ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (STAGED DEVELOPMENT APPLICATIONS) BILL 2017

First Reading

Bill introduced on motion by Mr Anthony Roberts, read a first time and print ed .

Mr ANTHONY ROBERTS (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) (10:13): I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Staged Development Applications) Bill 2017. The purpose of this bill is to restore the procedures for staged development applications and how first stage concept proposals are assessed. Staged development applications are often lodged for complex residential, commercial, retail and hotel developments to obtain "in principle" approval which sets out key planning parameters like use, shape and scale upfront, allowing the finer-grained details and operational impacts of a proposal to be spelled out in future applications when those more detailed aspects are fully developed. Importantly, a first stage concept approval does not allow any works on a site to start. This ensures that all relevant impacts are fully assessed in subsequent staged development applications before any work may be carried out.

The staged development application model is particularly important in the City of Sydney where a concept proposal is required for new or expanded buildings in central Sydney. This staged approach of concept proposal followed by a detailed development application provides for more certainty to developers and financial backers to make investment decisions knowing that the key parameters have been found sound and justify further investment in the detailed design of a proposal through a subsequent application. The provisions also allow stakeholders and the community to provide feedback at the conceptual stage before a detailed proposal is lodged.

In 2015 the Minister for Planning approved a first stage concept development application made by Arts NSW for an integrated performing arts and cultural precinct in Walsh Bay. The approval did not permit any construction work to be carried out. The Minister's decision was challenged and initially dismissed by the Land and Environment Court in 2016. The Land and Environment Court's decision was then taken to the Court of Appeal. On 15 June 2017 the Court of Appeal overturned the Land and Environment Court's decision and declared that the approval was invalid. The court made this decision on the basis that the proposal was not a staged development application within the meaning of the Environmental Planning and Assessment Act. It came to this conclusion because the concept proposal was to be followed by only a single development application for the development of the whole site.

In the Court of Appeal's view there must be at least two detailed proposals for separate parts of the site in order for a staged development application to meet the requirements of the Environmental Planning and Assessment Act. The court also determined that the Act did not permit the consideration of construction-related impacts to be permitted as part of a later development application even though the concept approval did not authorise construction work starting. The effect of the decision was to limit the circumstances in which the stages provisions could be used.

The decision by the Court of Appeal creates a great deal of uncertainty for a number of complex development proposals under assessment or recently approved by the department and local councils. Many of these projects have a high capital investment value. The Department of Planning and Environment estimates that the projects at risk of legal challenge could have a combined capital investment value of over $8 billion and would deliver over 14,500 dwellings across the State. By introducing this bill, the Government has acted swiftly to address this uncertainty and

prevent delays in the delivery of significant residential, retail and commercial development across Sydney and the rest of the State. This bill is a conservative measure to restore the law to the way it previously operated and was understood by councils and other consent authorities and industry.

The draft bill was released for public comment on 30 June 2017 and a broad range of submissions were received. Some suggested the inclusion of additional provisions to allow greater flexibility for concept approvals. These comments were taken into consideration but were considered inconsistent with the purpose of the bill which is to restore current accepted practice for concept development applications, remove uncertainty and prevent delays. Following the public consultation period, some drafting changes have been made in relation to consequential amendments. There is one major change to the bill in response to submissions. This change is to clarify that the bill will not validate the second stage development application lodged for the Walsh Bay Arts Precinct proposal.

I now turn to the amendments in the bill. The bill replaces the current staged development application provisions of the Act with new provisions for concept development applications. This confirms that the provisions are meant to be used for any concept proposal rather than exclusively for staging two or more parts of a proposal across a site. The new provisions are largely the same as the current ones, however there are two critical changes which restore the way the provisions for staged development applications operated before the Court of Appeal's decision. First, the bill will allow a concept development application to be followed by only a single application for the whole development site. This will avoid the artificial carving up of a development site which would otherwise be required if the legislation was left unchanged, creating time delays and additional costs for no good commercial, technical or community benefit. It will also mean that the provisions are available to a broader range of development.

Secondly, the bill will allow councils and other consent authorities to decide the most appropriate time to assess construction-related and other operational impacts, as has been long-standing practice before the Court of Appeal's decision.

It is councils and other consent authorities who, with the benefit of having the available information at hand, are best placed to determine when a comprehensive assessment of these impacts should be undertaken. The bill will give councils and other consent authorities the choice to decide on a case-by-case basis whether construction-related impacts should be assessed either in part at the concept stage and more fully at the subsequent stage of the development application, or at the subsequent stage of the development application when the details and likely operational impacts of the proposal are fully known.

Importantly, nothing in the bill will result in a reduction in the level of assessment undertaken by councils and other consent authorities and it will ensure that all impacts are fully assessed before any construction can be carried out. Also, nothing in the bill will affect the department's longstanding practice of comprehensively assessing all likely impacts of coalmines, wind farms and coal seam gas projects. Finally, the bill will apply to pending applications and will prevent any legal challenge against consents granted since the public release of the bill on 30 June 2017. However, the bill will not validate the State significant development concept consent for the Walsh Bay Arts Precinct proposal or the second stage, which is yet to be determined. The bill restores the settled law and practice on staged development applications to how it previously operated, resolving the current uncertainty and avoiding potential delays and additional cost in the delivery of significant development across the State. I commend the bill to the House.