

PLANNING BILL 2013
PLANNING ADMINISTRATION BILL 2013

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Bills introduced on motion by Mr Brad Hazzard, read a first time and printed.

Second Reading

Mr BRAD HAZZARD (Wakehurst—Minister for Planning and Infrastructure, and Minister Assisting the Premier on Infrastructure NSW) [3.49 p.m.]: I move:

That these bills be now read a second time.

I am pleased to introduce the Planning Bill 2013 and the Planning Administration Bill 2013. These bills honour one of the Government's key election commitments: to overhaul the State's planning laws and return local planning powers to local communities, restore powers to local councils and restore confidence and integrity to the planning system. In doing so the Government is creating a truly world-class planning system—a planning system that will deliver the outcomes we need to respond to the challenges we face today and into the future. The new planning system will: deliver jobs and opportunities; protect the environment and our quality of life; provide certainty for all users of the system, whether they are major investors or families undertaking minor home renovations; and deliver more housing, jobs and infrastructure in the right locations to cater for our growing population.

It is informed by strategic plans that are developed with community input, based on sound evidence, and will provide the road map for how we will deliver sustainable development. Today is an important milestone in a process that started in July 2011 with the establishment of an independent panel led by the Hon. Tim Moore and the Hon. Ron Dyer, to review the State's planning system. In June 2012, following extensive community engagement, the independent panel produced a detailed report with 374 recommendations for consideration by the Government. The Government responded with the release of the green paper in July 2012, which set out the major proposed reforms and responded to the independent panel's report. Over 1,500 submissions were received concerning the green paper and more than 2,000 people contributed through community workshops, practitioner forums and online discussions.

All of the detailed feedback received on the independent review and the green paper helped to inform the white paper and exposure bills which were released in April this year for further consultation. Almost 5,000 submissions were received on the white paper and exposure bills and each one was carefully reviewed and analysed. What is clear is that the review of the New South Wales planning system has involved unprecedented consultation. In excess of 6,000 responses were received, including many familiar voices and, in what is a good sign for the future, many new participants in the planning debate.

I will now turn to the case for change. When the current Environmental Planning and Assessment Act 1979 was introduced, it was considered best practice in Australia. However, over time it has become too complex and difficult to navigate with too much red tape. The average development application takes 71 days to assess; for simple home renovations it takes on average 58 days; and to build a new home, approval takes on average more than two months. These delays impose unnecessary burdens on families and small businesses, both in terms of cost and time. The current system is not strategic and considers issues in isolation. It

has not been able to adequately respond to changing economic demands and important considerations such as the protection of the environment, and the community's expectations about safeguarding and maintaining their quality of life.

Under the former Labor Government the New South Wales community had also lost faith in the current planning system. There was a clear perception that politics could determine decision-making and a sense that planning decisions lacked transparency and independence. Planning is a critical part of the New South Wales economy, society and environment. Over \$20 billion of potential economic activity passes through the planning system in any given year via the development assessment system. An independent study into the proposed planning system undertaken by the Centre for International Economics confirmed that the delivery of these planning reforms will contribute an estimated \$2 billion to \$3 billion per year to the State's economy.

The report found that the proposed reforms are consistent with leading practice for planning systems as identified by the Productivity Commission, the Council of Australian Governments Reform Council and the Grattan Institute, meeting 33 of the 42 leading practice principles, and partially meeting six principles. The current system meets only 12 of these principles and partially meets 13. For a planning system to function effectively, it must have the community's confidence.

The Government's broader planning and infrastructure agenda will now be addressed. The reform agenda for planning was clear when the Government said it would return local planning powers to local communities, return decision-making on development applications to local councils, restore confidence and integrity to the system, deliver more housing and jobs, streamline planning and cut red tape. It has delivered on this agenda since coming to government. The Government has removed politics from planning by delivering on the commitment to repeal part 3A of the Environmental Planning and Assessment Act 1979 within its first 100 days of coming to office.

Targeted policy reform and investment in infrastructure has been delivering the economic results needed to make New South Wales number one again. New housing approvals are at their highest levels since 2004. The Government has planned, released and rezoned land for over 65,000 new jobs in Western Sydney; invested over half a billion dollars in the essential infrastructure needed to unlock new housing opportunities through the Housing Acceleration Fund; and approved over \$37 billion worth of major projects since it was elected. These projects are delivering 45,000 direct jobs and 96,000 construction jobs.

