Local Government Amendment (Governance and Planning) Bill 2016

Second Reading

The Hon. CATHERINE CUSACK (15:21): On behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

It gives me great pleasure to introduce the Local Government Amendment (Governance and Planning) Bill 2016. The bill is phase one of the Government's broader reform of the Local Government Act 1993. This bill begins modernising and streamlining the legislative framework for local government in New South Wales. The Government is committed to an updated legislative framework that will meet the needs of councils and their communities in 2016 and for many years to come.

It is important to remember, however, that this is not a mere redrafting exercise. These Phase 1 amendments introduce subtle but profound changes that will enable and encourage local government to reimagine itself and its purpose in our community. This bill starts the journey away from process-focused local governance towards principle-focused governance.

As our councils develop proficiency in using the tools this bill offers them, communities across New South Wales stand to benefit from local representation and governance that better reflects their values, their concerns and their priorities. This bill will assist councils apply their resources more effectively for the benefit of the communities they serve.

It cannot go unmentioned that 2016 has seen enormous change for the system of local government in New South Wales. What has been lost in the debate about boundaries, however, is the steady progress that has been made—by both the State and local government sectors—towards improving the system that crosses these boundary lines. New South Wales deserves a local government system that works well for everyone, not just a select few or select areas. How do we know it will be better? In part, because the proposals in the bill have been the subject of extensive consultation.

Starting in late 2011, councils came together at Destination 2036 to discuss their long-term future. This forum led to the appointment by the Government of the Independent Local Government Review Panel and Local Government Acts Taskforce. Both the panel and taskforce reports recommended legislative change to support the work of councils and ensure they could be fit for the future. The Government's 2014 response to those reports supported the development of modern, principles-based local government legislation.

In January of this year, the Government released an Explanatory Paper which outlined the specific amendments to be included in this Phase 1 bill. At the same time, an online survey, inviting public comment on each amendment was opened on the Office of Local Government's website for over 10 weeks. I thank those who participated, with over 160 submissions received. An information webcast was also held in March, which I am advised was well-attended by over 120 separate site registrations. The Government has made sure that councils and their

communities have had a chance to have their say on these amendments, which will help to shape the new local government sector.

The Phase 1 bill focuses on achieving the following major policy objectives: it seeks to embed strategic business planning principles across the broad range of council functions and practices; it promotes independent and sustainable councils engaged with, and accountable to, their local communities; and it supports a culture of continuous improvement in councils so they are able to deliver on the strategic goals agreed with their local communities.

Clause 2 of the bill introduces new principles for local government, which will build a common understanding of what local government should and can achieve. These new principles bring up to date some of the ideas covered by the Council's Charter and introduce new concepts that better reflect the role of local government in the twenty-first century. These principles are both guiding and aspirational. They are not intended as binding rules but they set down in writing what we expect from local government. It is useful to have such principles in the laws that govern the way we govern ourselves at a local level. It is even more important as we find ourselves at a point of renewal across the sector.

Turning to the particular provisions of the bill that will enhance the way councils are governed, clauses 6, 8 and 25 will establish distinct roles for mayors, general managers and councillors. The current lack of clarity about these roles has been identified as an area requiring change. Better role definition will reduce confusion and help people to get on with their jobs and make things happen for their communities. The bill also contains other important measures to improve the governance of councils.

Clause 7 increases the term of office for mayors elected by councillors from one to two years. This change was recommended by the Independent Local Government Review Panel to enhance political leadership and support stable governance of councils. The Government agrees that this apparently small change will generate significant returns in good governance.

Under clause 9, councillors will also be required to take an oath or affirmation of office to reinforce the serious nature of their role. Councillors will also be encouraged to obtain and maintain the skills necessary to do the job. The bill will introduce a new regulation-making power for induction and ongoing professional development for councillors. The Government anticipates making regulations that will provide guidance such programs, including requirements for public reporting of councillor participation in these programs. The bill also specifies in section 232 (1) that it is part of the role of every councillor to make all reasonable efforts to acquire and maintain the skills necessary to perform the role.

The bill also facilitates the drafting and adoption of a new model meeting code which will address existing procedural ambiguities and modernise procedural requirements. This change is effected primarily in clause 27 the bill.

