

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

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**Bills introduced on motion by Mr Frank Sartor.**

**Agreement in Principle**

**Mr FRANK SARTOR** (Rockdale—Minister for Planning, Minister for Redfern Waterloo, and Minister for the Arts) [10.07 a.m.]: I move:

That these bills be now agreed to in principle.

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 [IPART] 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—97 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 refer 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 New South Wales has become lengthy, complex and confused. Even small amendments take on average 196 days. To simplify the planning regime, one layer of plans—regional environmental plans—will be removed from the Act. The bill also provides for some minor changes to the State environmental planning policy process. The big reforms are to the local environmental plan-making process.

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 agreed at Gateway 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.

The bill also introduces a number of other amendments to update the local plan-making process. For example, in special circumstances local environmental plan proposals will be able to be developed by the Director General of the Department of Planning or other relevant planning authority rather than the council. Other amendments allow for the efficient conversion of an existing local environmental plan into the standard instrument format where there are no substantial policy changes from the existing local environmental plan. This provision alone will result in significant time and resource savings for councils. 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 refer now 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 concurrences, 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 1974 and the Independent Commission Against Corruption Act 1988. The bill will enable the Minister to delegate decision-making powers to the Commission for part 3A projects, which currently is not possible. However, this will not include critical infrastructure projects, given that such projects often deliver essential publicly funded infrastructure.

I expect 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, which 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. The commission will also be responsible for determining regional development where no regional panel has been established.

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. Councils will continue to be responsible for undertaking the assessment of development applications as they currently do, but the panels can provide greater consistency in the determination of these regionally significant developments across the region.

In addition, the establishment of the regional panels with both State members and local nominees will address a key concern expressed by the Independent Commission Against Corruption in relation to corruption risks associated with local council decision making. Regional panels are not subject to direction by the Minister for Planning or a council in the exercise of their functions. However, the panels will have to comply with procedural requirements set out in the Act, the Regulations and any relevant guidelines. 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.

The local council nominees will rotate depending on the location of the proposed development. As an example, if a Central Coast Regional Panel were established a development application on a site in Wyong would be processed by Wyong Council staff and determined by the panel comprising the three State nominees and two Wyong nominees. If it were in Gosford, it would be processed by Gosford Council staff and determined by a panel comprising the same three State nominees and two Gosford nominees. This will lead to improved transparency and increased consistency by taking local politics out of the decision-making process.

The bill includes appropriate accountability provisions concerning the operation of panels, including provisions dealing with meeting procedure, quorum and voting requirements and appointment of alternatives; requirements for the disclosure of pecuniary interests; and panel members being subject to the Independent Commission Against Corruption Act 1988 and the Ombudsman Act 1974. Further details on regional panels are set out in this policy statement, which I will place on the table for the information of members.

A concern raised during the consultation was that the bill does not provide specific details on the types of development that will be dealt with by regional panels. The types of development will be spelled out in a State environmental planning policy rather than the Act. It is proposed that the following classes of development will be included in the State environmental planning policy: 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, which will transfer some decisions back to regional areas. The panel will also be responsible for undertaking reviews of council determinations where a third party has a right to seek a review.

A number of councils have successfully used independent hearing and assessment panels to provide independent advice on development matters—for example, Liverpool, Fairfield, Sutherland, Warringah and Canterbury. However, a number of independent hearing and assessment panel models have emerged, so for greater consistency we are introducing standard provisions for the establishment and operation of independent hearing and assessment panels. The introduction of statutory provisions allowing for such panels is also consistent with the recommendations of the Independent Commission Against Corruption [ICAC]. The bill provides that a council may establish a panel where it feels it is appropriate to do so and, in addition, a council must establish a panel where an environmental planning instrument requires it, which is similar to the current arrangements that apply under State Environmental Planning Policy No. 65. Appropriate accountability measures will apply to independent hearing and assessment panels and regulations will be made governing their procedures and other operational matters.

The bill includes a number of amendments to the Act to improve the assessment system. These will be supported by consequential amendments to the regulations. 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 deletes the part 5A Crown development division 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, and 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. In addition, the certification provisions for Crown applications, which are currently in section 116G and section 116GA of part 5A, will be transferred into part 4A of the Act.

The Act currently provides that a consent lapses five years after the date the consent was issued unless development has physically commenced. Case law establishes 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. The bill also provides that an applicant may seek a one-year extension to the lapsing period of a consent, subject to a deferred commencement condition. This is currently a loophole in the law. These amendments are to ensure that the consent holder must demonstrate a real intention to act on their consent. Under the transitional arrangements, this will only apply to consents that are issued after the relevant provisions have commenced. Existing consents will not be affected.

