

## Second Reading

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [5.30 p.m.]: 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.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Development Consents) Bill 2010. The primary purpose of the bill is to extend the lapsing period of existing development consents. Development consents tend to be granted with a lapsing period of two years, rather than the maximum five years allowed by the Act. This means that if a development consent is not physically commenced within two years it will lapse. In normal market conditions the two-year time frame is sufficient to allow developers to physically commence a development. However, in recent times, and particularly during the global financial crisis, this two-year period has not been long enough to obtain finance and commence works. This has been evident in a 14 per cent reduction in the number of construction certificates issued in 2008-09, compared with the number of certificates issued in 2007-08.

The New South Wales planning system is a significant contributor to the prosperity of this State. In 2008-09 the total value of development approved by consent authorities under part 4 of the Act was \$18.5 billion. The New South Wales economy continues to show strong signs of growth. This State leads the nation in new private investment: building approvals are up, new home sales are up and, importantly, investor housing finance approvals are up. This positive news about the State's economy only highlights the importance of ensuring that existing consents can be taken up as finance flows back into our building and construction industries. This bill will do this by ensuring that when consents have been granted with a lapsing period of less than five years the bill will operate to extend the lapsing period to the maximum of five years. The bill will also ensure that from the commencement of the bill until 1 July 2011 any consents granted by a consent authority will be subject to the maximum five-year lapsing period.

The Government believes that giving consent holders this additional time to carry out their development is appropriate, given the continuing signs of economic recovery. Importantly, to ensure the integrity of the planning system, the bill does not apply retrospectively to development consents that were subject to reduction in the time period but lapsed before the bill was introduced. The bill is a prudent measure. It also provides for the possibility of future economic downturns. It contains provisions that will allow the Minister for Planning, by regulation, to prevent consent authorities from reducing the lapsing period to less than five years if economic times turn tough again. The other purpose of the bill is to make the rules around the lapsing of consents easier for the community, industry and councils to administer. This will reduce administrative costs and provide more certainty to everyone who comes in contact with the New South Wales planning system.

The existing test for lapsing is whether a development has been physically commenced. This is a relatively straightforward test to establish. Unproclaimed provisions in the Environmental Planning and Assessment Amendment Act 2008 would have introduced a two-stage test that required physical commencement of the development the subject of the consent within five years to demonstrate that the developer was sufficiently committed to undertaking the development to prevent the consent from lapsing but then further work to an additional standard to demonstrate substantial commencement within seven years to ensure that the consent did not lapse. Further consultation has indicated that the two-stage test proposed by the amending Act is overly complex and will prove difficult for all parties to administer in practice.

It would require consent holders to meet different commencement thresholds at different times over the life of a consent. Because of these difficulties, the provisions remain uncommenced after 22 months. The bill proposes to remove the second part of the two-stage test while retaining the ability to establish in regulations what does or does not constitute physical commencement. What constitutes physical commencement has been the subject of consideration by the court. As members may know, the court has held that peg out surveys may constitute physical commencement in certain circumstances. Clearly, this is not a satisfactory result in all cases. It is therefore proposed that a regulation be made following the commencement of the changes made by this bill to make clear that a peg out survey does not constitute physical commencement.

It is proposed to consult with key stakeholders, including the Local Government and Shires Associations, industry groups, relevant professional bodies and green groups, before the making of this regulation. These changes will simplify the lapsing provisions and provide additional certainty for the development industry. These changes and the regulations that will be made after the amendments to the Act commence are consistent with the broad thrust of the primary purpose of this bill. For those reasons I commend this bill to the House.