to the proposal as soon as they become available. The bill also provides that an environmental impact statement will be required to be submitted with a State significant development application even if it is not designated development. Environmental impact statements provide a clear and comprehensive framework for assessing the impacts of proposed development and have been a widely accepted tool used in New South Wales, other jurisdictions and internationally to assist in improving environmental outcomes stemming from development.

A key feature of environmental impact statements is the need for proponents to assess potential impacts, identify and evaluate options and alternative solutions, and outline ways in which the proposal can be modified to avoid, minimise and mitigate those impacts. The submission requirements for a State significant development application and the accompanying environmental impact statement will be outlined in the regulations so that the standard of assessment and reporting is made clear up-front to proponents and other stakeholders. The preparation of each environmental impact statement will be informed by whole-of-government input into the assessment requirements. This will ensure that a coordinated, strategic and holistic approach is taken to addressing the myriad issues that might arise with large, complex and multi-faceted development proposals.

All relevant State agencies will be consulted early in the process about the assessment requirements for environmental impact statements and their views will be sought on the proposal at inception, rather than later down the track. Furthermore, seeking early local council feedback, including inviting input into assessment requirements, will be an important tool for State significant development. This is particularly important where proposals raise particular local issues that should inform the preparation of the environmental impact statement, including developing any strategies to avoid, manage or mitigate impacts on local communities. By applying a coordinated and holistic assessment process, including involvement of all relevant government agencies at the early stages of the process, the need for separate individual approvals from those agencies further down the track can be reduced.

As such, additional and separate consultation and concurrence requirements such as for

threatened species from other State agencies will not apply for State significant development. Also, the current provisions relating to the application of approvals under other legislation to part 3A projects have been brought across into the new division 4.1 of part 4 of the Act for State significant development to assist in integrating approvals for State significant development. The provisions mean that certain integrated approvals and other authorisations will continue not to apply while some other approvals will need to be consistent with the consent issued by the Minister. In addition, the bill applies the current regime for biobanking for part 3A projects to State significant development, so that biobanking remains an optional requirement for dealing with the impact of proposals on biodiversity for these projects.

The primary purpose of coordinating State agency input early in the assessment process and removing individual and separate approvals by different agencies is to enable one comprehensive assessment of environmental impacts to ensure they are properly mitigated together, rather than piecemeal and sequentially. This also enables the reduction of the bureaucratic red tape associated with major, complex and multifaceted projects that would otherwise trigger requirements under multiple pieces of legislation. Coordinating and streamlining the services that government provides through strategic, comprehensive and holistic assessments gives industry and investors greater certainty and will help get the State moving again. Such an approach will also give the community certainty at a much earlier stage about whether a project can go ahead and will provide greater confidence that a comprehensive suite of measures will be put in place to minimise and mitigate off-site environmental impacts.

As with local development, State significant development will be assessed under section 79C of the Act and, therefore, relevant planning controls and development standards in council local environmental plans will apply. As with local development applications, development standards can be varied where appropriate under State environmental planning policy 1. However, there is reduced latitude to do so than under part 3A where local development standards and controls could be completely ignored or contradicted. It is also proposed that the State environmental planning policy of State and Regional Development will include a provision to exclude the application of development control plans to State significant development and allow for relevant planning issues to be assessed taking into account site-specific factors and the individual merits of each proposal.

Development control plans typically are not prepared with major complex classes of development in mind and often do not provide appropriate planning provisions for the types of proposals that would come under State significant development. As such, detailed and meaningful planning controls need to be tailored to specific proposals as they arise. Furthermore, other provisions in development control plans covering matters such as notification, advertising and procedural matters related to the handling of development applications will be unnecessary, given that the new Act and regulation provisions will provide consistent statewide procedures for the State significant development application process. An important feature of State significant development that builds and improves on the regular part 4 process is the power for the Minister to require modifications to the proposal before approving it.

This new process encourages proponents to address and respond to concerns raised in submissions by the public and this may include modifying the final proposal to mitigate impacts or to otherwise deliver improved outcomes for the community. In respect of appeal rights, standard section 123 appeals will apply—those being judicial reviews on points of

law. Existing third party appeal rights will also apply. The process for modifying State significant development consents will be the same as that for other development modified under section 96 of part 4 of the Act—that is, proposed modifications need to be substantially the same as the original approved development. Significant changes to these developments would require lodging of a new development application, with full assessment and public scrutiny like any other development application. Another important feature for State significant development will be to reinstate general rules related to the lapsing of development consents.