The introduction of the Planning Bill 2013 and the Planning Administration Bill 2013 will continue that work to deliver economic growth in New South Wales for the benefit of all while protecting the environment and enhancing people's way of life. The Government has carefully considered all the views about the planning system through submissions and other feedback channels and responded with changes to the Planning Bill and through implementation. A feedback report has been prepared which analyses the submissions received, so everyone can see the range of viewpoints held by the community. The report also demonstrates how the Government has listened to feedback from local communities, councils and stakeholders to improve the bill. I seek leave to table it for the information of members.

Leave granted.

Document tabled.

The Government's agenda for the new system and the fundamental provisions of the planning bills is: an emphasis on strategic planning as the fundamental focus of the new planning system; community participation in strategic planning at the time when the ground rules are being created to ensure they are able to drive how to best cater for growth and protect the environment and local character of their areas; a more simple and transparent development assessment process with codes based on local circumstances; a clear framework that ensures that necessary infrastructure is provided alongside growth; laying the foundations to transform the planning system to an e-planning system that supplies reliable and quality information anywhere and anytime; a new delivery culture involving all the key players in the planning system to set a sound framework for the successful implementation and operation of the new system; a better building regulation system through more mandatory inspections during critical stages and tighter controls on private certifiers; and a system built on a partnership between State and local government to deliver real outcomes to the community. The explanatory note attached to the bills provides a comprehensive description of the new planning framework. I commend it to members because it sets out the purpose of the important provisions in the bills.

The objects of the Planning Bill 2013 reflect a balance between the objects of promoting economic growth and sustainable development. The object to promote sustainable development is now a standalone objective and is defined in line with the 1987 Brundtland report definition as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The objects are to be considered together and applied to the extent that they are relevant, allowing a decision-maker to respond appropriately to individual circumstances when making a decision. Promoting sustainable development in the Planning Bill brings New South Wales legislation into line with planning legislation in most other Australian States and Territories and reflects leading international practice.

The remaining objects of the Planning Bill set out the other underlying principles of the planning legislation, including: early community participation in planning; coordinated infrastructure and service delivery; facilitating delivery of business, employment and housing opportunities; effective management of natural hazards and natural resources, including agricultural land, water and minerals; protection of the environment and heritage, including recognition of Aboriginal cultural heritage; health, amenity and quality in the design and planning of the built environment; building safety; streamlined and efficient assessments; and shared responsibility between all levels of government. The objects of the Planning Bill include promoting the protection of the environment and the conservation of biodiversity and it contains a range of new measures to achieve this object.

The Planning Bill 2013 contains a new approach to community participation that will be at the centre of the new planning system. Part 2 sets out the legislative framework for community participation, which is also a fundamental object of the planning legislation. The bill contains a community participation charter, which sets out the principles by which the community is to be engaged in planning processes. Planning authorities will be required to act consistently with the charter by preparing community participation plans setting out how they will provide opportunities for the community to participate in all areas of planning. These plans will need be prepared by planning authorities, including the State Government and local councils, and will be tailored to meet the needs of the local community rather than

based on a one-size-fits-all approach. The bill provides for the introduction of e-planning as a means of ensuring that the community can be properly informed about planning decisions and participate in the planning process. It also provides the necessary legal protections to ensure the community's rights to participate are properly protected.

The new planning system's principal focus will be strategic planning. For the first time, the planning legislation gives statutory recognition under part 3 of the Planning Bill 2013 to a hierarchy of strategic plans, including State, regional, subregional and local plans. The new hierarchy will be given direction by New South Wales planning policies, which will reflect the Government's agenda for key areas of interest in the planning system, including but not limited to: the provision of housing and employment lands; the protection of biodiversity; the provision of infrastructure; and the management of our mineral and agricultural resources. These planning policies will inform the development of regional growth plans, subregional delivery plans, and local plans, thereby ensuring there is consistency in how planning outcomes are achieved with a clear line of sight between objectives, priorities, targets and actions.

