



Full Day Hansard Transcript (Legislative Council, 20 November 2013, Proof)
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Extract from NSW Legislative Council Hansard and Papers Wednesday, 20 November 2013 (Proof).

PLANNING BILL 2013

PLANNING ADMINISTRATION BILL 2013

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [8.00 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, to return local planning powers to local communities, to restore powers to local councils and to restore confidence and integrity to the planning system. I congratulate the Minister for Planning and Infrastructure on the unparalleled consultation that has been undertaken in the preparation of these planning bills. The bills now before the House are the product of 2½ years of consultation and engagement with the community, local government and industry. They are the product of 2½ years of policy development conducted in an open, transparent and inclusive way with stakeholder groups and the community. More than 6,000 people have contributed by way of a submission or attendance at a community or stakeholder workshop. The Government has been working on these bills for 2½ years in a completely open and transparent way. It has consulted on the initial discussion papers, the green paper and the white paper. Indeed, the Minister released an exposure bill in April of this year.

The opportunity for the community and stakeholders to have input into the legislation has been unparalleled. The Government has spoken to a genuine cross-section of the community, ensuring true openness and a balanced range of views. In debating these bills in the Parliament, it is important to note the support that the Government's planning agenda enjoys from the planning and architectural professions, the business and investment community and, indeed, the heritage sector. In developing the planning bills, the Government has worked closely to address issues raised by the Independent Commission Against Corruption. The commission supports improvements made to the bills. In its letter of 22 October 2013 to the director general of the Department of Planning and Infrastructure, which the Minister for Planning and Infrastructure tabled in the other place, the Independent Commission Against Corruption Commissioner, 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 note that the Independent Commission Against Corruption has voiced further confidence in the planning system in its report released in October of this year on resources management policy. It has expressed confidence in the systems and processes established by the Department of Planning and Infrastructure to make decision-making transparent. It has recommended that the well-defined framework for decisions and clear processes of the Department of Planning and Infrastructure be adopted as a model for transparent decision-making about minerals resources. The Government will continue to work with the Independent Commission Against Corruption during the implementation of the new system to ensure integrity and probity in its rollout. I note the statements of strong support that have been made by peak bodies and professionals calling for the Parliament to make these bills law so we can get on with making New South Wales number one. The Sydney Business Chamber acknowledges that:

... the new planning system has been formulated following extensive consultation with the community. The new system gets the balance right between supporting development and respecting community expectations.

The Urban Development Institute of Australia has described how the Planning Bill offers a practical and effective alternative with increased opportunities for community input and strengthened environmental considerations. Local Government NSW believes that it is imperative that social and environmental objectives are incorporated into the Planning Bill, along with economic growth objectives. The Property Council has urged the Parliament to avoid stripping back the benefits by making concessions in this legislation. It warns that "the prospect of a further round of heavy amendments risks compromising the goal of a simple, efficient and transparent system". It

should be recognised that the property and construction industries generate one in 10 jobs in New South Wales and pay more than \$18 billion in wages to workers and their families. Local government has been with the Government at every step of consultations during the reform process. The president of Local Government NSW said:

Minister Hazzard has listened to the concerns of councils and the communities alike.

He has described the environmental protections and measures in the Planning Bill as "a significant win for communities". The Heritage Council of New South Wales has also been closely engaged in the planning reform process. It has written in support of the new evidence-based strategic planning system and said that the council is encouraged by the promise it holds for protecting places of heritage significance. I also commend the work of the Planning Institute of Australia, New South Wales 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.

The Planning Institute believes that it would be counter-productive for the community and the economy of New South Wales if these reform principles were to be abandoned or significantly watered down. The planning bills will provide 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.

~break/Newland

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I note that the Minister for Planning set out the case for change when he introduced the bills in the Legislative Assembly. He noted that development applications take on average 71 days to assess, for simple home renovations it takes on average 58 days and to build a new home, an approval takes on average more than two months. Those 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.

The New South Wales community had also lost faith in the planning system administered by the Labor Government. 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. More than \$20 billion of potential economic activity passes through the planning system in any given year via the development assessment process. 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. For a planning system to function effectively, it must have the community's confidence.

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. The Government has delivered on that agenda since coming to office. It has carefully considered all the views about the planning system in submissions and from other feedback channels and responded with changes to the Planning Bill and in its implementation. I note that the Minister for Planning tabled in the Legislative Assembly a detailed feedback report and a summary of the key changes that have been made to the bills as a result of consultation.

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 Planning Bill 2013 contains a new approach to community participation that will be at the centre of the new planning system. 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 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. 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. In line with our commitment to work in partnership with councils, subregional delivery plans will be developed by subregional planning boards. These boards will 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.

Part 4 of the Planning Bill 2013 provides for code assessment, which will help reduce red tape and ensure that developments are assessed using a simpler, quicker and less expensive process. I note many have chosen to make misleading statements about how codes will work, suggesting that the community will not get a say. This is simply not true. The community will have a say at every point along the way in establishing codes in their local areas, with a mandatory neighbourhood impact statement being required to be exhibited when a code is proposed. The community will help set the standards that will apply in their area. Codes provide an opportunity for building and enhancing communities and will ensure certainty for the community in how their neighbourhoods will look and feel in the future. Codes will also provide certainty for investors. They will know that if they comply with the community-set standards, their development can be subject to fast-track assessment. The Chief Executive, Stephen Albin, has today released a statement indicating the support of the Urban Development Institute of Australia for the new code approach. He notes:

The idea is not to build high rise next door to people's backyards without community consultation but rather to give the community more of a say at the front end and back end of the process The existing planning system is complicated, full of duplications, it lacks transparency and lends itself to corruption; and the community gets minimal input'.

That is exactly right. There will be no blanket target for the take-up of code and complying development. It is proposed 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.

~break/Clay

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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. 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 developments that require Heritage Council approval, Aboriginal heritage impact permits, an environmental impact statement, threatened species concurrence or development that relies on a strategic compatibility certificate. 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.

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 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.

I turn now to the issue of implementation. I note the commitment of the Minister for Planning 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.

In closing, I would encourage this Parliament to consider the views of the Coalition for Planning Reform—an organisation that has been established to advocate for planning reform in New South Wales. The membership of the Coalition for Planning Reform includes the Australian Institute of Architects, Planning Institute of Australia, NSW Business Chamber, Sydney Business Chamber, Property Council of Australia, Urban Development Institute of Australia and Tourism Transport Forum. The membership of those organisations includes business—small and large, planners, architects, plus companies that finance, own, manage and develop property. Members of those organisations engage with and shape our communities. The Coalition for Planning Reform offered this advice to the Parliament on the Government's planning legislation:

In considering the current legislation before the Parliament it is important to remember:

- it is the result of over two-and-a-half years of detailed consultation;
- through the independent review, plus Green and White Paper, there have been three rounds of public exposure of the proposals; and
- amendments have already been made in response to concerns raised by the community, councils, environmental groups and our own membership organisations.

No stakeholder will be pleased by every clause of the legislation. That is an impossible task.

However, the bill does provide the opportunity to rebuild confidence in the planning system through more engagement, clearer rules and greater transparency. It will allow communities to better participate and plan for the future needs of our cities, regions, precincts and communities.

NSW cannot afford to maintain the existing system that all sides have described as broken. Yet we risk being left with it if the current reform agenda is rejected.

We are instead urging all MPs and MLCs to endorse meaningful reform and legislation before the Parliament.

Wise words from those whom we entrust with delivering the homes, jobs and planning outcomes the community needs. It is now time to turn the new planning legislation into a reality. I commend the bills to the House.