



Full Day Hansard Transcript (Legislative Assembly, 6 May 2011, Proof)

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Extract from NSW Legislative Assembly Hansard and Papers Friday, 6 May 2011 (Proof).

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MAINTENANCE OF LOCAL GOVERNMENT DEVELOPMENT CONSENT POWERS) BILL 2011

Bill introduced on motion by Mr Greg Piper.

Agreement in Principle

Mr GREG PIPER (Lake Macquarie) [10.03 a.m.]:

That this bill be now agreed to in principle.

This bill has been introduced previously under a different title—the difference being the date, 2010 rather than 2011. I have had extensive discussions about it with local government practitioners, both elected and executive, a number of people in the Parliament and very briefly with the Minister for Planning. I thank the Minister for participating in those discussions and also for indicating that he is willing to have further discussions.

The Environmental Planning and Assessment Amendment (Maintenance of Local Government Development Consent Powers) Bill 2011 seeks to provide positive options to address problems when a council is identified as having problems with exercise of planning functions. The bill also provides for a mechanism to assess objectively whether there is indeed a problem, to identify key issues that need to be addressed and to oversight corrective action. The bill proposes an approach in stark contrast to the reactive and negative methods that had become increasingly used by the previous Government. Planning and development consent has become increasingly complex for some years and until the election of this new Government there was resistance to addressing this complexity by reviewing and redrafting the State's planning laws.

This has created an environment in which investors and communities are largely critical of the process and, worse, in which the previous Government's response was to address the problem by inexorably removing the rights of the community by limiting and diluting the powers of their local elected representatives. I congratulate the Minister for Planning for moving quickly to remove the very unpopular powers introduced by the former government under part 3A of the Environmental Planning and Assessment Act. I look forward to numerous other improvements and ultimately to a comprehensive and long overdue overhaul of the Act. Such an overhaul, a rewriting of the planning legislation, will take time. I believe that this bill, without adding in any great amount to the complexity of the legislation, provides beneficial options for the Minister in the interim and could and should ultimately, in a similar form, be included in the new Act.

The bill addresses issues of concern that could arise over a council's ability to exercise its planning functions in a timely and appropriate manner. Under the current system if the Minister for Planning feels compelled to intervene the mechanism typically employed is the appointment of a planning panel and the transfer to that panel of the council's planning powers. Two such panels are currently operating in New South Wales, these having been established at Cessnock on 16 August 2010 and Wagga Wagga on 7 November 2007. I note that the panel operating at Ku-ring-gai was disbanded with the change of government. I also congratulate the Minister on that. However, I maintain my concern that the appointment of a panel brought with it no integral program for developing the skills of councillors or staff, if indeed there was a deficiency.

No doubt occasions will still arise when a council, for various reasons, is identified as being dysfunctional in the application of its planning responsibilities. Unfortunately, current available remedies do very little, if anything, to strengthen that council's expertise in exercising its strategic planning and development assessment responsibilities under the Environmental Planning and Assessment Act. The remedy of appointing a planning panel disenfranchises the local community from its right to democratic representation by elected councillors. An appointed planning panel can undoubtedly clear backlogs of development applications and resolve conflicts over controversial developments, but it is a paternalistic process doing nothing to build the capacity for local decision-making. Nor does it ensure that the local council becomes better placed to resume its obligations once the period of administration under a planning panel has ended.

The appointment of a planning panel denies the local community its right to the democratic representation expected in our society. While we have 152 local government areas and only relatively few occasions on which such action needs to be taken, the existing methods are negative in their nature and fail to provide a positive path for the council. This bill seeks to change the system so that during any intervention competence in planning responsibilities can be developed before fully transferring back to the elected council as seamlessly as possible. In so doing, it introduces under proposed new section 117C a defined list of prescribed planning functions ensuring that an administrator has suitable authority to exert control over all relevant planning matters.

The bill provides a remedy with the primary intention of maintaining local council as the principal planning and determining authority, but at the same time providing oversight from a planning administrator to work with the council to resolve deficiencies in the council's carriage of its responsibilities under the Environmental Planning and Assessment Act. Under this bill, the planning administrator is in effect firstly in a mentoring role, but maintaining the power to take a stronger role where circumstances warrant. The bill delivers these benefits but will in no way limit the Minister's control, via the process of administration, of any council identified as unsatisfactory in the performance of its planning and consent powers. The bill establishes a process to assist the Minister with any such decision through proposed new section 117O, which establishes a panel for the review of councils.

This panel will have three members, with the Minister for Planning and the Minister for Local Government each nominating a representative and the third member being a representative of the Local Government and Shires Associations of New South Wales. The Minister may seek advice from the panel for the review of councils for any reason, including when a report under section 74C of the Independent Commission Against Corruption Act 1988 recommends the appointment of a planning administrator. The panel for the review of councils may also provide the Minister with advice of its own volition. Advice from the panel may relate to the need to provide assistance to a councillor to appoint an administrator. To this end, the panel may draw on information from any source it deems appropriate, including by receipt of submissions from interested persons.

If the Minister appoints a planning administrator it will be that person's role to advise the council on planning matters; to assist the council in improving its governance and processes; where appropriate, to make planning decisions on behalf of the council; and, where appropriate, to seek ministerial revocation of delegations to council officers. Where such a revocation has been requested by the panel, the Minister retains the authority to decide the matter.

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The process set out in the bill requires that both the Minister and the council are kept informed of progress with the process of administration. The bill includes the formal requirement of a six-month review, which will be reported firstly to the Minister and then to the council. Periods of administration exceeding one year will also have a requirement to provide an annual report. Any report of an administrator will be required within four weeks of the end of the period on which it reports. Significant to the development of a council's capacity for dealing with matters of planning and development is the requirement for administrators' reports to evaluate key performance indicators specified in the Minister's initial appointment of that person to the role. A report may also recommend an extended period of administration. Such a recommendation will require justification and this will be further considered by the panel as well as allowing for a response on the recommendation from the affected council.

This bill will replace the current use of planning assessment panels with a system of administration providing all the same features, plus significant additional benefits. For this reason it also abolishes those panels. The ultimate authority of the Minister for Planning will remain unchanged. Despite the criticism levelled at councils from time to time, most people agree that we live in one of the best places in the world. Our State is a fantastic place to live in and it should not be forgotten that councils representing their local communities have delivered so much of the amenity and facilities our communities enjoy. However, there are times when problems with individual councils need to be addressed. This bill provides intervention in the most constructive of ways, addressing the problems whilst building the capacity of the council in governance, in planning and in development consent principles. This bill will make a positive change to planning controls in New South Wales and to the greatest reasonable extent retain local input into deciding what is right for a community. The concept of improving councils rather than disempowering communities is embodied in this bill. It is a concept that deserves the support of all in this House. I commend the bill to the House.

Debate adjourned on motion by Mr Ray Williams and set down as an order of the day for a future day.

The SPEAKER: Order! General Business Notices of Motions (for Bills) having concluded, the House will now consider General Business Notices of Motions (General Notices).