The bill, through an amendment to the Act and regulations, 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. The bill provides that the reviewable condition provisions can only be used to regulate the extended hours of operation, not core hours of operation, and an extended number of people, not core numbers of people. The regulations will require the consent authority to clearly identify that the consent is subject to a reviewable condition and, if an applicant is dissatisfied with the review undertaken by the consent authority, it can appeal the decision to the Land and Environment Court.

The regulation will be amended to require the full council or a committee of council to provide reasons justifying a determination when the determination is not in accordance with recommendations of the council's planners. This change will strengthen transparency provisions and is consistent with Independent Commission Against Corruption recommendations. The bill will provide that it is mandatory to submit a statement of environmental effects with a development application. The regulations will also be amended to simplify and standardise application forms and clarify the information requirements. The department will issue a guide and will undertake training of councils, consultants and others involved in preparing development applications to assist in improving the quality of development applications.

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. I place on the table a policy statement for the information of members, which provides more detail.

The provisions in the bill also establish a new approach for determining consultation with government agencies during the preparation of local environment plans. The Gateway process will determine on a case-by-case basis which agencies should be consulted and the time frames for consultation. There will be no fixed statutory referrals or concurrence requirements with the exception of threatened species. With threatened species, the bill changes the consultation time frames under section 34A of the Act to 21 days if threatened species are likely to be adversely affected by the implementation of the provisions of an environmental planning instrument. Once the bill is passed the regulations will be amended to reduce the time agencies have to provide their concurrence to councils to 21 days.

In summary, the powers of a council to reject a grossly inadequate development application will be strengthened. There is to be no ability to stop the clock. The concurrence time frames will be shortened from 40 to 21 days. Where advice is not received from concurrence authorities within 21 days, it will be deemed that the concurrence or approval is granted. Councils will be instructed that, if advice has not been received within 21 days, they must not delay the determination of a development application.

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. This provision will replace the current section 82A review where a council gets to review its own decision. The provision is rarely used and does not provide applicants with confidence that there will be an independent review. Matters that can be arbitrated will include 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 goods 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.

Certain categories of development may be excluded, such as designated development, integrated development and Crown development. An applicant may seek a review of a council determination including any condition of consent if it is a class of development listed in the regulations. When an applicant seeks a review the council must notify the Department of Planning. An arbitrator will be allocated for the matter and in complex matters or where specialist expertise is required more than one arbitrator may be appointed for a matter. Existing council planning staff may be appointed as planning arbitrators to undertake reviews in another local government area. This initiative will greatly assist councils in rural areas.

The bill provides that the director general of planning will maintain a register of planning arbitrators. A person may be appointed to the register if they have demonstrated expertise in areas such as planning, architecture, heritage and urban design, and when the Minister has approved their appointment. Planning arbitrators will be appointed for up to three years but may apply for reappointment. 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. It is noted that section 123 administrative appeals will apply also to arbitrators. Further information on the role of planning arbitrators and the proposed process for appointing them are set out in the policy statement, which is tabled for the information of members.

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—for example, where the proposed development would exceed development standards by more than 25 per cent. 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 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. When the original decision was made by a council, the review will be undertaken by the relevant regional panel. The Planning Assessment Commission will undertake these reviews when the original decision was made by a regional panel or where no regional panel has been established for an area.

The bill 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 is to 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.

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, and they are set out in a policy statement, which is tabled for the information of members.

Under certain conditions the bill will also allow exempt and complying development to be considered in environmentally sensitive areas. However, appropriate environmental constraints will be integrated into the exempt and complying codes as appropriate for the particular classes of development. A State environmental planning policy [SEPP] will give effect to the codes. The SEPP will contain general limitations on what may be included as exempt and complying development. The SEPP 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 and requirements for applications for complying development certificates will be amended to improve the quality of information provided. The regulation will clarify the rules as to when a complying development certificate lapses if not acted upon.

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. Ten 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. We have set a target 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.

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 1974 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.

There are a number of paper subdivisions throughout the State 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 enables the landowners and agencies to work together to ensure that subdivision works such as roads, electricity, drainage and sewerage works are funded and provided to enable the land to be rezoned 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 2008 and the Building Professionals Amendment Bill 2008. 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 Bill introduces a number of reforms related to certification of development. The 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. Consent authorities will be able to issue stop-work orders to immediately stop unauthorised work or work that affects the support of adjoining land. Councils will be able to require certifiers and people carrying out development to answer questions to assist councils in exercising their functions under the Act. 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. However, this reform will assist councils in funding necessary enforcement action related to breaches of the development consent and holding developers accountable. Compliance cost notices will also allow consent authorities to recoup the costs of ensuring compliance with orders issued under the Act.

