

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2008
BUILDING PROFESSIONALS AMENDMENT BILL 2008
STRATA MANAGEMENT LEGISLATION AMENDMENT BILL 2008

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Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.34 p.m.], on behalf of the Hon. Michael Costa: I move:

That these bills be now read a second time.

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

Leave granted.

When the Environmental Planning and Assessment Act was introduced in 1979 it was a watershed moment for environmental assessment in New South Wales. The new Act led the nation. For the first time New South Wales had a comprehensive framework within which to reconcile competing interests such as the management and conservation of natural resources, the promotion and coordination of the orderly and economic use and development of land and the social and economic welfare of the community and a better environment. Over the years the Act has been extended, altered and interpreted by the courts to the point that I would argue it no longer fulfils its original intention. It is time for reform.

Furthermore there is a national mood for reform. We now have a Federal Government that is interested in planning-related issues. The new Federal budget reflects this change including the commitment to infrastructure spending in our major cities and affordable housing initiatives.

Investigations by the Independent Pricing and Regulatory Tribunal and the Productivity Commission into red tape resulted in a number of recommendations including some concerning development approvals and planning. In the meantime the New South Wales Government is also pursuing across-the-board reform. Priority P3 State Plan is about removing unnecessary red tape and improving the regulatory framework for investment in New South Wales. South Australia, Victoria, Queensland and Western Australia have responded to the national reform agenda and are reviewing their planning systems as we speak.

The planning system is also facing significant challenges. There are increasing pressures on housing. Unsteady property markets, the prospect of more rate rises, faltering property values and the real threat of a recession in the United States is increasing uncertainty for businesses and households. The planning system as it is only adds to that uncertainty when it should avoid adding to unnecessary costs or delays. It is time to step back and ask who are the real users of the system.

The Local Development Performance Monitoring Report 2006-07 provides a detailed analysis of the development system in New South Wales, the first analysis of its kind. The results are compelling: in 2006-07 councils dealt with 112,000 development proposals comprising 86,000 development applications, 14,000 modifications and 11,000 complying development certificates.

This represents investments worth nearly \$22 Billion. Ninety seven per cent have a capital value of less than \$1 million. Surprisingly, 67 per cent have a capital value of less than \$100,000. The average time for all projects was 76 days. The average time for projects between \$500,000 and \$1 million was 168 days across the State and 29 councils took greater than 100 days on average.

These facts tell us that the development and planning system influences a massive level of development. They tell us also that by far the main users of the system are families, mums and dads, not big developers.

When we started the reform process we engaged with communities and stakeholders. These Bills have been developed following almost a year of consultation. We have listened and the common theme is that we need changes to the planning system and we need them now. The reforms are being driven by what people are telling us about the system: it takes too long to get a simple development approved. The system is too complex for simple developments—only 11 per cent of development applications are dealt with as complying development in New South Wales compared with well over 50 per cent in Victoria.

It takes too long to zone land for new housing and new jobs, often over two years for a simple local environmental plan. Concern has been expressed about a possible perception that political donations may influence decisions. Concern has been expressed about the accountability of private certifiers and possible conflict of interest.

The review process is costly, legalistic, adversarial and not accessible to ordinary people. The planning process adds to the cost of delivering infrastructure and impacts on affordability. In this context the proposed reforms are a measured response. We want to ensure our planning system is transparent, rigorous, accountable and efficient. We need to bring

our planning system into the twenty-first century and better equip it to deal with the challenges of population growth, increasing urbanisation and transport needs, complex natural resource and climate change issues, the realignment of employment markets and changing community expectations. These reforms are also intended to cut red tape and make the system simpler and more accessible, especially for mums and dads and small business. The major areas of reform relate to plan making, development assessment, certification, development contributions, arbitration and reviews.

I now turn to the parts of the Environmental Planning and Assessment Amendment Bill 2008 dealing with plan making. Land use planning provides the guiding framework for balancing economic development and investment and infrastructure to meet State, regional and local needs as well as protecting sensitive environmental areas. However, the plan-making process in NSW has become lengthy, complex and confused. Even small amendments take on average 196 days.

To simplify the system, one level of plans, regional environmental plans, will be deleted. However, the big reforms in relation to plan making are those applying to the local environmental plans. The key change is the introduction of the new Gateway process. As the name suggests, the Gateway will ensure there is sufficient justification early in the process to proceed with the planning proposal. This stops wasting time with planning proposals that are not credible. If it is agreed in principle, the planning proposal then can proceed to a full assessment. The Gateway determination settles what assessment is required to develop the details of the plan, including infrastructure needs, what community or agency consultation is required, and whether a public hearing is required. These provisions provide for flexibility and a strong emphasis on effective community consultation.

