ENVIRONMENTAL PLANNING AND ASSESSMENT AND ELECTORAL LEGISLATION AMENDMENT (PLANNING PANELS AND ENFORCEMENT) BILL 2017

First Reading

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

Second Reading

Mr ANTHONY ROBERTS (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) (16:00): I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) bill 2017. Corruption in the exercise of planning functions by local councils will always be a potential risk. Who can forget Wollongong and the "table of knowledge" or, more recently, the corruption issues that have been raised in relation to the former Auburn and Canterbury councils? These potential risks can arise, for example, when an individual councillor has an interest in land that is the subject of development or is the developer or has a connection to the developer, or the council is both the applicant and the owner of land that is the subject of proposed development. In these cases, a legitimate concern arises. Because of the actual or perceived conflict of interest, can the councillor or council objectively consider the proposed development and will they take into account concerns of other stakeholders?

The risk of conflict of interest is highlighted by the regular investigations the Independent Commission Against Corruption [ICAC] has undertaken into corruption in the planning system. To date, there have been at least 20 investigations in this area, which includes the ICAC's Operation Atlas investigation into Wollongong council. A vast majority of these investigations have involved councils in the Greater Sydney region, with most of these relating to potentially inappropriate relationships between applicants and decision-makers. To reduce this risk of corruption, one option that has been consistently recommended is the use of independent panels. Under this model, development applications, or DAs, are determined by a panel of independent persons with appropriate expertise. The panel decides whether to approve the DA based on a technical assessment of its merit in light of the planning controls.

When a panel is truly independent and expertly qualified, it greatly reduces the risk that the decision-maker will have a conflict of interest. This approach also helps to de-politicise planning decisions and improves the thoroughness and quality of decision-making. Data has shown that it also reduces the approval times, which means reduced costs. As part of its response to Operation Atlas, Wollongong council established an Independent Hearing and Assessment Panel "to provide transparency and probity in the development application assessment process, and also provide an independent forum for stakeholders (applicants and objectors) to present and discuss issues relating to controversial development proposals".

A range of other councils have chosen to do the same. Currently, some 15 councils in New South Wales have Independent Hearing and Assessment Panels, or IHAPs as they are currently known. Many of these were established by administrators of newly merged councils. My department has had strong feedback from stakeholders that these panels are working extremely well and are valued by their communities. Stakeholders report that panel decisions are seen as both rigorous and credible. However, there is a pressing need to strengthen the use of panels and to build additional safeguards into the model to ensure their independence. Some administrators have raised strong concerns that existing IHAPs will be abolished by newly elected councils after

September and, therefore, the corruption risk will return. They are aware of some candidates who have promised to sack some existing IHAPs.

For those reasons, the Government is introducing this bill to require all councils in the Greater Sydney region and Wollongong to have a local independent planning panel. To ensure the model is best equipped to prevent corruption, the model must include safeguards such as: a mechanism to verify panel members are appropriately qualified and do not have conflicts of interest in that local government area; a strong code of conduct, which is important for good governance and helps to ensure that decisions taken by the panel are honest, fair, transparent and in the best interests of the community; clear criteria for the referral of matters to the panel to ensure that the panel is considering all significant or controversial development in the council's area; and a limit on the length of time a member can serve on the same panel to prevent the formation of inappropriate relationships between applicants and decision-makers.

The bill introduces consistent provisions for establishing and operating a panel. Key features of the proposed local planning panels are that each panel will have four members. Three of these, including the chair, must be experts in one or more of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. The chair must have expertise in law or government and public administration. The three expert members will be drawn from a pool that will be established by the Department of Planning and Environment and approved by the Minister.

The chair of each panel will be chosen by the Minister for Planning, and the council will choose the two other expert members from this pool. The creation of the pool will help to ensure that the chair and expert members are qualified and, importantly, independent. The fourth member will be a community representative chosen by council from the ward or area in which a proposed development would occur. Councillors will not be able to be a panel member in their own local government area, as this would undermine the basic objective of having DAs determined by independent experts. Members will be appointed for three years and may only sit on the same panel for a maximum of two terms. Statutory rules will govern the operation of these panels, including a thorough code of conduct.

The bill will allow the Minister to make rules about which DAs must go to a local planning panel for determination. The DAs determined by the panel will include any DA above $5 million; any DA where the applicant or landowner is the council, a councillor, a member of council staff or a State or Federal member of Parliament; and any DA that receives 10 or more objections. The types of DA associated with a high risk of corruption, which also will be determined, will be residential flat buildings assessed under State environmental planning policy [SEPP] 65, the demolition of heritage items, places of public entertainment and sex industry premises, designated development as set out in the Environmental Planning Assessment Regulation 2000, and modern applications that fit this criteria.

