Legislative Council Hansard – 18 October 2017 – Proof

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2017

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by Mr Scot MacDonald, on behalf of the Hon. Don Harwin.

Second Reading

Mr SCOT MacDONALD (18:13): On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment Bill 2017. In the almost four decades since it was passed, the Environmental Planning and Assessment Act has been amended more than 150 times. From its initial 137 pages, the Act has now expanded to 300 pages. While it still provides a solid foundation for our planning system, it is starting to show some middle-age spread. I acknowledge the architect of the original Act, Mr John Whitehouse, who, like the original architect of Sydney's iconic Opera House, we consulted with in the development of these amendments. I take the opportunity to thank Bob Meyer for his contributions.

This bill builds on the Government's agenda to cut red tape, and provide a faster and more flexible planning system for government and the communities we represent. The introduction of a new design policy, the rollout of regional plans and the development of the New South Wales Planning portal are just some examples of real changes we are making to the New South Wales planning system. Under the leadership of the Berejiklian–Barilaro Government, we have stripped out the redundant elements and are returning to a clear, useable framework that meets the needs of government, industry and the community.

The consultation process for this bill has spanned 2016 and 2017. Initially, the Department of Planning and Environment held targeted stakeholder consultations and discussions across the State with more than 370 representatives attending from councils, planning practitioners, industry, environment and community groups. This targeted consultation was followed by preparation of a draft bill, which we released for public exhibition from January to March this year. Consultation resulted in more than 470 submissions containing a mix of sensible suggestions on how we can improve on those proposals and focus on making them more workable or easier to implement. We heard strong support for the enhancements to community participation, increased strategic planning, improved design, and provided more efficient approvals from New South Wales agencies and an improved compliance framework to ensure the approved works are actually the works constructed. I thank those individuals, councils, organisations and community networks for their time and expertise in contributing to this bill.

This Government is enhancing liveability, public amenities, economic growth and major infrastructure investments to support the ongoing population growth being experienced across the State. With this success comes the challenge of balancing growth with the needs of our communities. Members on this side of the House are all too aware of the very real challenges facing communities, particularly those in metropolitan Sydney, in finding and affording suitable housing for themselves and their families. The Berejiklian-Barilaro Government put its money where its mouth is; this was clear in the most recent budget where we invested in more transport and infrastructure to enable easier access to homes, green spaces, schools and workplaces. This side of the House will continue to build a better planning system that facilitates the infrastructure, housing and places of work that we need, while maintaining the environment, accessibility, character and ease of use we value.

In considering this bill, I draw members' attention to the key amendments that aim to improve the planning system through faster, simpler processes, enhanced strategic planning, improved community confidence and participation, and more balanced and transparent decision-making. I now turn to the detail of the bill and the key updates to the existing Act. The reform package before us today is largely as originally proposed, refined with valuable improvements from the submissions of stakeholders and discussions with New South Wales agencies. This is testament to the extensive and constructive consultation the Department of Planning undertook during 2016–17.

The Act will be restructured into 10 parts. Part 1 updates the overarching objects of the Act, the fundamental principles guiding planning and development across the State. The bill modernises the language of the existing objects, without changing their policy intent. The bill adds three new objects. These are to promote good design and amenity of the built environment, promote the sustainable management of heritage, and promote the proper construction and maintenance of buildings. Both good design and cultural heritage were part of the exhibited draft bill and were well received by stakeholders. Building quality was also included to ensure building safety is at the forefront of all of our minds following the horrific Grenfell Tower fire. In response, we are introducing a new object to "promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants". A clear building object recognises the important role of building regulations in providing for public safety and the safety, health and wellbeing of a building's occupants and users.

The bill creates a new part 2 of the Act called "Planning administration", which brings together the provisions about the decision-makers under the Act and, importantly, the new requirements for community participation. Each planning authority will now prepare a community participation plan explaining how it will engage the community in plan-making and development decisions. All local councils and New South Wales development agencies that are planning authorities under the Act will have to prepare these plans. In doing so, they must have regard to new community participation principles set out in the bill in developing these plans to ensure the community has its say. A new requirement for decision-makers to provide reasons for their decisions has been incorporated in this legislation. This will enshrine transparency in decision-making, a cornerstone of this Government that I am proud to be a part of.

The Act also sets out the mandatory minimum community participation requirement for each type of planning decision in the Act. Councils and other authorities must observe these requirements and commit to going beyond these requirements in their participation plans. Part 2 also consolidates the provisions about planning authorities. This includes the provisions that relate to the different planning panels established by the Act—the Planning Assessment Commission, regional planning panels and local planning panels, also known as IHAPs. As members will be aware, in August this year the Government brought forward amendments to require councils in the Greater Sydney Region and Wollongong City Council to establish Independent Hearing and Assessment Panels [IHAPs] to determine development applications. We are now ensuring that the exclusions on memberships for IHAPs for property developers and real estate agents are appropriately extended to the Sydney and joint regional planning panels.