Under part 3A the Minister has complete discretion about whether to require developers to commence work by a certain date, potentially leading to proposed development sites remaining untouched for indefinite periods without recourse. However, under State significant development, as with other development applications, consents will lapse after a maximum of five years—thereby encouraging developers to physically commence works including construction of buildings on sites so that the benefits of these approvals are realised sooner. The bill includes regulation-making powers in respect of State significant development, including for the preparation of environmental impact statements, consulting with government agencies and other affected parties, making orders for declaring specified development as State significant development, making application and determination information publicly available, and requiring applicants to provide responses to submissions. I seek leave to table a policy statement entitled, "State significant development—procedures", dated June 2011.

Leave granted.

Document tabled.

Schedule 1.3 amends existing Act provisions and inserts a new part, part 5.1, to establish the new assessment pathway for State significant infrastructure. New part 5.1, to be inserted by the bill, provides that State significant infrastructure must not be carried out without the approval of the Minister for Planning and Infrastructure. The process for assessing State significant infrastructure, as with State significant development, aims to provide coordinated and strategic assessment by the State for large-scale projects. However, it is necessary to ensure that the process for assessing State significant infrastructure proposals of direct and great public benefit to the community, including critical infrastructure projects, is comprehensive, efficient, and done with minimal red tape.

The bill provides that classes or descriptions of development may be declared State significant infrastructure by a State environmental planning policy. The bill restricts such declarations, however, to development that is permitted to be carried out without consent under a State environmental planning policy, and infrastructure, as defined under the new part 5.1, or other activities permitted without consent where the proponent is also the determining authority and where an environmental impact statement would otherwise be required under part 5 of the Act. The bill also provides that the Minister may declare by a State environmental planning policy, or by an order, other specified development on specified land to be State significant infrastructure. The bill also includes a provision that allows such declarations to be made on recommendation from Infrastructure NSW or the Planning Assessment Commission.

I draw the attention of the House to the policy statement I previously tabled outlining

proposed classes of State significant development. The statement also outlines the proposed classes of State significant infrastructure to be listed in the proposed State and Regional Development State environmental planning policy. State significant infrastructure largely includes classes of development undertaken by or for public authorities. We have tried to match, as much as possible, the underlying structure of the Act so that most large development proposals, including by private developers, are dealt with under part 4 of the Act, while public infrastructure projects are dealt with in a similar manner to that under part 5 of the Act.

The proposed classes of State significant infrastructure include transport and public utility works undertaken by or for State public authorities and which would otherwise require an environmental impact statement under part 5 of the Act. These works were traditionally determined by the Government under part 5 of the Act, before part 3A was introduced. They include, among other things, major road and rail projects, electricity transmission and distribution, telecommunications, water and sewerage systems, and stormwater management and flood mitigation works. In addition, major public water supply works, public port and wharf facilities and Australian Rail Track Corporation rail infrastructure will also be captured if the works are valued above $30 million. State significant infrastructure will also include submarine telecommunication cables and licensed pipeline projects.

The bill provides that if a development meets the description of a class of State significant infrastructure and also a class of State significant development under the State environmental planning policy, the development is to be assessed as State significant development. This will ensure that there is one comprehensive, rigorous and transparent assessment process by the Department of Planning and Infrastructure, rather than a piecemeal approach. The bill also sets out provisions for staged infrastructure applications, and outlines the application and assessment process for State significant infrastructure. This includes application lodgement requirements and the director general issuing the proponent environmental assessment requirements following consultation with relevant public authorities.

All State significant infrastructure will undergo comprehensive assessment, including preparation of an environmental impact statement, with State agencies consulted early in the process about the assessment requirements for the environmental impact statements. As with State significant development, by applying a coordinated and holistic assessment process, including the involvement of all relevant State agencies at the early stages of the process, there is a reduced need for separate individual approvals from those agencies further down the track. Similarly, additional and separate consultation and concurrence requirements such as for threatened species from other State agencies will not apply for State significant infrastructure. Also, the current provisions relating to biobanking and the application of approvals under other legislation to part 3A projects have been brought across State significant infrastructure to assist in integrating the approval.

As State significant infrastructure will almost exclusively deal with proposals delivering important and high-priority community infrastructure, it is essential that a comprehensive and coordinated whole-of-government approach is taken to assessing these proposals, rather than requiring piecemeal and separate approvals from different agencies. The bill requires the director general to provide submissions or a report on issues raised in submissions to the proponent, and the director general may require the proponent to submit a response to issues raised in the submissions. The director general may also require the proponent to submit a preferred infrastructure report that outlines any changes to the proposal to minimise its environmental impact or to deal with any other issue raised during the assessment of the infrastructure proposal. This is an important feature that ensures public comments are duly

considered, and it encourages proponents to seek better solutions by modifying the final proposal to mitigate impacts or to otherwise deliver improved on-ground outcomes for the community.