A major shift in the new planning system is the new approach to subregional planning. Previously, many councils operated in isolation from adjoining local government areas in planning for their area. This approach has been shown to be inefficient and ineffective at delivering good planning outcomes for the community. Leading international practice has demonstrated the benefits of councils working together on a regional or subregional basis to deliver better planning outcomes, including more efficient land use and better utilisation of infrastructure. Through strategic planning we will be better able to preserve and protect our natural and built environment. Councils, community and State agencies will work together up front to identify key areas that must be protected, thereby providing greater certainty that they will be protected at all levels of strategic planning.

Part 3 of the Planning Bill 2013 provides for the creation of subregional delivery plans, which will provide the framework for coordination between the State and local governments on planning outcomes within defined subregions. This will include councils working together to identify and plan on a subregional level for how growth and change can best be managed, where certain land uses are best facilitated, and how to make better use of existing and planned infrastructure. The subregional delivery plans will directly zone land in key areas, providing capacity for growth to occur in a timely way and ensuring that the strategic objectives set through the New South Wales planning policies and regional growth plans are delivered effectively. Subregional delivery plans will be developed by subregional planning boards.

Part 6 of the Planning Administration Bill 2013 provides that a subregional planning board is to consist of not more than four members appointed by the Minister, a separate member appointed by each council in the subregion, and a chairperson appointed by the Minister with the concurrence of Local Government NSW. This will ensure that in all deliberations of the subregional planning boards, local government will have majority representation. This delivers on the Government's commitment to give planning powers back to local communities through their councils.

Another key initiative in the planning bills is the introduction of strategic compatibility certificates. These certificates have been designed to provide opportunities for land use change to occur to reflect strategic growth priorities where the local plan has not yet been

updated to reflect a higher order plan. The provisions dealing with strategic compatibility certificates state that these certificates will be issued by the independent regional planning panels, not the director general of the department, if more than 25 objections are received or if a council objects to the proposal. Strategic compatibility certificates will apply only in locations where local plans have not yet incorporated regional growth plans and/or subregional delivery plans. Applicants can seek a certificate only for development proposals considered strategically consistent with those plans developed with community input.

For the first time in New South Wales, the bill will put strict limits on the discretionary powers to amend policies and strategic plans without public exhibition. Only minor changes to plans will be able to be made, including minor amendments to correct errors or inaccurate descriptions. All other amendments will be required to be publicly exhibited. The bill also requires reasons for the amendment to be published to ensure transparency and accountability in decision-making. For the first time, infrastructure planning and delivery will be integrated by law as part of strategic planning. Again for the first time, councils and State agencies will work in partnership to plan and deliver infrastructure. The bill will also enable communities to have a much greater say in the planning and delivery of infrastructure in their areas.

Part 4 of the bill deals with development that requires consent, including complying development, code-assessed development, merit-assessed development and State significant development. The white paper introduced a new development assessment path known as "code assessment" for straightforward development applications to help reduce red tape and to ensure that developments are assessed using a simpler, quicker and less expensive process. No blanket target for the take-up of code and complying development will be imposed by the State Government on local councils. However, councils will be expected to streamline their processes and adopt code and complying development where appropriate. It is anticipated that code assessment will be focused on growth areas, urban renewal areas and urban activation precincts serviced by infrastructure and transport, and as identified in subregional delivery plans or as nominated by councils. Outside those precincts identified for growth by regional and subregional planning, councils will be able to determine whether and where code assessment will apply in their local area. Codes will set the ground rules for development in an area and result in greater certainty for the community about the types and scale of development they can expect in their area. The exposure bill confirms that standards in a code apply strictly. The full merit assessment process applies to development that does not meet the standards in a code, and the community will always be consulted.

The bill also makes it clear that certain developments will never be subject to code assessment. This includes development that requires Heritage Council approval, an Aboriginal heritage impact permit, an environmental impact statement, threatened species concurrence or development that relies on a strategic compatibility certificate. Before inserting a code in a local plan there will be detailed requirements for the information that a planning authority has to prepare and the level of community participation. These will be set out in neighbourhood impact statements that will make it easier for the community to engage on draft codes. Code assessment applications cannot be determined by certifiers. They will always be assessed and determined by councils or professional staff with planning expertise. If a development falls under code assessment, the application will be assessed against the code's performance criteria. These criteria will address matters such as detailed urban design and amenity aspects. If a development meets the code development standards and performance criteria, an applicant can be certain that the consent authority cannot refuse the development on those grounds or impose conditions that are more onerous than the code

provisions.