These criteria will ensure that the vast majority of DAs continue to be determined quickly and efficiently by expert council staff. The panel's time should be focused on determining DAs of high value, corruption risk, sensitivity or importance. The panels will also provide advice on planning proposals such as proposed rezonings. In these cases, the final decision to proceed will remain with the council, but the panel will provide expert advice on the merit of the proposal.

Initially, the requirement to have an IHAP will apply only across greater Sydney, and in Wollongong where a panel has already been established. This ensures there will be consistency across the areas covered by the Greater Sydney Commission, further improving the strategic focus on development for the future. For now, councils outside of Sydney and Wollongong will continue to be free to establish a local planning panel if they wish, and any two councils or more will be able to share a panel if this is more efficient. It is unlikely that a mandatory model will be suitable for

smaller regional councils because they generally do not have the volume and complexity of development to warrant this approach.

With the introduction of mandatory IHAPs it is appropriate that more development be determined at the local level. The bill does this by raising the basic threshold for regional planning panels. Currently, development with a capital investment value of more than $20 million is determined by regional planning panels. The bill increases this to $30 million for councils in the greater Sydney region and for Wollongong. DAs below this threshold will be determined by either the local planning panel or council staff on delegation. This will ensure that more local development is determined at the local level. The bill will move the thresholds for regional planning panels to the State Planning Policy (State and Regional Development) 2011 so that they sit alongside the thresholds for State significant development.

The bill also makes a number of savings and transitional arrangements to facilitate the new panels. This includes ensuring that existing panels, whether established under the Environmental Planning and Assessment Act or the Local Government Act 1993, are preserved until their composition is brought into alignment with the new requirements. This will ensure that existing IHAPs remain in place until the new requirements commence. It is expected that this will occur in March 2018.

The benefits of IHAPs extend not only to reducing corruption risks; they are also fundamental to providing strategic, streamlined and balanced decision-making. Panels can achieve greater certainty for all parties by providing rigorous and credible determinations on the merits of an application, reducing the likelihood of reviews and appeals. Panels also elevate the role of the council—they allow the council to focus on the strategic task of setting the overall vision, policies and controls for development in the local area. It is for these reasons that we are introducing this vital, game-changing reform to the planning system.

This is the first element of a broader package of improvements to the Act that the Government is considering. Proposed improvements to the Environmental Planning and Assessment Act were publicly exhibited at the beginning of the year and have generally been well received. Stakeholders have expressed support for our efforts to modernise and to streamline the planning system. The submissions and the information sessions held during the public exhibition provided invaluable feedback from the community and industry about not only about the workability of the proposals but also how to best implement these changes. My department has been working hard analysing these submissions to determine what changes are needed to the package and ensuring that any concerns or matters raised are appropriately reviewed and addressed.

Separate to IHAPs the bill also proposes to amend the Parliamentary Electorates and Elections Act 1912 and the Local Government Act 1993 to ensure that the NSW Electoral Commission has sufficient powers to enforce local government electoral laws. In 2016 the Local Government (General) Regulation 2005 was amended to require that candidates for local government elections declare in their candidate information sheets whether they are a property developer or a close associate of a corporation that is a property developer. The proposed amendments in this bill give the Electoral Commission the ability to exercise its investigative powers under the Election Funding, Expenditure and Disclosures Act 1981 for the purposes of ensuring compliance with the provisions of the Local Government Act relating to local government elections. These include powers to inspect and take copies of banking records, and to require the production of information and documents under the Election Funding, Expenditure and Disclosures Act 1981.

These additional powers will enhance the ability of the Electoral Commission to investigate alleged offences in connection with local government elections, including any allegation that a candidate has provided a false declaration regarding his or her status as a property developer. The proposed amendments also make clear that the Electoral Commission can enforce compliance by

instituting proceedings for offences under the Local Government Act relating to local government elections.

Lastly, the Bill amends section 693 of the Local Government Act to extend the limitation period for offences relating to local government elections under that Act. Currently, a 12 month limitation period applies to electoral offences under the Local Government Act. The bill proposes to extend this period to three years from the time the offence is alleged to have been committed. This will allow an additional two years for potential contraventions to be detected and for the NSW Electoral Commission to investigate allegations before any prosecution becomes "time-barred". As with panels, it is vitally important that these changes are made before September's local government elections. For these reasons, I commend the bill to the House.