The bill includes provisions regarding the preparation of the director general's report to the Minister and the considerations the Minister is to take into account when deciding whether to approve or refuse consent for the carrying out of the State significant infrastructure. The bill also provides that any State significant infrastructure may also be declared critical infrastructure if the Minister is of the opinion that it is essential for the State for economic, environmental or social reasons. The concept of critical infrastructure was first introduced in 2005 to ensure that there was a straightforward and quicker way to assess and approve infrastructure projects of high importance to delivering government infrastructure priorities to the public. Today there is still a need to have in place a way to speed up the assessment and determination of high-priority public infrastructure proposals.

It is important to note, however, that future critical infrastructure declarations will be far more restrictive and will apply only to certain major public infrastructure projects that are not State significant developments. This means that in future, development proposals such as power stations, wind farms and biodiesel projects will no longer be listed as critical infrastructure, hence significantly restricting the application of the critical infrastructure provisions. The main distinction between State significant infrastructure and critical infrastructure is that for State significant infrastructure an assessment is undertaken to determine whether the development should proceed. However, for critical infrastructure the proposal will generally already be recognised as a priority to proceed, and the assessment process assists in determining the details of how it will proceed.

Once an approval has been given, only the Minister for Planning and Infrastructure will be empowered to ensure that the environmental protections built into every critical infrastructure approval are complied with. As currently applies under part 3A, it will not be possible for any person, interest group, or other entity, including local councils or other government agencies, to commence legal proceedings under the Environmental Planning and Assessment Act 1979, or any other environmental legislation in this State, or to issue stop work orders to prevent the government agency, or public private partnership, or private infrastructure provider, from carrying out the project.

The critical infrastructure provisions in this bill will not prevent interest groups and communities going to court to seek judicial review about whether a proposal has been assessed and determined in accordance with the law, in line with the principles recognised last year by the High Court in the case of *Kirk v WorkCover*. However, the bill ensures that there are no additional rights to seek judicial review of a decision on critical infrastructure, statutory or otherwise, beyond those recognised in Kirk. The provisions for critical infrastructure strike the appropriate balance between the rule of law and the role of the courts in reviewing the decisions of public officials, the need for certainty for investors, and the imperative that these projects be delivered speedily and without interference for the benefit of all the people of New South Wales.

The bill does, however, include a three-month time limit for the bringing of any such judicial review proceedings in regard to State significant infrastructure projects, not just those declared critical infrastructure. This three-month period is consistent with other provisions limiting the bringing of judicial review proceedings that already exist in the Act, in relation to

the making of environmental planning instruments under part 3 and for the granting of development consents under part 4 of the Act, including those for State significant development. These provisions limiting the time for judicial review proceedings are important in providing certainty for investors and the community alike. Including this provision in the bill strikes the appropriate balance between the need to allow the courts to supervise the decision making of public officials and the need for the Government and infrastructure providers to get on with delivering these projects for the benefit of all the people of New South Wales.

The bill also includes a range of machinery provisions dealing with State significant infrastructure, including allowing for modification and conditioning of approvals. As with State significant development, another main feature of State significant infrastructure will be heightened transparency and disclosure of decision-making, including requiring the Department of Planning and Infrastructure to publish on its website environmental assessment requirements, environmental impact statements, and all public submissions and other related documents and reports relevant to the State significant infrastructure proposals. The bill also includes regulation-making powers in respect of State significant infrastructure for landowners consent, amending applications, application fees, and public exhibition, notification and public registers of applications and determinations.

Schedule 1.4 amends part 2A and schedule 3 to the Act in relation to the Planning Assessment Commission. The bill sets out revised functions for the Planning Assessment Commission. This includes any functions delegated to it under the Act and allows the Director General of the Department of Planning and Infrastructure, in addition to the Minister, to request the Planning Assessment Commission to provide advice, to review certain matters or to hold public hearings. The bill also amends schedule 3 to the Act to clarify that the chairperson is a member of the Planning Assessment Commission and that membership of the commission can range from four to nine members, including the chairperson. The bill also includes amendments to the membership of the Planning Assessment Commission so that members may not hold office for more than six years in total to strengthen the independence of the commission. The amendments also include allowing for Planning Assessment Commission members to be appointed on either a full-time or part-time basis and allowing the Minister to change the basis of the appointment during the member's term of office.