The issue of integrity in local government administration has been a significant concern in recent times. While this bill does not change the substantive ethical obligations of councillors, it puts in place amendments that will, over time, improve councillor understanding about what is expected and required of them. In particular, under clauses 52 to 76 of the bill and the consequential amendments, the pecuniary interest obligations of councillors will be consolidated with other ethical obligations in the Model Code of Conduct. The Local Government Act currently contains two parallel schemes for ethical obligations—those found in the Code of Conduct and those

found in standalone pecuniary interest provisions. This is confusing. The amendments in the bill will move the pecuniary interest obligations out of the Act and into the Model Code of Conduct, which is imposed on councils through regulation. This consolidation will help to lift councillor awareness of these responsibilities by keeping all ethical obligations together in a single statutory instrument.

The transition to the new arrangements should be done in stages, however, to take into account the concurrent development of a new Model Code of Conduct. The Government's intention is that the amendments in the bill should commence after stakeholder consultation and the finalisation of a new model code. However, the bill prudently ensures there is no risk that the ethical obligations of councillors are reduced if the amendments are commenced earlier for any reason. The bill provides that the current pecuniary interest obligations in the Act are deemed to be part of the model code from commencement. This will ensure that all current ethical obligations on councillors continue until a consolidated new code of conduct is ready for publication.

Moving now to the new emphasis on strategic governance, the bill refocuses the existing framework for strategic business planning and reporting, making it central to all council activities. This will ensure council services are planned and delivered fairly and sustainably. Strategic planning and reporting has proven to be a very successful tool for councils to support their communities and carry out their functions. The panel and the taskforce endorsed it becoming the primary governance tool for councils into the future. The bill achieves this in three ways.

First, section 8C of the bill introduces new principles of integrated planning and reporting [IP and R] that apply to all councils, ensuring the pivotal role of IP and R for local governance is established. These principles synthesise the fundamental elements of integrated planning and reporting to establish clear policy guidance for councils and communities. It is noteworthy that new section 80 (a) provides that regional priorities, such as may be developed between adjoining councils in conjunction with the Government, are to be considered in a council's strategic business planning. This does not mean, however, that regional priorities should outrank council consideration of local priorities.

Second, the bill makes some specific refinements to the operational provisions in the Local Government Act to increase its coverage. For example, amended section 404 will provide that all council activities, not only those mentioned in the Community Strategic Plan, come under the umbrella of the integrated planning and reporting framework and so are covered by a council's Delivery Program.

Councils will also be required under section 402A to adopt a community engagement strategy for all of their activities, other than business-as-usual' operations, not just the activities referred to in the Community Strategic Plan, as is currently the case. This reform will ensure that communities can have a genuine opportunity to be heard on all the important work that councils do.

Third, the bill puts a clear responsibility on mayors and councillors to engage productively in a council's IP and R processes. These new, explicit expectations are contained in section 226 (g) and section 232 (1) (c).

The bill also contains important new measures to support financial transparency of councils in the future. Councils will be required to establish an internal audit function as a driver for improved council performance. Some councils already have Audit and Risk Committees but

clause 43 of the bill will ensure that in the future an Audit, Risk and Improvement Committee is a mandatory good-governance practice for all. The bill also introduces a principles-based approach to the regulation of councils' financial governance practices that reflects the principles of sound financial management set out in the Fiscal Responsibility Act.

Most importantly, under the bill amendments, councils will become subject to oversight by the Auditor-General for their and their subsidiary entities' general audits from this financial year. This is a major reform but one that brings New South Wales into line with most other Australian jurisdictions and New Zealand and will provide greater consistency and certainty across the sector. It will also ensure that reliable financial information is available that can be used to assess councils' performance and for benchmarking.

The Auditor-General is, of course, independent of the government. She is accountable directly to the Parliament in relation to the exercise of her functions. The Auditor-General will be free to engage private sector auditors to assist her with her new responsibilities. The Audit Office anticipates that such contractors would be engaged after a competitive tender process. This is also similar to other jurisdictions. I am advised that the expectation of the Audit Office is that the vast majority of council audits will be delivered through contracted auditors who are accredited by the Auditor-General, with the Auditor-General conducting a small number "in-house". The Audit Office has committed to working with councils' current audit firms where they are accredited over the transition period. While it is important that the bill makes it clear when the current arrangements end, every effort will be made to ensure that there is a smooth transition to the new arrangements.