In response to community submissions on the Exposure Bill, the consultation provisions have been amended to clarify that a local environmental plan cannot be made unless the applicable community consultation requirements have been complied with and submissions have been considered. Consultation will be tailored to the specific proposal, meaning that proposals with potentially significant environmental policy or neighbourhood implications will have more extensive consultation requirements than a simpler, smaller-scale proposal. Under the current system there is a one-size-fits-all approach, irrespective of the significance of the proposal.

In addition, specific consultation procedures in section 34A of the Environmental Planning and Assessment Act concerning threatened species are to be amended so that consultation with the Department of Environment and Climate Change will be required where a proposed instrument will or may adversely affect critical habitat or threatened species, populations or ecological communities or their habitats.

The initiatives in the Bill concerning plan making will deliver substantial benefits to councils, state agencies, industry and the community.

I now refer to the parts of the Environmental Planning and Assessment Amendment Bill dealing with development assessment. The Bill introduces five main areas of reform in the development process:

- the introduction of new decision-making bodies
- new assessment procedures
- reducing unnecessary concurrence
- enhanced review and appeal provisions and
- extending exempt and complying development.

The Bill establishes two new decision-making bodies, the Planning Assessment Commission and the Joint Regional Planning Panels. These bodies are designed to strengthen confidence in decision making and increase accountability.

The Planning Assessment Commission will have a chairperson and up to eight other part-time commissioners and the members must have expertise in planning or related fields.

The Bill also enables casual appointments to assist in assessment or advice in a field of importance for a particular project or planning matter. Appropriate provisions have been included regarding probity and accountability measures for commissioners. This includes members being subject to the Ombudsman Act and the Independent Commission Against Corruption Act.

The Bill will enable the Minister to delegate his decision-making powers for Part 3A projects to the Commission. This is currently not possible under the existing statutory provisions. Appropriately, delegation will not occur in relation to critical infrastructure projects, given the importance of such projects in delivering much-needed infrastructure. It is expected about 80 per cent of Part 3A projects will be delegated to the Commission.

Whilst the Commission will have determination powers the actual assessment of projects will continue to be done by the Department of Planning. Departmental officers will make recommendations to the Commission. The Minister may also request that the Commission provide advice on other development or planning matters where appropriate and they may hold a hearing or undertake other investigations as part of their consideration of a proposal.

I refer now to the provisions dealing with Joint Regional Planning Panels. The Regional Panel concept is modelled on the successful Central Sydney Planning Committee and aims to provide greater transparency and objectivity in the determination of developments of regional significance.

Regional panels will ensure that projects of regional significance are determined by independent experts, particularly developments where the council has an interest in the proposal.

The establishment of the regional panels will address a key concern expressed by the Independent Commission

Against Corruption about the corruption risks associated with council decision making in the planning process. Regional panels will lead to improved transparency and increased consistency by taking local politics out of the decision-making process.

Regional panels will have five members: three State-appointed members and two members appointed by the relevant council. State members must have relevant expertise and experience as set out in the Bill and one of the two council nominees must also have expertise in these areas. Councils will continue to be responsible for undertaking the assessment of development applications as they currently do.

The Bill includes appropriate accountability provisions concerning the operation of panels, including requirements for the disclosure of pecuniary interests and panel members being subject to the Independent Commission Against Corruption Act and the Ombudsman Act.

Further details on regional panels are set out in the policy statement for the information of members put on the table in the other place by the Minister for Planning when the Bills were introduced. The relevant policy statement indicates that joint regional planning panels will be responsible for the following types of development: designated development; Crown development and private infrastructure greater than \$5 million, for example, hospitals, educational facilities and waste facilities; commercial or retail development over \$20 million; residential and mixed use development over \$50 million; development where the council is the proponent or has a significant financial interest in the proposal; and certain subdivisions and other development in the coastal zone that are currently dealt with under part 3A of the Act.

The Bill also includes a number of amendments to improve development assessment. For example, currently, deemed refusal time frames are based on net days to undertake an assessment and exclude the time when the council or an agency stops the clock. As a result, the assessment times are often double what are reported. The regulations are to be amended to remove the ability for agencies or councils to stop the clock. To balance this we are extending deemed refusal time frames from the current 40 or 60 days to 50, 70 or 90 days depending on the class of development, which will provide realistic time frames for local councils to complete their assessment.

The Bill also deletes the Part 5A Crown development provisions of the Act. These provisions currently provide for agencies to refer Crown development applications to the Minister for Planning when there is a dispute between a council and a government agency. The Bill amends these provisions to provide a more streamlined and effective mechanism for dealing with such applications. Regional panels will be the consent authority for certain types of Crown development, which is appropriate given the regional significance of such development. Minor Crown development applications will remain with councils. In some cases where applications have not been determined within the required time or the relevant consent authority wishes to refuse the application or impose conditions of consent the application will be referred to the regional panel. In all cases the Minister's approval will be needed if there is a dispute between the consent authority and the State agency, which is exactly the same as now.

