



Environmental Planning and Assessment Amendment (Planning Agreements) Bill.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (PLANNING AGREEMENTS) BILL

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Bill introduced, read a first time and ordered to printed.

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [6.20 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Planning Agreements) Bill, which is the first step in the legislative reform in New South Wales of the provision of public infrastructure through the planning system. It demonstrates the priority of the Government in this important area. The bill makes an important change to the system under the Environmental Planning and Assessment Act 1979 for the provision of infrastructure for public purposes. Section 94 of the Environmental Planning and Assessment Act 1979 remains the principal method for assisting councils to obtain contributions for public amenities and services required as a consequence of development. To make the system more transparent, since 1993 councils have only been able to levy section 94 charges if they have prepared and exhibited a contributions plan. Conditions imposing levies are appealable in the Land and Environment Court.

In January 2000 a review committee recommended to the former Minister for Planning, the Hon. Andrew Refshauge, a range of significant reforms. The Minister had the report published in May 2000 and submissions were invited from interested stakeholders. The majority of the recommendations of the review committee were widely supported. Progress on these matters was suspended during the discussions on Planfirst, which the Minister has since had reviewed. Following on from the formation of the new Department of Infrastructure, Planning and Natural Resources, and the review of Planfirst, the Minister asked Gabrielle Kibble, the former head of the Department of Urban Affairs and Planning, to chair a task force to look more closely at the way section 94 and the compulsory developer contribution system currently operates. Her task force is due to report next year.

In these circumstances it would be premature to bring forward the wider package of reforms set out in the report of the review committee that more directly relate to the way compulsory developer contributions are levied under section 94. This bill will amend the Environmental Planning and Assessment Act and recognises for the first time that planning authorities—that is, councils and the Minister administering the Environmental Planning and Assessment Act—may enter into voluntary agreements to obtain a development contribution to be applied for a public purpose. For the first time a planning authority will be specifically authorised to obtain development contributions through a defined system of voluntary planning agreements. The practice of entering into planning agreements in addition to or as an alternative to section 94 contributions, is well established. By expressly including planning agreements in the legislation the Government is acknowledging the role they play and will continue to play in the planning system.

By recognising the reality in legislation the Government is able to both regulate the nature and extent of the agreements and also regulate the way in which the agreements are entered into and publicised. For the first time there will be standards for planning authorities to meet when entering into planning agreements. The bill will enable communities and the Government to scrutinise public infrastructure decisions made by planning authorities. The development industry generally accepts that levying of contributions to local infrastructure is legitimate. However, section 94 is seen by both the development industry and councils to be too inflexible to deal with the uncertainties of development in some areas. Planning agreements are particularly appropriate in the case of large-scale developments, such as the proposed Australian Defence Industries St Marys' development, where the impact of development upon both local and State infrastructure can be substantial. In the case of such developments it may also be necessary and reasonable for the developer to contribute to a range of non-capital added costs, including costs of ongoing monitoring of development impacts, in order for the development to proceed.

The key features of the scheme include: planning agreements between a developer and council will be

voluntary—it is important to understand that no planning authority can compel a developer to enter into a planning agreement; once a planning agreement has been made it will be legally binding—and run with the land and so be enforceable by planning authorities against subsequent purchasers to whom all or part of the land is on-sold by the developer; the agreement would clearly state whether it is an alternative to or coexists with the usual section 94 contribution; planning agreements would normally provide for at least an equivalent level of services or amenities to those reasonably expected under a contributions plan; planning agreements can provide for infrastructure for a range of public purposes, not just those permitted by section 94; the substance of proposed agreements must be the subject of community consultation before they are made, amended or revoked; and recognising that a properly entered into planning agreement is a relevant consideration for a consent authority when determining a development application or rezoning land.

However, nothing in a planning agreement will be able to authorise a breach of any environmental planning instrument or development consent to ensure that the integrity of planning and assessment decisions is maintained. In addition, the regulations to be made following the passage of the bill will set out both the circumstances in which planning agreements will be publicly available after they are made and their availability at the rezoning or development application stage as relevant. Once the bill is passed, supporting changes will be made to the Environmental Planning and Assessment Regulation 2000 to ensure that the planning agreements scheme will operate consistently amongst all planning authorities. This bill is an important measure in improving the system of providing public infrastructure that is required as a result of development. I commend this bill to the House.

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