



Environmental Planning and Assessment Amendment

(Development Consents) Bill.

Second Reading

Mr CRAIG KNOWLES (Macquarie Fields—Minister for Infrastructure and Planning, and Minister for Natural Resources) [10.05 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce this bill, which will provide for extending the lapsing period for State significant development consents and voluntarily surrendering development consents. Under the Environmental Planning and Assessment Act 1979 there are generally two types of development: State significant development, and local development. State significant developments tend to be bigger, more complex, and more capital intensive than local developments. They are a major generator of jobs, and tend to involve major companies that make decisions on whether to invest in one project or another on a global, rather than local, basis.

Since 1995 the State Government has approved more than 180 State significant projects. These projects have included a vast array of developments in the agricultural, manufacturing, and mining sectors, including paper mills, smelters, food processing plants, abattoirs, transport terminals, port facilities, and gold, copper, and coal mines. Together, these projects have a capital investment value of more than \$11 billion, and have generated, or will generate, more than 16,500 full-time jobs. Since March this year I have approved more than 15 State significant projects with a capital investment of nearly \$440 million and the potential to create 2,000 jobs.

Department of Infrastructure, Planning and Natural Resources is assessing about 40 State significant development applications with a capital investment value of \$2.4 billion and the potential to create more than 2,000 jobs. In the next year, the department is expecting to receive at least 40 State significant development applications with a capital investment value of more than \$4 billion and the potential to create between 3,000 and 4,000 full-time jobs. Clearly, State-significant development forms the backbone of the State's economy. It is the engine that drives growth and it is crucial for the continued prosperity of New South Wales.

Under the Environmental Planning and Assessment Act 1979 a development consent lapses after five years if the development has not physically commenced. A consent authority may extend the lapsing period by one year only if the original consent was granted for less than five years. State significant development projects typically require a number of licences, permits, and approvals in addition to any development consent, and these consents, licences, permits and approvals are all vulnerable to legal proceedings. Legal proceedings can delay the physical commencement of development and make it harder to attract investment for large projects by creating uncertainty and reducing the attractiveness of these projects relative to other projects across the globe. In some cases, they may even prevent the physical commencement of the development before the consent lapses, and if this occurs companies are currently required to apply further resources in lodging a fresh development application for the project, even if they are successful in the legal proceedings.

In the competitive global market, this is likely to be a disincentive to investment in New South Wales, and could result in the loss of jobs and significant economic benefits. The Cowal Gold Project is located in western New South Wales, and has a capital investment value of \$330 million. It is expected to generate more than 300 construction jobs, 200 operational jobs, and significant economic benefits for the State. I approved the project in February 1999 after a commission of inquiry and comprehensive merit assessment, involving several Commonwealth, State and local government agencies. Since January 2002, the owner, Barrick Gold, has been involved in 14 legal proceedings on various aspects of the project, including three separate judicial reviews under Commonwealth native title statutes.

I understand that further legal proceedings commenced this week. To date, all but one of these proceedings have either been dismissed or discharged. However, even though these legal proceedings have been partly or wholly unsuccessful, they have delayed the physical commencement of the project to the extent that it may not be possible to start construction before 24 March 2004, when the consent lapses. In other words, there is a real danger that the Cowal Gold Project may not be able to proceed, even though the company is keen to proceed and has gained all the necessary approvals for the project. Clearly this is unacceptable.

This bill will amend the Environmental Planning and Assessment Act 1979 to give the Minister for Infrastructure and Planning the power to extend the five-year lapsing period for State significant development consents. Applications for extensions cannot be made to the Minister until 12 months before the date on which the consent would otherwise lapse. Before approving an application to extend the lapsing period, I will have to be satisfied that one or more legal proceedings have been brought by third parties, that these proceedings were ultimately wholly or partly unsuccessful, or remain unresolved, and that it is appropriate to extend the lapsing period. There will be no right of appeal from the

decision. Any extension will take effect from the date of the decision. A consent which is due to lapse after an application is made to the Minister, but before the Minister determines that application, will be taken not to have lapsed if it is ultimately approved.

The Minister will have the power to extend the lapsing period only by an amount of time commensurate with the period of delay caused by the relevant legal proceedings. In effect, the Minister will be able to "stop the clock" running on the lapsing period. The maximum period for which the extension can be granted is three years. The new provisions will apply to existing development consents granted for State significant development, and to legal proceedings on foot prior to the commencement of the proposed amendments. In summary, this proposal will allow the standard five-year lapsing period to be extended to eight years.

It is important to note that this proposal does not diminish any existing statutory right under the Environmental Planning and Assessment Act 1979, or any common law right to initiate legal proceedings. Under the Environmental Planning and Assessment Act 1979, there is currently no express provision for a development consent to be surrendered voluntarily. The bill will make it clear that a development consent may be surrendered voluntarily at any time, including where an appeal has been commenced in the Land and Environment Court under section 97 or section 98 of the Environmental Planning and Assessment Act 1979. An applicant can only voluntarily surrender a development consent if there are no continuing obligations under the consent in the opinion of the consent authority. Finally, the bill provides for amendments to the regulations, and makes necessary consequential amendments. I commend the bill to the House.

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