The Auditor-General will also be empowered to conduct sector-wide performance audits to identify trends and opportunities for improvement across the sector. This is similar to her powers in relation to State government agencies and will be a very important new source of guidance for both councils and the State Government.

Clause 47 of the bill establishes the option for the Minister to appoint a financial controller to councils at financial risk. This is broadly similar to the position in Queensland. The new power is only able be used in circumstances where the Minister is also empowered to issue a performance improvement order. The bill also provides scope for further regulations to be made to prescribe specific financial criteria that the Minister must consider, should that be necessary or desirable. The purpose of this new power is to broaden the suite of options available to the Minister to improve council performance in cases of real financial sustainability risk without resorting to the more drastic step of appointing an administrator.

The bill also includes a process for prescribed councils to voluntarily streamline some governance structures. Although supporting regulations are yet to be considered by the Government, this would be a mechanism to permit rural and remote councils with small populations to reduce the number of councillors, abolish wards and/or reduce the number of meetings below the current thresholds in the Act. These were measures that some councils proposed in their Fit for the Future submissions to IPART in June 2015. The bill provides an avenue for the Government to give these proposals careful consideration.

The bill also contains measures to reduce some of the regulatory burden on councils. For example, the bill integrates State of the Environment reports into strategic business planning so there is no requirement for councils to prepare a separate State of Environment report. Instead,

the environment is to be considered holistically when councils are planning to deliver their functions.

Councils will also be able to delegate the provision of financial assistance to community groups, as well as delegate more routine tendering functions to general managers, while ensuring that any major decision on outsourcing that might affect current council staff remains a decision for the councillors. The bill also removes the requirement that general managers report annually to council on senior staff contract conditions, since all such staff are now employed on standard contracts.

Another red-tape reduction measure is to remove the requirement for an annual council expenses policy and replace it with a requirement to adopt a policy in the first 12 months of a new council term. These policies are published online and rarely varied so there is no utility in an annual process. The bill also provides all councils with an option to use universal postal voting for elections. At present, this may only be done via regulation.

The bill also contains some housekeeping elements to address legislative ambiguities, such as: clarifying that the civic office of councillor will become vacant if the councillor is elected as a mayor; aligning the role of administrators with the newly defined roles of mayor and councillors to address a further legislative ambiguity; clarifying that the count-back provisions of the Local Government Act do not commence until a prescribed future time, to allow the supporting regulations to be finalised; and clarifying the status of a determination of a council's category by the Local Government Remuneration Tribunal.

My thanks must go to the members of the local government ministerial advisory group—the United Services Union, Local Government NSW and the Local Government Professionals Association—who provided extremely constructive feedback on the Phase 1 proposed amendments. Their feedback has greatly informed the development of the bill. I welcome similar positive stakeholder engagement as the Government develops future phases of reform to the Local Government Act. I commend the bill to the House.

The Hon. PETER PRIMROSE (15:21): The Local Government Amendment (Governance and Planning) Bill 2016 is the first phase of the Baird Government's proposed changes to the Local Government Act. The bill is a bad beginning. The Opposition recognises that following consultation it is appropriate to update such complex legislation. But that update should be on the basis of evidence, not political bias, and should make the legislation better, not worse. There are so many problems with this bill that the Opposition cannot support it. If we are unsuccessful in sending the bill back to be totally remade we will move amendments in Committee that we believe will improve it. During the debate in the other place many members raised serious concerns and asked the Minister to respond in his reply. He totally failed to do so. In this House of review I urge the Government not to treat the legislative process with such disdain and I urge the Government to respond to the concerns raised by all members.

Broadly, this bill amends a number of provisions in the current Local Government Act, specifically focusing on the purpose of the Act and principles for councils; council governance; wards, councillors and election matters; auditing; disciplinary matters; and disclosure of pecuniary interests. Clause 1 omits the current purposes of the Act in section 7 and inserts revised purposes. There is a very clear and distinct shift in the language in the bill used to describe these purposes. Under the bill, councils will be distinctly separate from their communities. Rather than perceiving the community as a direct participant in the affairs of council, the community is now

to be envisaged as an external stakeholder, to be managed and engaged with. For example, the words "encourage and assist the effective participation of local communities in the affairs of local government" are omitted by the bill, and replaced with "to facilitate engagement with the local community by councils".

