



# NSW Legislative Council Hansard, Full Day Transcript for

29 October 2003.

## ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONSENTS) BILL Second Reading

**The Hon. MICHAEL COSTA** (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [11.50 a.m.]: I move:

That this bill be now read a second time.

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

### Leave granted.

I am pleased to introduce this bill which provides for extending the lapsing period for State significant development consents, and voluntarily surrendering development consents.

Under the *Environmental Planning & Assessment Act 1979*, there are generally two types of development: State significant development and local development.

State significant development tends to be bigger, more complex, and more capital intensive than local development. It is also a major generator of jobs, and tends to involve major companies that make decisions on whether or not to invest in one project or another on a global—rather than local—basis.

Since 1995, the State government has approved over 180 State significant projects.

These projects have included a vast array of development 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 over \$11 billion, and have generated (or will generate) over 16,500 fulltime jobs.

Since March this year, the Minister has approved over 15 State significant projects with a capital investment of nearly \$440 million, and the potential to create 2,000 jobs.

At present, the Department of Infrastructure, Planning & Natural Resources is assessing about 40 State significant development applications with a capital investment value of \$2.4 billion, and the potential to create over 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 over \$4 billion, and the potential to create between 3 and 4,000 fulltime 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 NSW.

Under the *Environmental Planning & Assessment Act 1979*, a development consent lapses after 5 years if the development has not physically commenced.

A consent authority may only extend the lapsing period by 1 year if the original consent was granted for less than 5 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.

These 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 NSW, and could result in the loss of jobs and significant economic benefits.

The Cowal Gold Project is located in western NSW, and has a capital investment value of \$330 million. It is expected to generate over 300 construction jobs, 200 operational jobs, and significant economic benefits for the.

The Minister 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 3 separate judicial reviews under Commonwealth native title statutes.

I understand that even 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 & Assessment Act 1979*, to give the Minister for Infrastructure & 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 3 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 & Assessment Act 1979*, or any common law right to initiate legal proceedings.

Under the *Environmental Planning & 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 s97 or s98 of the EP&A Act.

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.

The Minister in the other House moved amendments to this bill which are minor editing changes. One amendment reflects greater certainty as to what proceedings may be counted as relevant legal proceedings. The current draft Bill is not clear as to the inclusion of the time period from when a hearing has ceased until judgment. Another amendment has the inclusion of the phrase "or by the court or tribunal concerned dismissing the proceeding". The inclusion of this phrase gives greater clarity to what type of proceeding is a relevant legal proceeding. The final amendment introduces the phrase "sought relief". It is thought that this phrase encompasses a greater range of proceedings, especially in terms of judicial review proceedings.

Finally, the bill provides for amendments to the Regulations, and makes any necessary consequential amendments necessary.

The Minister moved minor amendments to the bill in the Legislative Assembly. One of the amendments gives greater certainty as to what may be counted as relevant legal proceedings. The draft bill was not clear as to the inclusion of the time period for when a hearing has ceased until judgment. Another amendment included the phrase "or by the court or tribunal concerned dismissing the proceeding". The inclusion of that phrase gives greater clarity to what type of proceeding is a relevant legal proceeding. The final amendment introduces the phrase "sought relief". It is thought that this phrase encompasses a greater range of proceedings, especially in relation to the judicial review proceedings.

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