The Government is also proposing improvements to the Planning Assessment Commission, which will be relaunched as the Independent Planning Commission to reflect its determinative role. To reinforce the commission's key function of independently determining projects, we are removing the commission's review function, as it currently reviews State significant proposals and may then later determine the same proposals. Removing this duplication is central to our mandate. Other changes to the provisions of the commission will clarify administrative arrangements, including that, for the purposes of deciding an application, the commission can be constituted by one or more members as determined by the chair.

This will be subject to any direction of the Minister. I will be making a direction to ensure that significant projects, such as applications for new mines, will be determined by a three-member panel, as is current practice. To accompany these legislative changes, the Government remains committed to implementing a stronger public hearing process for the commission. This will include giving the community an early say in scoping the issues that need assessment and in participating in a more active interrogation of the proposal and the assessment report.

Part 3 relates to strategic planning and planning instruments. It consolidates and amends provisions currently found in parts 3 and 3B of the Environmental Planning and Assessment Act. A critical new measure is to enhance local strategic planning through new local strategic planning statements. For the first time, the councils' strategic plans for the local area will be recognised in legislation. This will complete the connection from regional and district plans to strategic planning at the local level and through to the legal development controls in the local environmental plan [LEP]. These plans will tell the story of the local government area and set out the strategic context within which the LEP has been developed, explain how strategic priorities and targets at the regional and district level will be given effect to at the local level, and incorporate land use objectives and priorities identified through the council's Community Strategic Plan.

The local strategic planning statement will be reflected in the local environmental plan by including a mandatory provision in the standard instrument LEP that references the local strategic planning statements. This means the LEP will be required to reflect the local strategic planning statements in its aims and objectives. Each new planning proposal, such as a rezoning, will have to explain how the change is consistent with the local strategic planning statement. Councils may also opt to have their statements endorsed by the Department of Planning and Environment. The statements will then become even more effective safeguards against inappropriate development proposals. Councils will be able to tailor the statements to outline land use priorities and actions at the ward level or to achieve particular goals. Ward councillors will also be able to play a role in the development of the statements. The department of planning will assist councils to develop their strategies through templates and guidelines.

We are also making development control plans [DCP] more consistent and simpler to use for community members and practitioners. There are more than 400 DCPs across New South Wales. In many of these the same issue is addressed in different ways. The variations in structure and format can make them difficult for users to understand and apply, inadvertently not meeting council's requirements. These variations also restrict the ability to embed DCP controls in the planning portal. A standard format DCP is a step to reduce red tape for industry, increase transparency and simplify useability for the community. While the format will be consistent, the content of the DCPs remains open for councils to tailor.

I now move to part 4, which addresses development assessment and consent. The bill includes important measures to improve the responsiveness and efficiency of the conditions of consent for State significant projects, without compromising the protections the conditions afford. A strong New South Wales requires rigorous and timely assessments. Too often I hear about delays from lack of communication or coordination. These delays cost business, councils and, ultimately, the community. To address delays by government agencies, the bill introduces a step-in power to ensure that agency advice is provided and that any identified conflicts are resolved in a timely manner.

I will take the time to explain this measure, as many objections misinterpreted the step-in powers, wrongly thinking that the department is taking over the role of the agencies. This is not how the step-in power will work. The secretary's step-in power is reserved for situations where, for example, an agency has not responded to a request for advice or granted general terms of approval within statutory time frames, or when different agencies' advice conflicts. The department's role is to facilitate the removal of any roadblocks. The secretary would only exercise this power subject to the same assessment considerations as agencies themselves would need to take into account. These requirements will be reflected in State Assessment Requirements that are being developed with the advice of these agencies.

Another key theme in the changes to part 4 is enhancing confidence in the complying development pathway. Complying development is an important contributor to meet the State's housing needs and to achieve the Premier's target of 90 per cent of housing approvals determined within 40 days by 2019. This pathway helps to save time and money for many families wanting to achieve routine development. But the community should be confident in this process, and the investigation and enforcement measures to deal with certifiers who abuse this pathway. We saw considerable support for giving councils a new power to stop work on a complying development for up to seven days to investigate complaints. To support councils in their investigations and enforcement activities, the bill enables councils to introduce a compliance levy on development applications. This levy will be given effect through the regulation.

For the first time, the bill would also allow the court to strike down a complying development certificate that does not meet the development standards. To further reduce regulatory duplication without diminishing environmental protections, the amendments establish a mechanism of "transferable" conditions. These are conditions of consent that lapse if they are substantially consistent with the requirements in another regulatory instrument, such as environment protection licences. This mechanism will apply to State significant development.

The bill also clarifies the use of "financial assurance" conditions. These conditions can require the developer to put up a bond or other financial guarantee to cover rehabilitation or decommissioning works. Financial assurance conditions help ensure the long-term impacts to the landscape are minimised, particularly where the proponent is not the landholder. The types of developments subject to these provisions, such as wind farms, will be identified in the regulations to ensure there is no duplication with other regulatory regimes. In relation to modification applications, the exhibited bill included a provision to stop people from submitting modification applications for works that have commenced already.