The downgrading of council's role as a local provider is also very apparent in new section 7. This bill specifically deletes giving councils the ability to provide goods, services, facilities and activities appropriate to the current and future needs of local communities. Providing a framework for an "environmentally responsible" system of local government is also omitted. The system must now only be "sustainable and flexible." Clause 2 omits council's charter and inserts a new set of principles. Again, there is a shift in language that degrades council's role as community activist to the status of passive observer. Reference to council exercising its functions "in a manner that is consistent with and actively promotes multicultural principles" is replaced with merely "recognising diverse local community needs and interests" and "meeting diverse needs". Specific reference to "promote and to provide and plan for the needs of children" is also omitted by this bill.

Nor is it is any longer the role of council, under the proposed legislation, to protect the environment. The reference to "properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development" is omitted. Council need only "consider the principles of ecologically sustainable development—I stress the word "consider". Council is no longer the protector of public assets but merely the manager of them. The reference to "bear in mind that [council] is the custodian and trustee of public assets and effectively plan for, account for and manage the assets for which it is responsible" is omitted from the current Act by this legislation and is replaced with "manage lands and other assets so that current and future local community needs can be met in an affordable way". Under this bill, a council is no longer a promoter of social justice required to "exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights"; it is merely required to "consider" social justice principles. Again, the community is kept at arm's length from council's work.

The requirement to "facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and coordination of local government" is also omitted by the bill. The State Government's privatisation agenda is clearly demonstrated in the removal of the charter point to provide "directly or on behalf of other levels of government, adequate, equitable and appropriate services and facilities for the community". The bill replaces it with: "Councils should work with others to secure appropriate services for local community needs". Finally, the strategic organisational shift away from "local" government to "regional capacity building" is apparent with the introduction of a requirement to "consider regional priorities beyond local community needs and aspirations and to collaborate with others to maximise achievement of strategic goals." One can assume that the strategic goals will be those of the State Government.

Chapter 3 of the bill is very important. It details the guiding principles for councils, the principles of sound financial management and integrated planning and reporting principles. But under clause 82, new section 674A states that none of these give rise to or affect legal proceedings. I appreciate that in the original Act, civil action could not be taken in relation to a council pursuing its charter. However, the original Act also specified that a council must actually pursue its charter. This bill appears to fail to specifically place any such duty or obligation on meeting the principles

that it specifies in chapter 3. But at the same time as it increases the scope of the principles in chapter 3, the bill paradoxically specifies that they are not subject to legal recourse.

Also under clause 82, the expansion of freedom from civil action grows exponentially. Under the bill such exemptions will also apply to provisions relating to the role of the governing body, the role of the mayor, the role of a councillor, and the conduct of councillors, staff, delegates and administrators.

The bill overall is full of buzzwords that have no specific meaning or, at best, a contested one—such as listing achieving intergenerational equity as a principle of financial management as proposed in new section 8B (d). We accept that this term is used in other financial legislation but is now widely contested as a concept and in 2016 more appropriate terminology should have been used. While under new section 674A chapter 3 does not give rise to civil legal proceedings, the actions and policies of council and its auditors will be guided by them despite the lack of clarity or enforceability. The lack of clarity about how these so-called "principles" are to operate between council, auditors and legal enforceability makes this seem like a pretend reform—the reform you are having when you really are not having any positive reform at all.

While these buzzwords and contested terms are appropriate for a speech, they are not appropriate in modern legislation. We should remember, though, that this is the same Government and the same Minister that assessed councils according to equally meaningless and vacuous terms such as "Fit for the Future" and "scale and capacity". It would seem that buzzwords, not legislative reform, are what this Government and the Minister know how to do best. Item [3] of schedule 1 amends section 210B to allow a council that has been prescribed by the regulations and within certain time limits to apply to the Minister for approval to abolish its wards, avoiding the need for approval by local residents at a constitutional referendum. Again, the community is being sidelined. Many residents believe abolishing wards makes it more difficult for residents to have personal contact with councillors. Whether this argument is so is a matter for debate, but that debate should be held within the local community.