The Act currently provides that a consent lapses five years after the date the consent was issued unless development has physically commenced. The Courts have found that physical commencement includes such minor works as the placing of survey pegs.

The Bill allows a regulation to be made setting out what can reasonably be considered to constitute physical commencement. The Bill also provides that if development has not substantially commenced a higher threshold within a subsequent two years it will lapse. This will be supported by a regulation setting out what reasonably can be considered to constitute substantial commencement.

These amendments are to ensure that the consent holder must demonstrate a real intention to act on their consent. Under transitional arrangements these lapsing provisions will only apply to consents that are issued after the relevant provisions have commenced. Existing consents will not be affected.

The Bill provides that certain conditions such as extended hours of operation or the number of occupants allowed in certain premises can be easily reviewed. This provision is a response to consents having been structured so that a development application was required each time an applicant wished to continue with extended hours of operation.

The new provisions based on a New Zealand model will allow for only the reviewable condition to be reviewed when considered necessary by the consent authority without the need for regular new applications. If an applicant is dissatisfied with the review undertaken by the consent authority it can appeal the decision to the Land and Environment Court.

I note the Minister for Planning moved an amendment to the Bill when it was being considered in detail in the other place. The amendment dealt with a new issue not addressed in the Bill namely modification of development consents.

This amendment was in response to a recent decision of the Land and Environment Court concerning modification of development consents being a decision handed down by the Court after the Bill was introduced.

The issue of modification of consents has long been a source of contention given that developers can make use of modification provisions to override development standards that ought otherwise apply to the development.

The amendment to the Bill moved and adopted in the other place will ensure that this loophole is no longer open.

Other key reforms to development assessment in the Bill include: clarifying that development applications must be accompanied by a statement of environmental effects, including a requirement that council must provide reasons justifying a determination when the determination is not in accordance with recommendations of the council's planners. This is consistent with ICAC recommendations and simplifying and standardising what must be contained in a

development application.

Many of the reforms outlined so far focus on improving the performance of local councils, however, it is also recognised that there is room for improvement by State agencies. Currently provisions in environmental planning instruments and legislation require councils to seek advice or approvals from State agencies during the plan-making process or prior to determining a development application. To improve the efficiency of the planning system these reforms are removing the need for redundant or duplicated concurrences and referrals and, where required, greatly reduce the time taken to obtain concurrence.

In September 2004 the New South Wales Government removed 1,130 concurrence provisions. The current review identified an additional 1,240 remaining concurrence provisions. It is now proposed to remove approximately 1,100 of these by deleting clauses that duplicate other regulatory provisions, replacing referral and concurrence provisions with heads of consideration for the consent authority to consider and replacing the referral and concurrence provisions with reference to approved guidelines. A State environment planning policy will be used to remove or amend the concurrence provisions and will be exhibited for public comment in the near future.

In addition to the above the powers of a council to reject a grossly inadequate development application will be strengthened, concurrence time frames will be shortened from 40 to 21 days and where advice is not received from concurrence authorities within 21 days it will be deemed that the concurrence or approval is granted. I note a concurrence policy statement for the information of members was put on the table in the other place by the Minister for Planning when the bills were introduced.

I now turn to the expanded review and appeal provisions in the Bill. Opportunities for greater access to reviews and equity are being introduced in two key areas. Planning arbitrators will provide families and small business with the opportunity to have a council decision reviewed and their concerns considered without having to bear the costs of the court system. Arbitrators will provide a quick, non-legalistic review option making the system fairer.

Matters that can be arbitrated will include development under \$1 million such as: single or dual occupancy residential dwellings not exceeding two storeys and a specified height; alterations and additions to such dwellings; commercial or retail premises under nine metres in height or with a gross floor area of less than 2,000 square metres but excluding bulky good and licensed premises; and a change of a permissible use in commercial or retail premises with a gross floor area of less than 2,000 square metres.

Planning arbitrators will be subject to oversight by the Independent Commission Against Corruption and the Ombudsman and be required to comply with a code of conduct. Further information on the role of planning arbitrators and the proposed process for appointing them is set out in a policy statement put on the table for the information of members in the other place by the Minister for Planning.

The exposure draft of the Bill proposed that applicants other than for planning arbitrator matters would be able to seek a review by the Planning Assessment Commission or Regional Panel or appeal to the Land and Environment Court with respect to a determination. During the exhibition period concerns were raised that this may undermine the role of the court and lead to forum shopping.

Having considered the submissions received, this provision will not proceed. In addition, in the interests of fairness and the speedy resolution of disputes the Bill reduces the time for making an appeal to the court from 12 months to three months. This will provide consistency in the times in which an appeal must be made.

I am pleased to announce that a new type of third-party objector review, neighbourhood reviews, will be introduced through the Bill. Currently the Act allows third party objector appeals to the Land and Environment Court only with respect to designated development. These provisions will not be changed.