The bill amends the Environmental Planning and Assessment Regulation so that where a council is asked to issue a building certificate for unauthorised work completed in the past two years, council will be able to recover the full costs of assessing the application. This will also be a deterrent to people who carry out building works without consent and then ask council to approve the development once it is finished. As the reforms are implemented we will amend the regulation to enable councils to issue penalty infringement notices for new offences and to enable higher fines to be issued to companies and for breaches involving more complex development. I lay on the table a policy statement for the information of members that sets out future actions that will be taken to implement these certification reforms, including the introduction of the new penalty notices.

The bill amends the regulations to tighten the test for the issue of a construction certificate so that the design and construction of the building must be consistent with the development consent. The bill also introduces a new requirement that the design and construction of a building must be consistent with the consent before a final occupation certificate can be issued. In relation to interim occupation certificates, the current "fit for purpose" test remains. This is a change from the exposure draft bill, but the certifying authority will have to identify on the certificate the extent and nature of any inconsistencies with the development consent. A new mechanism is provided for 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. Future regulations, as set out in the policy statement for the information of members, will also clarify what is consistent and not consistent with development consent.

Accredited certifiers will not be given new powers. However, certifying authorities will be required to issue a non-compliance notice to a person carrying out development where a condition of consent is not being complied with or work is not consistent with the consent. If the notice is not complied with, the certifying authority will be required to forward it to council. The council will then be able to consider how it will deal with the non-compliance. This will promote communication and the sharing of responsibility between certifiers and councils. To facilitate this, regulations will also be introduced to require certain information to be shared between certifiers and councils. These are outlined in the policy statement that has been placed on the table for the information of members.

The bill also introduces a new type of certificate—a design certificate—that will promote confidence in building design and, in particular, ensure that qualified and experienced people are responsible for designing complex fire safety systems. The regulations will set out the process for issuing a design certificate. The policy statement tabled for the information of members outlines these reforms further. The bill provides a mechanism for ensuring that where the regulations require a complex fire safety system to be designed by a qualified designer, a part 4A certificate cannot be issued for that aspect of development unless a design certificate has been issued.

These changes to the certification system in the Environmental Planning and Assessment Act will be 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 three employees who are accredited certifiers. This change will enable certifiers to work together and to 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. Accredited certifiers who are directors of accredited companies will have special responsibilities and the board will 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 under a modified scheme. The council employing the certifier will have to provide the board with a recommendation as to the person's competence and skills, and the employee will be authorised only to carry out work on behalf of the council. Implementation of this reform will ensure that existing experienced council employees can be accredited.



The policy statement sets out further details of the implementation of this new requirement and further discussions will occur before the accreditation scheme for council employees is finalised. This change will increase accountability of council staff and confidence in the qualifications of practitioners responsible for administering the certification system. To accommodate councils that do not have qualified staff, the board will be able to grant exemptions from the requirements in certain circumstances with the approval of the Minister. The board will also accredit fire safety engineers to complement the new requirement in the planning bill that certain complex fire safety designs must be designed by accredited fire safety engineers. These accredited building professionals will be subject to the same disciplinary rules as accredited certifiers and the accreditation scheme will set out the skills and experience required for accreditation by the board.

These reforms increase consistency and boost community confidence. The policy statement sets out the next steps in implementing these significant changes to accreditation. There will be further stakeholder consultation, through the Certification Liaison Committee that has been working with my department on these reforms, before the regulations supporting these amendments are finalised. The new accreditation scheme, which will set 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 can now impose fines of up to \$110,000 and cancel or suspend accreditation without having to go to the Administrative Decisions Tribunal. The certifier or building professional will be able to appeal to the tribunal from decisions of the board.

The board will also be able to suspend an accredited certifier's certificate of accreditation while an investigation into their conduct is carried out where they have persistently breached the legislation and are likely to continue to do so. The regulations will be amended to enable the board to issue fines to certifiers in a broader range of circumstances, and higher fines will apply to breaches by corporate certifiers. These changes are outlined in the policy statement that I have placed on the table for the information of members. To increase confidence in the system, the bill strengthens the rules to further address perceived conflicts of interest between accredited certifiers and developers by limiting the amount of income a certifier can earn in a year from certification work involving the same person and, for employee accredited certifiers, limiting 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 relation to the appointment of accredited certifiers for complex buildings, in certain circumstances.

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 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 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.

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 bill is 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, in the course of my speech today I have placed on the table another five policy statements demonstrating 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. Last week I released the first set of 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. I will establish an Implementation Advisory Group with a broad representation of stakeholders to provide input on the broader implementation issues. I believe we have 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.