Item [5] amends section 224A to allow a council that has been prescribed by the regulations and within certain times to apply to the Minister for approval to decrease the number of councillors, again avoiding the need for approval at a constitutional referendum. Again, the community is being sidelined by the bill. The prohibition on a ward having fewer than three councillors is omitted. Many residents believe having fewer councillors would again make it more difficult for residents to have personal contact with councillors. I stress again: This debate is one that local communities should have; it is not, as proposed in this bill, simply a matter for the council to apply to the Minister to seek approval.

Item [6] specifies that the role of the mayor will now include "to promote partnerships between the council and key stakeholders". Apparently, unlike all the other largely passive proposed activities of councillors, the mayor can be an activist but only when pursuing outsourcing and public-private partnership opportunities. Labor supports the so-called Fit for the Future recommendations by the Independent Local Government Review Panel for mayors to be popularly elected by their local communities and during the Committee stage we will move an amendment accordingly.

Item [8] significantly downgrades the role of councillors who, it is envisaged, will no longer be seen as representatives of their community, as advocates or as community leaders but merely as members of the governing body—one could say a board of directors charged with upholding the

decisions of that body. The bill specifically omits the role in the current Act "to provide leadership and guidance to the community". The bill also omits the role "to represent the interests of the residents and ratepayers" and replaces it with "to represent the collective interests of residents, ratepayers and the local community". It is frankly difficult to understand how this will work in the event of competing interests, say between residents and developers.

New section 232 (1) (f) states that one role of a councillor is "to uphold and represent accurately the policies and decisions of the governing body". I repeat: The bill states specifically that one of the roles of a councillor is "to uphold and represent accurately the policies and decisions of the governing body". Accordingly, a councillor will no longer be free to criticise a council decision that he or she does not agree with. That is fine for public servants or a member of a board of directors but councillors in local government have been elected by, and are responsible to, a constituency and not the council. Councillors should be able to continue to argue against a decision of the majority on the council on behalf of their constituents.

Imagine being a minority councillor on a council controlled by a voting bloc and being told, "You will not be complying with the Local Government Act if you speak out against a decision that your constituency believes is dodgy". The wording of new section 232 (1) (f) silences a councillor who is in a minority or who does not support the majority decision of the council, and it does that very specifically. This new section of the Act will be used to control, to quieten and to put aside any opinions differing from those of the controlling blocs on local councils. This is a genuinely Orwellian provision. While most councillors seek the best outcomes for their community, there is often a very real difference in opinion as to how that can be best achieved. That dynamic should not be quashed by this bill.

Debate on this legislation—as with all debate—should be robust. Robust debate is part of achieving the best outcome for local communities, and our communities are mature enough to hear conflicting ideas from their councillors and to appreciate the variety of opinions that can be found on local councils. There is a diversity of opinion on local councils precisely because they reflect the diversity of opinion found in our local communities and it should be respected, not banned by a genuinely totalitarian provision. This provision, if nothing else, should be deleted from the bill.

Item [19] removes the requirement for a council to be prescribed by the regulations before it can decide to use a universal postal voting system at its elections. This makes it easier for councils to institute a postal voting system. The proposed amendment to section 310B will allow elections to be conducted exclusively by postal voting if a council so resolves. The Opposition has always maintained the position that local, State and Federal elections should be conducted as near as possible on the same basis to make democratic participation simple and easy for the voter. Accordingly, we do not support exclusive postal voting.

Currently, section 310B (2) in the existing Act requires "a resolution made at least 18 months before the next ordinary election of councillors" before universal postal voting could be instituted and the requirement in this bill is not proposed to be amended. Some community groups believe the Minister still wants to try to have the Government's hand-picked administrators agree to universal postal voting so that it will apply at the September 2017 polls and to all those forcibly merged mega councils. However, there are no amendments to change the current requirement in the bill for a council to pass a resolution made at least 18 months before the next ordinary election of councillors.

The Minister, Premier and Deputy Premier need to clarify whether this is their intention and, if so, how they plan to overcome the 18-month restriction. This is particularly noticeable because the Government, in its current budget, has allocated $1.5 million to the NSW Electoral Commission to begin the process specifically to introduce universal postal voting. My reading of this legislation is that the Government cannot do that unless there is this 18-month period but if the Government's intention is to seek to use its hand-picked administrators to require universal postal voting in these mega councils it needs to fess up now in this debate.