However, a new type of third-party review will be available for people directly affected by certain types of development. The aim is to ensure that councils exercise proper discretion when granting consent to development that would result in standards being exceeded or otherwise not complied with.

The types of development to which these neighbourhood reviews will apply will be listed in the regulations and will include: development for residential purposes that exceeds two storeys or contains at least five separate dwellings on a site of more than 2,000 square metres where development standards for height or floor space ratio would be exceeded by more than 25 per cent; and, development for commercial, retail or mixed-use purposes that is greater than nine metres in height and has an area of more than 2,000 square metres where development standards for height or floor space ratio would be exceeded by more than 25 per cent.

Reviews will not be available where the development is a planning arbitrator matter, designated or integrated development, or Crown development.

A person will be able to seek a review by a Regional panel or the Planning Assessment Commission within 28 days of a determination only if they made a submission objecting to the proposed development and if they own or occupy land within a one-kilometre radius of the subject land. The Bill also includes provisions to ensure that commercial competitors are not able to take advantage of these reviews for the sole purpose of securing a direct financial advantage over a competitor.

The Bill also provides that in a Class 1 appeal before the Land and Environment Court where the Court allows an applicant to amend a development application, other than a minor amendment, the Court must order that applicant to pay the consent authority's costs thrown away as a consequence of the amendment. This will act as a disincentive to applicants seeking to amend their proposals before the court without community consultation or input from councils and

other relevant authorities.

I now turn to the parts of the Bill dealing with complying development. Complying development provisions were introduced into the planning system in 1997. These provisions allow people to obtain a complying development certificate to show that the development complies with the predetermined criteria and meets the requirements of the Building Code of Australia.

Some councils embraced the concept, such as Port Macquarie, which deals with 60 per cent of developments using this efficient process freeing up council staff and reducing costs to applicants. However, on average only 11 per cent of developments across the State are dealt with as complying development. It is an approach that has been endorsed at the national level and is accepted practice in other States. We need to make it work better for New South Wales. A number of initiatives are required. I note a complying development policy statement for the information of members was put on table in the other place by the Minister for Planning when the bills were introduced.

A State environmental planning policy will give effect to the complying development codes. The State environmental planning policy will contain general limitations on what may be included as exempt and complying development, including appropriate environmental constraints. The State environmental planning policy will exclude exempt and complying development in certain environmentally sensitive areas or only permit certain types of exempt or complying development in those areas. For example, in many situations internal office fit-outs could be complying development in a heritage building. A swimming pool could be complying development in bushfire zones.

Regulations will be introduced to further clarify complying development procedures. For example, a courtesy notice to neighbours must be issued after the complying development certificate but before work commences. The time limit for determining a complying development certificate will be increased from the current seven days to 10 days.

In response to community submissions the proposal allowing minor non-compliance with complying development codes has been removed from the reform package. The Department has established a Complying Development Expert Panel to oversee the development of statewide codes.

The first of the draft codes has been prepared for the following types of development: single-storey dwelling houses on lots of land of 600 square metres and over; internal alterations for two-storey dwelling houses; and internal fit-outs and change of use for certain commercial and industrial uses.

A myth has been circulating claiming all development less than \$1 million will be exempt from complying development. This is clearly not the case. Another myth doing the rounds claimed that the Bill would create a one-size-fits-all system. Again this is clearly wrong. Particular code provisions are being developed for different classes of development and will be able to be augmented in certain circumstances to take into consideration locational differences.

The first suite of draft codes will be on exhibition until 4 July 2008 and during this time there will be a series of workshops across the State to explain the codes and seek feedback. Eleven councils have also agreed to review the codes against their current development applications to see whether those matters could be dealt with as exempt or complying development under the codes. A target has been established of 30 per cent of development to be dealt with as complying development in two years and 50 per cent in four years.

The Government would like to acknowledge the councils that are already achieving the target of 50 per cent. They are: Cobar, Warrumbungle, Coolamon, Port Macquarie-Hastings, Conargo, Junee, Murrumbidgee, Coonamble and Narrabri. To achieve a similar result across New South Wales will significantly reduce the regulatory burden on small business and homeowners.

I now turn to the parts of the reforms dealing with developer contributions. Under existing legislation local developer contributions vary widely between councils for no clear reason. In metropolitan Sydney contributions vary from between \$57,000 per lot to nothing at all. There is no clear definition of the kinds of infrastructure that contributions should fund, and as a result some councils are using contributions to fund things such as council administration buildings, cat and dog pounds and computer upgrades. Many councils are also retaining funds and not spending an increasing amount of levied money. Clearly something must be done.

The Bill establishes a new part in the Act for developer contributions—part 5B. The Bill places renewed emphasis on three principles: delivering infrastructure, maintaining affordability and restoring accountability.