With the establishment of State significant development and increased delegation of ministerial determination functions to the Planning Assessment Commission, there is a strong need to ensure that the membership and operation of the commission is optimal for undertaking its heightened role. The provisions relating to the Planning Assessment Commission membership and functions are part of a broader suite of measures to improve the transparency, independence and professional operation of the Planning Assessment Commission. Other measures will include providing more resources to assist the Planning Assessment Commission in carrying out its expanded role. As Minister I will require the commission to publish new operational procedures and protocols which outline how the

commission will undertake its day-to-day functions in a more open and transparent way. Meetings where determinations of development applications are made will generally be open to the public to give opportunities to communities, local councils and proponents to address the Planning Assessment Commission directly.

There will also be an increase in Planning Assessment Commission public meetings in rural and regional New South Wales, where there is significant community interest in a proposal. As well as making determinations in public and holding public briefing meetings for contentious proposals, the Minister for Planning and Infrastructure will still be able to direct the Planning Assessment Commission to hold an inquiry into a proposal by way of a full-scale public hearing and report back to the Minister with the results of that hearing. In this case the commission will also ask for written submissions from interested parties before asking them to make submissions to the commission in person. Consistent with the current provisions of the Act, if the Planning Assessment Commission determines a development application after conducting a public hearing at the Minister's request, with an opportunity for the community to make submissions and participate in the investigation of the proposal, there will be no appeal rights for applicants and third parties for applications under part 4 of the Act. This will ensure that the public's participation in the process cannot be undermined either by an applicant or a third party following the report of the Planning Assessment Commission, merely because they did not agree with the report of the independent umpire.

Let me make it clear, however, that appeal rights will be affected only if the Planning Assessment Commission holds a public hearing at the request of the Minister. Appeal rights will not be affected if the commission merely holds a public briefing or public determination meeting. Schedule 1.5 amends part 2A and schedule 4 to the Act and inserts a new schedule 4A, in relation to joint regional planning panels. As with the Planning Assessment Commission at the State level, joint regional planning panels will have an important role in determining large-scale projects, particularly those residential, commercial, retail and coastal projects that were previously dealt with by the Government. It is therefore essential to ensure that the membership and operation of the regional panels is also optimal for performing its functions. The bill will give local government more of a say in the selection of the chairperson of each regional panel by requiring the Minister to obtain the concurrence of the Local Government and Shires Associations of the proposed appointment. The associations' concurrence will not be required if they do not respond to the request within 21 days or if they refuse concurrence on two occasions with respect to the same appointment.

To provide transparency and to ensure that the best possible appointments are made, I propose to establish a panel with representatives from the Local Government and Shires Associations, the development industry, the Department of Planning and Infrastructure, and the Public Service Commission to advise me not only on suitable chairperson candidates but also on future appointments of other members of the regional panels. These proposed changes to rebalance how regional panel members are nominated and appointed will help to strengthen relationships with our council partners, ensure members are of the highest calibre and possess appropriate skills, and improve public confidence in the way decisions are made

regarding regional development. It has been two years since the joint regional planning panels were first introduced to determine development proposals of regional significance. We have an opportunity now also to put in place administrative and procedural measures to respond to the lessons learnt over that time.

As with the Planning Assessment Commission, changes to regional panel membership are part of a broader suite of measures to improve the transparency, independence and professional operation of the regional panels to help build community confidence in the system. The operational procedures for the regional panels will also be revised and published, and will include improved systems for addressing key issues such as complaints handling and additional measures to remove instances where there may be potential conflicts of interest. The bill also inserts a new schedule 4A, which outlines the classes of regional development for which the joint regional planning panels will be the consent authority. This will provide ongoing certainty to industry, the community and local councils about what applications will be determined by councils and what will be determined by the regional panels. These classes of regional development have largely come across from the State Environmental Planning Policy (Major Development) 2005, with some changes.

It is proposed in the bill that applications for certain classes of regional development currently determined by regional panels be handed back to councils to determine instead. This includes most designated development proposals, certain types of coastal development and large subdivisions. It is also proposed to increase the capital investment value threshold for the general development category determined by joint regional planning panels from $10 million to $20 million, with the exception of council and Crown applications. Other classes of development applications determined by the panels will not materially change. These changes will return about 55 per cent of development applications to councils and will allow regional panels to concentrate on the determination of truly regionally significant development. With the return of the determination of those development applications to local councils, it will be important that councils continue to meet the performance benchmarks for those development applications within the range of $10 million to $20 million so that the improved assessment times achieved by the regional panels and the flow-on savings to industry can be maintained.