The general manager's role is significantly expanded by the bill. Item [21] specifies that the general manager, rather than the council, is to determine the organisational structure of the council. The council will now only determine senior staff positions and reporting lines. This, in the view of the Opposition, is misguided. One of the few remaining powers of a councillor is to select the general manager and approve the organisational structure of the council. Given that it will be the elected councillors who wear the blame for any poor decisions of the organisation, it should follow that those councillors get a say in how the organisation is structured and where the resources of the organisation are being directed.

Item [25] omits the current functions of the general manager and replaces them with a revised list of functions—a list which, significantly, now includes advising the governing body on the appropriate form of community consultation to adopt for the development of plans, programs, strategies and policies. Once again, these amendments represent a shift away from the view that local government is something integral to the community and towards a view that local government is a business to be managed. The Opposition will oppose these proposed provisions.

Item [29] will allow a council that has been prescribed by the regulations, within certain time limits, to apply to the Minister for approval to hold less than the prescribed number of meetings per year. Item [36] omits all references in the community strategic plan that address civic leadership, social, environmental and economic issues in an integrated manner—references that were based on social justice principles of equity, access, participation and rights. All those references would be gone were this bill to pass. Reference to the community engagement strategy being based on social justice principles is also to be omitted. The criteria for community strategic plans will now be in the regulations and so will become a matter for the Minister rather than the Parliament. This is as per clause 87, the amendment to schedule 6, item [18].

Under item [40], the Auditor-General will become the auditor for all councils, but the Auditor-General may appoint others to carry out the auditor's functions. There is a requirement for the Auditor General to report significant matters to the Minister and to report annually to Parliament. The Opposition does not support new section 422 (2), which would allow the Auditor-General to appoint another person or firm to be auditor for the council. This important role should not be delegated, and the Audit Office should be resourced properly to fulfil that function. The bill also requires, in item [43], the establishment of an internal audit, risk and improvement committee. Labor will move an amendment requiring at least one member of that committee to be fully independent of the council, and neither an elected councillor nor a staff member. This is an important measure to ensure that the process is robust.

The existing legislation is inadequate and requires reform. For example, the current legislation does not prevent developers and real estate agents from seeking election to councils. This bill does not address that problem, it does not cap expenditure on local government elections and the Government has failed to provide considered reform to local government regulation. Rather, the bill gives effect to changes to the Local Government Act—changes that would reinforce

potentially corrupt behaviours—in the guise of reform. I will illustrate this with an example. Item [30] allows the Minister to approve a councillor with a pecuniary interest attending, speaking and voting at a council meeting—without that councillor's actions constituting misconduct—simply to maintain a quorum. The Minister will be the one to determine whether allowing this conflicted councillor to vote on the issue in which they have a pecuniary interest is in the interests of the local community.

There is no guide in the bill as to how the Minister will form this view. No detail is provided about whether the Minister's reasons will be made public or whether they are reviewable—and, if so, by whom. It will also be for the Minister to decide whether allowing a conflicted councillor to vote on a matter would meet the threshold for being considered misconduct. The Opposition cannot conceive of a legitimate reason why a Minister for Local Government would want to be the one required to give their explicit consent to the likes of Auburn Councillor Salim Mehajer, former Parramatta Mayor John Chedid, Liverpool Mayor Ned Mannoun, Port Stephens Mayor Bruce MacKenzie, or any of the other Liberal-aligned councillors who have found themselves in trouble over their conduct. Any subsequent corruption to the detriment of the community would then fall clearly on the Minister's head. This proposal by the Baird Government will further erode community confidence in councils.

Do not forget that it was this Government that originally gave councillors such as the ones I mentioned permission to vote on matters in which they had a conflict of interest. The Government then had to sack Auburn council after councillors took this as the Government condoning their dodgy activities. Labor accepts that the quorum issue is a real one for local government, but the problem has been caused by the Government's own refusal to ensure that real estate agents and property developers are banned from being elected to local councils. Ban them from standing and the quorum issue will disappear overnight. The Opposition would readily move again, as an amendment to the bill, that real estate agents and property developers be so banned. But we recognise that to do so would be beyond the leave of the present bill as presented to the House by the Government, so we will return again to the matter of such a ban at some future time.