The Bill supports local communities by recommitting local councils and State agencies to providing infrastructure to meet the real needs of new residents. For the first time this Bill sets out key considerations for determining, collecting and then spending contributions. The considerations are: infrastructure should be delivered within reasonable times; the impact of the contribution on whether the development is affordable; is the contribution based on a reasonable apportionment of new demand and existing demand; has a reasonable estimate of the cost of infrastructure been used; and are the estimates of demand reasonable.

These key considerations will make contribution schemes accountable and stop these levies being an uncontrolled backdoor tax on the family home.

The Bill establishes a two-tier system for local council contributions. Councils can levy for key community infrastructure without approval as they do now. The list of key community infrastructure is set out in the Bill and includes land works and buildings. It includes drainage and water management works, local roads, bus stops, sporting, recreational, cultural and social facilities, parks and car parking. It also includes district facilities that have a direct connection with the development that is the subject of the contribution. The list is broad.

However, councils will have to obtain the approval of the Minister for Planning if they want to get a contribution for any other kind of community infrastructure. The Bill will make councils accountable in this. A council must demonstrate that a legitimate case exists for the extra contribution by doing a business plan and getting an independent assessment of the proposal. This business plan and independent assessment must address the key considerations that I have outlined above.

The same approval requirement will apply when councils use a voluntary planning agreement to get the extra contribution. In this case the approval of the Minister for Planning will be required not just for additional community infrastructure but also for the provision of any public infrastructure that could be obtained under a planning agreement beyond key community infrastructure.

The Bill retains key provisions of the existing legislation to ensure that councils continue to obtain the full range of community infrastructure—the former public amenities and public services subject to the new accountability requirements I have outlined. Similarly, although the Bill adopts new terms such as "public infrastructure" and "the provision of public infrastructure", it preserves the range of infrastructure and other public benefits that local councils and other planning authorities can legally obtain under a voluntary planning agreement.

Finally, the Bill also leaves untouched the range of infrastructure that the State can require a contribution for in a State contributions area. Councils will still be able to seek a direct contribution, the former section 94, or an indirect contribution, the former section 94A, flat rate 1 per cent levy but not both.

The Bill strengthens the anti double dipping provisions of the existing Act. The Bill will end unjustified double dipping between subdivision approval and the grant of development consent for a subsequent dwelling or other development.

Generally most councils will choose a direct contribution for their contributions plans in greenfield development areas. In brownfield areas I expect that councils will be more attracted to the indirect contribution. While an indirect levy will generally remain limited to 1 per cent of the development cost, the Bill provides that councils can seek a higher rate from the Minister for Planning in the same way as they can for additional community infrastructure. A council must demonstrate that a legitimate case exists for the increase in the maximum percentage of the levy by providing a business plan and an independent assessment of the proposed contribution that addresses the key considerations I have outlined above.

The Bill carries forward the existing direction powers of the Minister for Planning to councils so that, if necessary, the Minister can limit infrastructure contributions by kind, type or maximum amount by tailoring appropriate limits on a regional or subregional basis. The Bill enhances those powers to enable the Minister to approve an additional contribution over and above the otherwise maximum amount in specified circumstances.

The Bill will allow improved reporting of development contributions, their collection and spending. It brings a new rigour to the delivery of infrastructure, requiring time frames for delivery to be met for each infrastructure item. As a last resort, it also enables the Minister to direct councils to use those unspent contributions to provide infrastructure to new and existing communities within reasonable time frames.

Let me make this clear so there can be no misunderstanding: Councils will continue to hold and manage their community contributions. The Bill provides that there will be one exception. For Sydney's north-west and south-west growth centres the Bill will amend the Growth Centres (Development Corporations) Act to establish a Community Infrastructure Trust Fund to be managed by the Treasury. In these areas the Government has committed to providing \$7.9 billion in infrastructure of which \$2 billion will be funded by New South Wales taxpayers. The Growth Centre Commission has been given the job of coordinating the provision of infrastructure consistent with the release of the development areas.

The Community Infrastructure Trust Fund is to be established to enable the Government to manage the delivery of infrastructure. Without the Community Infrastructure Trust Fund any of the six councils in growth centres could use contributions from the growth centres to prioritise the delivery of community infrastructure in their own areas outside the growth centres by using the current pooling provisions.

This Bill provides for an orderly transition to the new regime for contributions. Councils will have until 31 March 2009 to identify those plans where they have entered into legally binding arrangements for the provision of infrastructure that would not be key community infrastructure under the new provisions. Councils will have to remake all their plans by 31 March 2010 to comply with the new requirements. In consultation with local government practitioners the Department of Planning will update the development contributions manual and practice notes before the new part commences.

I now turn to paper subdivisions. Throughout the State there are a number of old paper subdivisions where the landowners cannot develop their land for residential use because of a lack of essential services.

The Bill introduces a scheme to enable landowners in these areas to come together with the assistance of a council or a State government agency to agree on a plan to enable the orderly and economic development of their land. The scheme will require at least 60 per cent of the owners of land in the area and the owners of at least 60 per cent of the land in the area to agree to the plan before the council or State agency can be given the necessary powers to facilitate the redevelopment.