The bill introduces a one-stop shop for development applications that trigger a concurrence or referral requirement or require approval under another Act. For these applications, the Director General of the Department of Planning and Infrastructure becomes responsible for coordinating the general terms of approval and advice or recommendations from other agencies. The bill requires the director general to have regard to a single set of assessment criteria, which will assist in implementing a whole-of-government approach to cross-agency issues and standardising government responses. The bill also ensures that the advice of the Heritage Council or the Rural Fire Service about development applications must be followed, unless there are unreasonable delays or unresolved conflicting agency advice. Benchmark response times are to be adopted in consultation with the Heritage Council and the Rural Fire Service. State agencies and approval bodies retain their function of issuing the final approvals under their own legislation. For example, the Heritage Council will always be responsible for issuing the final approval under the Heritage Act.

The Planning Bill 2013 overhauls the developer contributions system to make it fairer, affordable and transparent. The contributions framework under part 7 of the bill provides a direct link between new growth and infrastructure, to ensure that the necessary infrastructure will be provided to support growth. Councils will now have five years to spend contribution revenue to reduce the time between development occurring and infrastructure provision, and developers will be given the option to defer the payment of contributions to point of sale via a statutory charge. The bill includes important reforms to building certification regulation to rebuild the community's confidence in construction regulation and building safety and provide support for certifiers and councils in relation to compliance and enforcement. A new compliance and enforcement regime will help planning authorities better protect their communities when development is constructed and operated. For the first time, offences under the planning legislation will be classified in tiers according to their severity, with increased maximum penalties for individuals and corporations.

Community appeal rights as they exist under the current system will not change. For the first time, the community will also be able to initiate legal proceedings regarding the making of regional and subregional plans. There were previously no judicial review rights for these strategic plans as they were made outside the legislation. Importantly, the bill expands judicial review rights to protect community participation processes. For the first time, the planning legislation expressly allows judicial review of the failure to notify and exhibit State, regional and subregional strategic plans for minimum periods. In developing the planning bills, we have paid particular attention to addressing the concerns raised by the Independent Commission Against Corruption, the Heritage Council and Local Government NSW as these issues both are important in their own right and also represent concerns raised by local councils and the community more broadly. The Government is committed to transparency and probity in process and decision-making under the new system.

We have responded to the Independent Commission Against Corruption's concerns and ensured that there are additional limitations on the discretion of decision-makers to restrict variations from standards, increase public scrutiny and require greater transparency; there are tighter controls on complying development and stricter controls for code-assessed development; there is a greater role for experts and independent panels as part of decision-making, including the Planning Assessment Commission and regional planning panels, which will have expanded responsibilities; if a proposal does not comply with the development

standards for code development it must be determined through merit assessment, including community consultation; and where a local council objects to an application for a strategic compatibility certificate or if more than 25 objections are received, regional planning panels will now determine the application.

There will be a mandatory 28-day exhibition required for applications; all existing community merit appeal rights remain available and are consistent with the current Act; the community's judicial review rights are consistent with those under the current Act, as well as extending judicial review to the making of strategic plans; all specific anti-corruption provisions in the current planning legislation are retained, including the special powers to suspend consents; and it will be a requirement to consider proportionality of contributions against established benchmarks when drafting a planning agreement. The Independent Commission Against Corruption supports the improvements made to the bills and we will continue to work with the commission during the implementation of the new system to ensure integrity and probity in its rollout. In its letter of 22 October 2013 to the Director General of the Department of Planning and Infrastructure, the Commissioner of the Independent Commission Against Corruption, the Hon. David Ipp, AO, QC, said:

I particularly note the Department's undertaking that it will develop assessment criteria for variations to development standards that will be more robust than those which apply under the current system. The implementation of this proposal and the other measures outlined in your letter today will address the Commission's concerns to a significant extent.

I seek leave to table a copy of the letter from the Independent Commission Against Corruption to the director general.

Leave granted.

Document tabled.

We have consulted with the Heritage Council and amended the bill to ensure that there is a specific object recognising the importance of heritage—the current Act does not provide this. Development on State heritage items or Aboriginal heritage must be merit assessed where full community consultation applies. The director general must follow the advice of the Heritage Council under the one-stop shop unless there is unreasonable delay in issuing an approval or the Heritage Council cannot resolve a conflict with another agency. Existing protections for listed heritage items and heritage conservation areas at both the local and the State level are preserved. In addition, the Government will prepare a standalone State planning policy for environment and heritage.