In the meantime, however, we will move to delete this clause from the bill. This specific proposal sends a message that it is okay in some circumstances—driven by administrative convenience alone—to break the rules and for a councillor to speak and vote on issues in which that councillor has a pecuniary interest. We believe this proposed provision in the bill would be conducive to a climate of corruption, and we will not support it. In item [42] the bill proposes to delete section 428A, which requires councils to produce state of the environment reports every four years. We oppose this. While we acknowledge that councils are asked to do many reports on a diverse range of issues, the state of the local environment is a critical one, especially as the bill, in new section 8A (2), subparagraphs (c) and (d), states specifically that local decision-making should consider 'the long term and cumulative effects of actions on future generations' and 'the principles of ecologically sustainable development.'

Item [89] proposes to omit the current code of conduct, which is in schedule 6A to the Act. A new model code of conduct is to be created by various sections of part 2, chapter 14, and by regulations. However, the bill then goes on to say that any of the regulations as they pertain to pecuniary interest provisions can be modified or excluded. It seems that the Government has not considered closely the importance of having clear and legislated pecuniary interest requirements for councils. There is nothing in the proposed model code of conduct that allows for the making of a pecuniary interest complaint, by any member of the community, about councillors or

administrators, current or former, which would allow such a matter to be investigated by the appropriate body or authority.

Further, given that model code of conduct complaints provisions do not pertain to any complaint made under part 3 of chapter 14, how does a council ultimately deal with misconduct relating to the pecuniary interests of a councillor, especially where it may deal with a performance improvement notice or other alternatives to disciplinary action? Given that the savings and transitional arrangements indicate that the complaints procedure do not apply to any matter for which a complaint may be made under part 3 of chapter 14, this would seem to make the whole model code of conduct redundant for councillors, as any misconduct complaint about a failure to disclose pecuniary interests could lead to sections 438HA or 440J being used.

The proposed amendment to section 460 specifically excludes a complaint made by a member of the community about a councillor's or administrator's failure to disclose pecuniary interests being dealt with by the departmental chief executive—it even excludes the departmental chief executive making such a complaint himself or herself. Once again, how does a member of the community make a misconduct complaint about an alleged failure of a councillor to declare a pecuniary interest? Instead, anything related to councillors or administrators, current or former, and alleged failures to disclose pecuniary interests is dealt with solely under the misconduct procedures set out under sections 440F to 440P.

This would appear to effectively require that only councils, broadly defined, can make a complaint about a possible breach of a pecuniary interest declaration and have it investigated. Consequently, the council and the departmental chief executive become the gatekeepers in the handling of a complaint and the investigation of any alleged failures of pecuniary interest declarations.

Proposed amendments to sections 469 and 470 require that the processes of the NSW Civil and Administrative Tribunal [NCAT] relate to pecuniary interest matters not involving councillors or administrators, current or former. Thus NCAT can hear misconduct matters, of which pecuniary interest disclosures are part, but only in relation to section 438HA, a performance improvement plan, or section 440J, alternatives to disciplinary action. It may not hear matters relating to councillors or administrators, given that the complaints procedure does not apply to any matter for which a complaint may be made under part 3 of chapter 14. Put simply, council staff may be called to appear before NCAT for alleged breaches of a failure to disclose pecuniary interests, but current or former councillors or administrators may not. This means that the council and the departmental chief executive also become the gatekeepers in investigating complaints made about the failure to disclose. However, the departmental chief executive may become involved only if the complaint has been referred by a council or specific persons named under the misconduct procedures at sections 440F to 440P.

An amendment to section 486A proposes that NCAT have exclusive jurisdiction to decide allegations of pecuniary interest disclosures when they concern non-councillors and non-administrators, current or former. But the amendment to section 482 is proposed to specifically exclude councillors and administrators, current and former. Section 482A, in relation to current and former councillors and administrators, would apply only where the matter had been referred to NCAT under sections 438HA and 440J. Once again, this is placed in doubt by the savings and transitional provisions.

The obvious question is whether with this bill, with its flawed pecuniary interest provisions, the Government is simply looking out for its developer mates. If it walks like a duck and talks like a duck, it probably is a duck. I have gone into considerable detail on this matter, outlining the specific sections, because I know the Parliamentary Secretary will be keen to reply to my questions, on the advice of the Minster's staff, who are sitting in the gallery. This is going to be the law in New South Wales. This will apply to councillors and others. If this is incorrect, I am looking forward to receiving a detailed response. There will be legal action over this legislation if it is passed. I want the views and response of the Parliamentary Secretary to be taken into account by the judge when he or she considers whether I am correct.