The scheme will enable the landowners and agencies to work together to ensure that subdivision works such as roads, electricity, drainage and sewerage works are funded and provided. This will facilitate the rezoning of the subject land so that it can be developed. This new scheme will be especially useful to unlock old subdivisions in parts of Western Sydney.

I now turn to the reforms to the certification system in the Environmental Planning and Assessment Bill and the Building Professionals Amendment Bill. These reforms are aimed at further strengthening the accountability of the certification system and providing greater consistency in the regulation of building and complying development.

Schedule 4 to the Environmental Planning and Assessment Amendment Bill clarifies the roles of councils and certifiers, strengthens councils' enforcement powers and strengthens the certification system.

Councils will be given greater powers to enforce development consents, with new investigation powers and mechanisms to recover costs of enforcement action. There will be new stop-work orders so consent authorities can take action to immediately stop unauthorised work or work that affects the support of adjoining land. To assist councils in funding necessary enforcement action related to breaches of development consent that ensures developers are held accountable, a consent authority will be able to require payment of an enforcement bond as a condition of consent. There will be limits on the types of things the consent authority will be able to fund from the bond. Compliance cost notices will also allow consent authorities to recoup the costs of ensuring compliance with orders issued under the Act.

As the reforms are implemented new regulations will be made to enable councils to issue penalty infringement notices for new offences and higher fines to companies and for breaches involving complex development. I note a certification policy statement for the information of members was put on the table in the other place by the Minister for Planning when the Bills were introduced.

The Bill amends the regulations to tighten the test for the issue of a construction certificate and introduces a new requirement that the construction of a building must be consistent with the consent before a final occupation certificate can be issued. The current "fit for purpose" test remains for interim occupation certificates but the certifying authority will have to keep a record of any inconsistencies with the development consent.

In addition to these changes a new mechanism will allow certifying authorities to seek advice from a consent authority regarding consistency with development consent. This has been a main area of dispute between councils and certifiers.

Accredited certifiers will not be given new powers. However, certifying authorities will be required to issue a non-compliance notice where a condition of consent is not being complied with. If action is not taken to address the issue identified in the notice the certifying authority will send the notice to council and the council will then be able to deal with the non-compliance. This measure will promote communication and the sharing of responsibility between certifiers and councils.

The Bill also introduces a new type of certificate, a design certificate, that will promote confidence in building design. In particular, this will ensure that only qualified and experienced people are responsible for designing complex fire safety systems by providing that where the regulations require a complex fire safety system to be designed by a qualified designer a Part 4A certificate cannot be issued unless a design certificate has been issued.

These changes to the certification system in the Environmental Planning and Assessment Act are complemented by changes to the Building Professionals Act by the cognate Building Professionals Amendment Bill to which I now turn.

This Bill makes significant changes to introduce accreditation of companies, council officers and fire safety engineers to strengthen the powers of the Building Professionals Board and to strengthen the controls on accredited certifiers.

The Bill enables the Board to accredit corporate entities as accredited certifiers where they have an accredited certifier as a director and at least two other employees who are accredited certifiers. This change will promote professional development within the industry. Any certification work carried out by the company will have to be done by an employee who holds the right level of accreditation and accredited certifiers who are directors of accredited companies will have special responsibilities. The Board will also have power to impose tough penalties on these new corporate certifiers.

Council officers carrying out building certification work on behalf of councils will also have to be accredited by the Board. New categories of accreditation will be developed and introduced that will apply to council certifiers. The Board will be able to rely on a recommendation from the relevant council as to the person's competence and skills and the person will only be authorised to carry out work on behalf of the recommending council. Implementation of this reform will ensure that existing experienced council employees can be accredited.

To accommodate councils that do not have qualified staff the Board will be able to grant exemptions from these requirements in certain circumstances with the approval of the Minister.

These changes will increase accountability of council staff and community confidence in the qualifications of all practitioners responsible for administering the certification system.

For the first time the Board will accredit fire safety engineers. These accredited building professionals will be subject to the same disciplinary rules as accredited certifiers.

These reforms increase consistency and boost community confidence. Before the regulations supporting these significant changes to accreditation are introduced there will be further stakeholder consultation through the Certification Liaison Committee that has been working with the Department of Planning on these reforms. The changes to the accreditation scheme setting out the necessary skills and qualifications for accreditation of council officers and fire safety engineers will be released for further public consultation before it is introduced.

The Government is also streamlining the Board's investigation process and increasing its disciplinary power. Where the

Board makes a finding of professional misconduct it will be able to impose fines of up to \$110,000 and cancel or suspend accreditation without having to go to the Administrative Decisions Tribunal.