We have also responded to the concerns of Local Government NSW as local government will be an important partner in the implementation of the new system. We share and support their commitment to achieving strong and prosperous communities. I thank Local Government NSW president, Keith Rhoades, for his leadership in working collaboratively with the Government. The bill will return greater planning powers to local councils and communities by allowing councils to modify statewide complying development codes, allowing councils to determine where code assessable development will apply outside growth areas, scrapping any target for streamlined assessment, and by giving councils representation on the new subregional planning boards. These elements of the bill have been supported by Local Government NSW, which identified that it will contribute to ensuring "that communities and

councils are included in planning decisions". I seek leave to table a media release of Local Government NSW dated 18 September 2013.

Leave granted.

Document tabled.

A range of other initiatives included in the bill address issues raised by Local Government NSW. Local Government NSW has welcomed these initiatives. Correspondence from the President of Local Government NSW, Keith Rhoades, dated 17 October 2013, stated:

I appreciate the prompt attention you have given to the planning outcomes from the LGNSW Annual Conference and your timely response. I am pleased that you have addressed the planning outcomes of the Conference in a constructive manner and have provided a positive response in many instances. This includes specific amendments to the planning bills and undertakings in relation to the implementation processes.

I seek leave to table that correspondence from the President of Local Government NSW.

Leave granted.

Document tabled.

I also commend the work of the Planning Institute of Australia, NSW Division, which has been instrumental in working with the Government to develop these reforms. The President of the Planning Institute of Australia, Sarah Hill, offered these comments on the planning bills:

The New South Wales Division of the Planning Institute of Australia (PIA) believes that the current New South Wales planning reforms represent a significant opportunity to ensure that this State has a modern and responsive planning system which will take New South Wales forward. The Government is to be commended on the process of wide consultation and in particular the positive engagement processes in the most recent round of consultations.

PIA believes that it would be counterproductive for the community and economy of New South Wales if these reform principles were to be abandoned or significantly watered down.

I seek leave to table that document from the President of the Planning Institute of Australia.

Leave granted.

Document tabled.

I turn now to the issue of implementation. The Government is committed to implementing this world-class planning system as soon as possible. Our communities need a planning system that enables positive development to provide housing, jobs and improved lifestyles whilst also safeguarding our environment. However, we also recognise the need to provide a smooth transition and certainty for councils, the community and industry. The bill includes savings and transitional provisions to ensure existing processes will continue uninterrupted. Planning applications that have been made but not determined can continue under the current Act and, if approved, will become consents under the new legislation. Important protections in State environmental planning policies, such as protections for koala habitats, will be

incorporated in new local plans. Current local environmental plans and development control plans will form part of the new local plan for each local government area on day one of commencement of the new system.

Clear governance arrangements will be established to ensure that the new system is implemented in a timely, transparent and collaborative way. The Government will work in partnership with local councils to ensure the successful implementation of the new system and will work closely with peak body representatives, industry professionals, government agencies and key community groups. These bills are another key milestone in our reform agenda for planning and will enable us to return local planning powers to local communities, return decision-making on development applications to local councils, restore confidence and integrity to the system, deliver more housing and jobs, streamline planning and cut red tape. In short, they will deliver a world-class planning system for New South Wales. They also represent the next step in the delivery on our commitment to reform the New South Wales planning system by making it simpler, more certain and more transparent. The bills will drive integrity and performance and make New South Wales the most competitive location for investment and employment generation.

The new planning system will deliver more say for local communities in setting the ground rules for future development in their areas. It will deliver straightforward and streamlined planning decisions for families and a system that is easy to understand. It will impose tough checks and balances for major development as well as create more jobs for small business, builders and tradespeople and strengthen our economy. These are important benefits for us all, delivered by a new approach that balances interests and responds to the needs of mums and dads, small business and communities. We have listened and responded to the many views expressed, including the individuals and groups who did and did not agree with our proposals. We have followed the approach to leading practice planning systems identified by the Grattan Institute, the Productivity Commission and the Council of Australian Governments Reform Council. We are ensuring that the economy will continue to grow and provide jobs and opportunities for all, and that housing and infrastructure will be delivered whilst also safeguarding our environment. Now it is time to get on board and make this new system a reality. I commend the bills to the House.

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