The Baird Government has waxed lyrical about improving the integrity of local government. This flawed and confused bill fails to live up to that promise. I hope the Government will clarify in its response the matters that I have raised, as the community needs assurance of the accountability and transparency of this complex but important issue. Given the magnitude of the issues that have been identified, Labor cannot support this bill in its current form.

The Hon. PAUL GREEN (15:53): I speak on behalf of the Christian Democratic Party in debate on the Local Government Amendment (Governance and Planning) Bill 2016. I too look forward to the Parliamentary Secretary's reply to some of the concerns raised by the Hon. Peter Primrose. This bill aims to improve the performance, transparency, governance and accountability of local councils. The bill includes amendments to streamline the integrated planning and reporting framework of local councils. It introduces new purposes for the Act and guiding principles for local government. The bill clarifies the roles and responsibilities of councillors, mayors, administrators and general managers. It will improve the governance of councils and provide for professional development. The bill introduces a model code of conduct to promote understanding of the obligations of councillors to act ethically. The bill appoints the Auditor-General to audit all councils. Further, it introduces new methods of performance management.

This bill is introduced in response to phase 1 of the review of the Local Government Act and in reference to the 2016 explanatory paper on new local government legislation and proposed phase 1 amendments. In its "Submission to the Office of Local Government—Feedback on the Phase 1 review of the Local Government Act 1993", Local Government NSW stated:

LGNSW has participated in the previous consultation processes and appreciates that some suggestions made in previous submissions have been reflected in the current proposals. LGNSW wishes to continue to work collaboratively with OLG to improve outcomes for the local government sector and their communities.

It further stated:

LGNSW also appreciates the concise nature of the Explanatory Paper. However, meaningful consultation requires:

•Early engagement with stakeholders;

•Sufficient time for all stakeholders to consider relevant proposals;

•Opportunity to consider proposals in context;

•Sufficient detail and specificity, particularly being able to consider the actual terms of draft legislation;

•Availability of associated regulatory impact statements articulating the costs and

•benefits of the proposals;

•An appropriate way of providing feedback on the proposals; and

•A subsequent feedback loop to indicate how the proposals were changed (or not) as a result of consultation, and how and why that conclusion was reached.

Most of these elements are missing in the current consultation.

While the NSW Government has been discussing legislative reform of the Local Government Act for a number of years, the nature and process of that reform has changed over time.

Previous proposals have been refined or changed, and others are completely new.

The Government has also adopted a phased approach, rather than undertaking a more holistic review of the Act. The only information released to date relates to Phase 1, with no information available about the matters that subsequent phases will address, and associated timeframes.

Local Government NSW raised five points of concern: the timing of the consultation, the provision of context, the detail and specificity, the impacts of proposals and the feedback mechanisms. The Government has advised that there was opportunity to provide feedback via an online survey on the website of the Office of Local Government between January and March 2016. The Government has also advised that it consulted with key stakeholders, including through the ministerial advisory group.

I note that the United Services Union is the largest union serving local government bodies in New South Wales, with more than 30,000 members. During the local government reforms its priority is to protect jobs at merged councils and to protect wages and conditions by protecting the Local Government (State) Award 2014. The Office of Local Government advises that a representative of the United Services Union was part of the ministerial advisory group that examined an exposure draft of the bill. The item that was amended in response to the participation of the United Services Union on the ministerial advisory group was, firstly, a new section 8A (1) (i). The Government added back in the reference to councils being "responsible employers" on the basis that this was a well-understood term and that the United Services Union was not sure whether "consultative and supportive" amounted to the same thing.

The second point in relation to lifting the bar of council's delegating tender acceptances was narrowed to exclude major outsourcing decisions with the impact on "in-house" council jobs. This was to address the major concern raised in the debate on red tape reduction bill while still being a workable improvement to council's everyday operation. I am the chair of the General Purpose Standing Committee No. 6 inquiry into local government and we investigated a wide range of issues surrounding local government reform. As I said in my foreword, there is widespread agreement that the reform is needed and that this consensus has been building for some years.