The Board will also be able to suspend a person's certificate of accreditation where they have persistently breached the legislation while an investigation into their conduct is carried out. As outlined in the Policy Statement put on the table for the information of members in the other place the regulations will be amended to enable the Board to issue fines to certifiers in a broader range of circumstances.

To increase confidence in the system the Bill strengthens the rules to further address perceived conflicts of interest between accredited certifiers and developers. Limits are placed on the amount of income a certifier can earn in a year from certification work involving the same person and for employee accredited certifiers on the number of certificates they can issue in one year for development involving the same person. The Board will require certifiers to report annually on their income and on whom they are carrying out work for. The Board will also have a new oversight role in certain circumstances in relation to the appointment of accredited certifiers for complex buildings.

I now turn to the Strata Management Legislation Amendment Bill, which covers amendments to both the Strata Schemes Management Act 1996 and the Home Building Act 1989. The strata reforms were widely supported during the consultation process. I will take members through some of the key aspects and leave it to my honourable colleague the Minister for Fair Trading to speak to the detail. The existing provisions in the Strata Schemes Management Act that govern on-site caretakers are being amended to make it clear that the provisions apply to anyone undertaking the role of a caretaker. The amendment responds to concerns that people may use another title such as "building manager" in an attempt to avoid the provisions.

The amendment will clarify that the caretaker provisions apply to anyone performing that function, regardless of whether they are called a "building manager", a "resident manager" or some other title. The Act prevents a developer from making exclusive-use by-laws during the initial period of the scheme. However, there is currently an exemption in section 56 that allows the developer to make by-laws relating to the parking of vehicles on the common property. The initial period of a strata scheme begins when the scheme and its by-laws are registered with the Department of Lands and finishes when the developer has sold one-third of the unit entitlements. The end of the initial period generally signifies the point at which strata lot owners start playing a greater role in the management of the scheme.

This exemption has led to complaints from buyers who are not aware until after they have moved in that the right to permanently occupy visitor parking has been sold or kept for the developer's exclusive use. The amendment will remove this exception so that such by-laws can be made only after the expiry of the initial period when other owners besides the developer are able to vote on the proposal. Of great concern to many strata owners and the Government is the practice of including conditions in sale contracts requiring a potential buyer to give the developer unconditional proxy voting rights or power of attorney. An attempt by the owner to change their proxy or vote in person would be a breach of contract that could lead to financial or legal penalties. In some cases the contract goes even further and requires the owner to ensure that any future buyer of the unit also gives the developer unconditional proxy voting rights.

These types of contract conditions are, in effect, an attempt to override the proxy voting provisions in the Act and deprive owners of their right to participate in the decision-making process. This contractual voting power can be, and has been, used to prevent action being taken to address defective building work or to assign lucrative service contracts to firms connected with the developer. This is a highly questionable practice and the amendment Bill will introduce measures that will prevent the developer or a person connected with them from being given power of attorney and being appointed as a proxy or casting a proxy vote pursuant to the terms of a sale contract. I emphasise that this will not stop owners from appointing a proxy even if they want to appoint the developer but this can only be done voluntarily and unconditionally.

As honourable members may be aware, an owners' corporation of a strata building generally elects a smaller body called an executive committee to handle day-to-day administration and decision making. Unfortunately, many complaints are received from owners about executive committee decision making that goes against the interests of the majority of owners, particularly where the committee members are associated with the developer or caretaker.

Accordingly, to ensure greater transparency in the operation of executive committees, it will be required that persons standing for election to the executive committee must disclose any connection they have with the developer or caretaker.

Finally, there is an amendment to the Home Building Act to clarify that an owner in a strata or community scheme can notify the Office of Fair Trading of a building dispute in relation to common property or community association property. Currently only an owners corporation can give consent for a Fair Trading inspector to access common property or association property.

There have been a number of cases where a developer has used their influence over owners corporations to prevent owners from obtaining assistance from the Office of Fair Trading to address disputes about very serious and costly building defects such as faults in fire safety systems or widespread water penetration to a building. This amendment will ensure that a Fair Trading inspector cannot be prevented from carrying out an assessment of disputed building or specialist work if requested to do so by an owner. Caretakers and other persons who control access to areas of the common property will also be required to cooperate with officers from Fair Trading. In summary these reforms to strata and home building legislation will be of significant benefit to owners on a day-to-day basis by ensuring they can participate fully in the management of their schemes and will improve the process for the resolution of disputes.

I note that the Legislation Review Committee has provided a report on the bills currently before the House.

Whilst the work of the Legislation Review Committee is a valuable contribution to the legislative process, I note the

report includes a number of misconceptions about the bills and fails to have regard to the overall benefits of the reforms to the planning system.

For example, the report criticises the Crown Development provisions as being "oppressive official powers that appear to unduly trespass on individual rights to have their views heard and represented".

However, the Bill provisions are no different in effect from the current Act provisions which have been in place since 1997. The Bill provisions merely simplify the dispute resolution process. There is no change to the public participation requirements for Crown development applications.