Accordingly, the bill includes a provision to give applicants the right to refer these development applications to the regional panel if they remain undetermined by the local council after more than 120 days, unless the chair of the regional panel considers the delay was caused by the applicant. The referral of a delayed development application will not be automatic. The proponent will have the choice of pursuing determination by the local council after the 120 days expires or referring it to the regional panel. Council assessment officers will remain responsible for the assessment of the proposal at all times and a proponent's existing appeal rights will also be maintained. At the same time it is proposed to require regular quarterly reporting from local councils on their performance in processing these applications. Performance measures will include timeliness, consistency with assessment officer reports and appeals against decisions. To respond to instances of repeated or systemic poor performance in determining development applications, the bill also allows the Minister

to designate additional classes of development back to the regional panels if the Minister deems the council's performance in dealing with those development proposals to have been unsatisfactory.

Schedule 1.6 includes miscellaneous consequential amendments to Act provisions in relation to the repeal of part 3A, the Planning Assessment Commission and joint regional planning panels, and the introduction of State significant development and State significant infrastructure. Importantly, the bill will allow the independent Planning Assessment Commission to recommend that a planning proposal be submitted to the Minister for a gateway determination. This will enable rezoning proposals that have planning merit or are consistent with local, sub-regional and regional planning strategies to be progressed even if a local council is unwilling or does not have the resources to pursue the rezoning at the time. In such a case the Minister can make the Director General of the Department of Planning and Infrastructure the relevant planning authority for the planning proposal to carry it forward.

Schedule 1.7 inserts a new schedule in the Act, schedule 6A, to provide transitional arrangements for existing part 3A project applications and concept plan applications. I am advised that more than 500 pending part 3A projects, worth over $60 billion, were caught in the part 3A system when the Government took office that will need either to continue under part 3A until determined, be transitioned to new assessment processes, or be returned to proponents and be re-lodged with councils. Transitional arrangements have already been determined for around 165 residential, retail, commercial and coastal subdivision projects.

It is proposed in the bill that the remaining part 3A projects for other classes of development currently in the system be subject to the following savings and transitional arrangements: part 3A projects that also fall within the new categories for State significant infrastructure will be assessed under the new State significant infrastructure regime, including State agency projects that meet certain criteria; other part 3A projects will be finalised under the existing part 3A regime where director general's requirements have already been issued by the time part 3A is repealed; projects that have not reached that stage of assessment yet will be assessed under the new State significant development regime if they also come within the new classes of State significant development; and, finally, certain projects will be removed from the State assessment system entirely if they do not match the new State significant development and State significant infrastructure classes and no director general's requirements are issued when the new legislation commences, or where director general's requirements have been issued more than two years previously and the proponent has not submitted an environmental assessment by the time the part 3A repeal is effective.

These provisions strike an effective balance between the need to provide security for investors and delivering jobs and housing for the people of New South Wales by facilitating the assessment of genuinely State significant proposals at a State level. The provisions also ensure that communities are able to have a real say at a local level about projects that should be determined at a local level. It is important to note that around a quarter of the pending part 3A proposals will leave the State assessment process entirely and be returned to the local

level to be dealt with appropriately. Schedule 2 to the bill outlines consequential amendments to 22 other Acts, six regulations and six water sharing plans to build on existing references to part 3A by referring to State significant development or State significant infrastructure, where relevant. Schedule 2 also amends the Statutory and Other Offices Remuneration Act 1975 to make reference to full-time members of the Planning Assessment Commission under the Schedule of Public Offices. Schedule 2 also amends the Subordinate Legislation Act 1989 to ensure that the Environmental Planning and Assessment Regulation 2000 can remain in force for another two years until September 2013 as an interim measure while a broader review of the planning system is being undertaken.

In conclusion, the bill offers an opportunity to wind back much of the layering and complexity introduced by the former Labor Government when it first introduced part 3A of the Act in 2005. The time has come to give planning powers back to communities. The majority of that task will be achieved through the outcomes we seek as part of the broad review of the planning system, which will be an inclusive review in partnership with councils and the community. However, in the interim, the bill will assist in slashing the number of development proposals dealt with by the State and depoliticising the determination of the remaining State significant proposals by handing them to the Planning Assessment Commission or to the Director General of the Department of Planning and Infrastructure for determination. This bill provides an opportunity to reinstate transparency, integrity and propriety in the way we assess and determine major developments of significance to the State of New South Wales. I commend the bill to the House.