This was to address the business model some developers have of constructing first and seeking permission later. While the rationale for the original proposal was supported by many stakeholders, most councils did not support banning retrospective modifications. Instead, we will allow authorities to impose additional fees to deter retrospective modification applications. This will be achieved via regulation. The Government has made significant investments in infrastructure to support new homes and businesses, to keep New South Wales as an attractive and competitive place in which to live and work.

Part 5 contains provisions relating to infrastructure and environmental impact assessment. For development in infrastructure corridors that require consent under part 4 of the Environmental Planning and Assessment Act, proponents must obtain the advice or concurrence of agencies, such as Transport for NSW and Roads and Maritime Services. However, this is not currently required for development undertaken by public authorities under part 5 of the Environmental Planning and Assessment Act. These activities do not require development consent but are still subject to an environmental assessment. It is standard practice for public authorities to consult with other agencies and State-owned corporations about their proposed activity to ensure that it will not affect future plans for an infrastructure corridor. This practice will now be formalised in law, which will further strengthen this Government's unprecedented infrastructure investment.

Part 6 relates to the certification of building and subdivision works. It represents an important part of the Government's response to the independent review of the Building Professionals Act 2005—the Lambert report. The bill simplifies and consolidates provisions currently in parts 4, 4A and 8 of the Act that regulate building and subdivision certification into a single more logical structure. This will benefit the building industry, including certifiers who can find the current arrangements challenging to navigate and understand. The measures will increase the efficiency and effectiveness of regulation and result in improved development outcomes.

The bill also makes some changes to enhance the effectiveness of the building provisions. In recent years, case law has developed that allows certificates to be used for developments that are out of step with the planning approval. To remedy this, the bill allows the court to declare a construction certificate invalid if it is not consistent with the development consent. This will help to ensure that what is built is consistent with the approved plans, reinforcing the integrity of the planning system and giving the community greater confidence in the approvals. Part 7 covers planning agreements and special infrastructure contributions. It amends provisions currently found in part 4 of the Environmental Planning and Assessment Act. The Government has been working to develop a clearer policy framework for the role and use of voluntary planning agreements in the planning system.

Part 8 contains provisions relating to reviews and appeals available to applicants for development consent and objectors. The review of determinations is extended to integrated development and for determinations by a local planning panel, the Sydney district planning panel, the regional planning panel, and some determinations by delegates of the Minister. This will reduce appeal numbers and alleviate pressure on the court. It will also give applicants an alternative option to the appeal process, potentially reducing costs and time spent.

Part 9 relates to implementation and enforcement measures, replacing provisions currently found in part 6 of the Environmental Planning and Assessment Act. Currently, regulators can issue fines for breaches to the Act, or pursue the matter through the courts. These options are not always the most appropriate means for addressing the breach. As such, the bill introduces a new tool for regulators to facilitate an appropriate response to breaches of the Environmental Planning and Assessment Act. This tool is enforceable undertakings, which allows regulators, including councils, to negotiate with a perpetrator of a breach to the Environmental Planning and Assessment Act an appropriate response to remedy the breach. Such responses can include recovery of profits gained from the breach, compensation to affected parties, and remedying or making good on damage to the natural or built environment. Additionally, if the consent holder breaches the terms of the enforceable undertaking the regulator can efficiently apply to the court to enforce the terms. The bill also provides a safeguard to ensure that enforceable undertakings are used appropriately. Council negotiated agreements will be subject to the secretary signing off on the final undertaking.

Finally, part 10 contains miscellaneous provisions amending those currently found in part 7A and part 8 of the Environmental Planning and Assessment Act and moves some provisions to the regulations. I reinforce that the Government, in a move welcomed by many, will finally draw to a close former part 3A. We repealed part 3A in 2011, yet despite this transitional arrangements continue, resulting in some developments still accessing the former part 3A modification pathway some six years after its repeal. This will occur through a regulation amending the transitional provisions of the Act once this package of amendments has been enacted. In future, former part 3A projects that need to be modified will be assessed as either State significant development or State significant infrastructure.

The measures presented in this bill today set out changes to make the planning system clearer and more convenient for users. They reflect how we operate now and in the future. These measures have been subject to extensive consultation, and have been welcomed and supported by councils, planning practitioners and other stakeholders. Once passed, those who are involved in the planning system will no longer be shackled by a mess of 40 years of amendments. They retain our robust processes and restructure the Act into a clear and useable document. This legislation provides measured reform. It promotes good outcomes and ensures that the community is involved in the strategic planning and assessment issues that affect us all. The amendments increase probity and accountability in decision-making, cut costs and red tape saving time and money not only for government but also for business, industry and homeowners. I believe that all these measures achieve the original aim of promoting confidence in our planning system, ensuring the policy settings to deliver the best for New South Wales. For these reasons I commend the bill to the House.

Debate adjourned.

The P RESIDENT: I will now leave the Chair and cause the bells to be rung at 8.00 p.m.