The report also criticises the Bill provisions concerning third party reviews and the safeguards that have been included in the Bill to make sure these reviews entitlements are not abused by commercial competitors. The relevant provisions are modelled on similar provisions in the Victorian Planning and Environment Act 1987 which have been in place since 1993. The inclusion of these provisions are an important and necessary safeguard for these new review provisions.

The report also criticises the provisions of the Bill limiting people's ability to be legally represented in reviews being undertaken by the Planning Assessment Commission, Joint Regional Panels and planning arbitrators.

The Government is unapologetic about these provisions, which are aimed at increasing access and equity in the planning system, ensuring everyone has the ability to seek an independent review of decisions irrespective of their ability to pay lawyers. In addition, the regulations will in fact set out the circumstances in which people may be represented, for example, where they have limited language skills or are otherwise unable to effectively represent themselves.

The report also criticises the Bill provisions that restrict appeal rights where the Planning Assessment Commission has held a public hearing. This is the same as the existing Act provisions which restrict appeal rights where there has been a Commission of Inquiry.

This is just a few of the examples of the way in which the Legislation Review Committee report has misunderstood the Bill provisions and the purposes of the planning reforms.

Whilst the Legislation Review Committee plays an invaluable role in the legislative process, in my view the significant reforms to the planning system and public benefits introduced by these Bills outweigh the concerns expressed by the Legislation Review Committee.

These bills have been developed following nine months of consultation with stakeholders. On the back of a comprehensive discussion paper released last November there have been numerous forums, meetings and consultative processes working with a full range of stakeholders. We have listened.

The common theme is that we need changes to the planning system and we need them now. We are now proceeding with the next step.

Once the bills are passed, more work will be done with stakeholders to implement the reforms, regulations, planning instruments, guidelines and protocols. I believe the key reforms contained in this Bill are sound. Most of the concerns raised relate to the lack of knowledge of the detailed provisions to be contained in regulations, protocols and guidelines. Honourable members should note that there are already six regulations included in the Bill. These provisions give more detailed information about key community infrastructure, planning arbitrator matters, reviewable conditions, procedures for planning arbitrators and review bodies, public notice of planning agreements and certification.

Moreover, the five policy statements put on the table in the other place by the Minister for Planning for the information of members demonstrate the Government policy intent to be delivered in further regulations, planning instruments and guidelines in relation to the following matters: joint regional planning panels, arbitrators, complying development, State agency concurrences and certification.

The Minister for Planning has released the first set of exempt and complying development codes and more will follow and be subject to public consultation.

To facilitate these next steps there will be three implementation consultative bodies. The existing Complying Development Experts Panel will continue to develop the full suite of codes. This panel is made up of representatives of local council, certifiers, professional bodies and government agencies.

The existing Certifier Liaison Committee will continue to provide stakeholder input into implementation of the reform provisions. This committee is made up of representatives of local council, private certifiers and government agencies. The Minister for Planning will establish an Implementation Advisory Group with a broad representation of stakeholders to provide input on the broader implementation issues.

I believe the government has comprehensively addressed the calls for clarification of the intent of subordinate provisions. It is time to move forward and give the people of New South Wales a better planning system. These reforms contain a number of recurring themes. They include the de-politicisation of the planning process to provide greater objectivity, greater access and equity for the ordinary people whom the planning system does not adequately serve at the moment and greater accountability.

This Bill makes very significant gains in increasing the objectivity and consistency of decision making by regional panels depoliticising development decisions and ensuring they are consistent across council boundaries within the

same region by using independent experts on the Planning Assessment Commission for a range of planning and development matters by replacing self-review under the current section 82A with planning arbitrators and providing independence in reviewing small local matters where neighbours are in dispute and by introducing uniform complying codes to provide mums and dads, architects, planners and neighbours with rules that will protect neighbour amenity by encouraging greater compliance with development codes.

The system will be fairer, less costly and more accessible for ordinary people through low-cost arbitrations on small matters avoiding expensive court processes, the expanded use of complying development codes giving more people a decision within 10 days rather than many months, new low-cost neighbourhood review rights and shifting a number of regionally significant development decisions back to the local region through the use of joint regional planning panels.

The system will also strongly enhance accountability through new third party neighbourhood initiated reviews of decisions involving significant variation to planning rules, much stronger provisions governing certifiers and the certification process, the use of independent arbitrators to review decisions on small projects, greater discipline being required of councils in how they levy for and deliver vital community infrastructure and, finally, a simpler plan-making process that includes a gateway test, which will mean unsolicited proposals will be dealt with in a more accountable way earlier in the process.

These reforms are not for the benefit of any particular section of the community but for the whole community. I believe the biggest beneficiaries will be the ordinary mums and dads who at last will be able to navigate the maze of bureaucracy they face when all they want is to get on with their lives.

I commend the Bill to the House.