Legislative Council Hansard – 09 August 2017 – Proof

ENVIRONMENTAL PLANNING AND ASSESSMENT AND ELECTORAL LEGISLATION AMENDMENT (PLANNING PANELS AND ENFORCEMENT) BILL 2017

First Reading

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Don Harwin.

The Hon. DON HARWIN: I move:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Motion agreed to.

Second Reading

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (20:45): I move:

That this bill be now read a second time.

I am pleased to introduce, on behalf of the Minister, the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017. Corruption in the exercise of planning functions by local councils will always be a potential risk. Who can forget Wollongong and the Table of Knowledge or, more recently, the corruption issues that have been raised in relation to the former Auburn and Canterbury councils? These risks can arise, for example, when an individual councillor has an interest in the land the subject of the development, is the developer themselves or has a connection to the developer; or the council is both the applicant and the owner of the land the subject of the proposed development. In these cases, a legitimate concern arises. Because of the actual or perceived conflict of interest, can the councillor or council objectively consider the proposed development and will they take into account the concerns of other stakeholders?

The risk of conflict of interest is highlighted by the regular investigations ICAC has undertaken into corruption in the planning system. To date there have been at least 20 investigations in this area, which includes ICAC's Operation Atlas investigation into Wollongong council. Seventy-five per cent of these investigations involved councils in the Greater Sydney region, with most of these relating to potentially inappropriate relationships between applicants and decision-makers. To reduce this risk of corruption, one option that has been consistently recommended is the use of independent panels. Under this model, development applications, or DAs, are determined by a panel of independent persons with appropriate expertise. The panel decides whether to approve the DA based on a technical assessment of its merits in light of the planning controls.

When a panel is truly independent and expertly qualified, it greatly reduces the risk that the decision-maker will have a conflict of interest. This approach also helps to depoliticise planning decisions, and improves the thoroughness and quality of decision-making. Wollongong council, as part of its response to Operation Atlas, established an independent hearing and assessment panel "to provide transparency and probity in the development application assessment process, and also provide an independent forum for stakeholders (applicants and objectors) to present and discuss issues relating to controversial development proposals".

Having said that, I commend the Government for finally taking some action and proposing in this bill—from memory in schedule 4—to put in a retrospective power which will allow the Electoral Commission to review whether people who have nominated correctly stated whether or not they were developers, and then to have power under the same Act to take action against those who made false declarations. I think that is a positive move. My personal view is that they should not be there at all but, if they have made an error, it will be up to the Electoral Commission and presumably ultimately the courts to decide whether or not it was an error made in good faith, because the Government has not explained what it means by the term "property developer", or whether it was deliberate. That is a matter for the police and others, but I commend the Government for at least taking some action to overcome that problem.

Another issue I will mention briefly is the proposed rotation of panels. There should be no prospect of an applicant knowing who will decide their application. If it is possible that it becomes known who is on a panel, it is at least possible—as those of us who take an interest in reading Independent Commission Against Corruption reports over the years know—that those people could be persuaded by largesse, duchessing and who knows what to support applications or to act in a particular way in relation to those applications for individuals. As has been suggested, it is possible that if those individuals on panels become known they will probably never need to buy lunch again in some places.

In this bill there are fixed panels that cannot rotate for three to six years in a particular geographical area. They should rotate, and we will be moving an amendment to that effect; otherwise, we believe that this is conducive to corruption. By having developers on councils it is at least feasible that those developers will be actively involved as councillors in nominating and appointing representatives to various panels. I am interested in the Government's view on why that is an acceptable provision. Why would it not be more reasonable to not have developers at all? The Government wishes to have developers on councils—that is clearly its policy—but if people are self-acknowledged developers on their nomination form, given that these panels are supposedly in place to reduce the role of developers in making decisions, why allow developer councillors to be involved in appointing members of the panel? I genuinely believe that is something the Government should consider as a measure to reduce an atmosphere so that it is not seen as being conducive to corruption.

Council meetings are held in public. Some councils in New South Wales still do not live stream. I think in the year 2017 they should all be live streaming, but they all conduct their activities in full public view, with written reasons being presented publicly. They should all be recorded—and they all are, to the best of my knowledge—but they also should be broadcast live. The proposed local panels should not simply be panels that disappear into a closed room to have their deliberations. If we are talking about being open, nothing is better for reducing an environment that is conducive to corruption than the disinfectant of light.

Having the public gaze on decision-making is a wonderful way of reducing corruption. I seek the Government's confirmation that it expects that these panels will be broadcast, that they will give written reasons and that members of the public will be not only allowed to view those deliberations but also be allowed to address those panels. In a very short time I have put together a voluminous amount of material in relation to this bill, but I am interested in hearing the contributions and views of the Government. I will have a great deal more to say when we move into the Committee stage.

Mr DAVID SHOEBRIDGE (21:19): The Greens will oppose the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017. One could not read about it. On the ruins of the Rum Hospital, within a stone's throw of the place where the New South Wales regiment mutinied against Governor Bligh—had him hide under the table because they were doing a dodgy land deal in south-west Sydney—and in the same Chamber that the likes of Eddie Obeid, Ian Macdonald and Tony Kelly and that rogues gallery of corrupt former members and Ministers appeared, the Government has brought in a bill to take planning powers off local councillors and centralise the power in just one State politician, the Minister for Planning, and says it is an anti-corruption measure. As though State members of Parliament [MPs] are immune to corruption!

This is from the same party whose leader of the Liberal Party in Victoria and a State MP have been sitting down and having dinner with organised crime at the Lobster Cave. Now, in 2017, the leader of the Liberal Party in Victoria is meeting with the head of the mafia in Victoria in the Lobster Cave. The same party comes to this Chamber and this Parliament with its appalling history of corruption—just think of the likes of Askin or Rex "Buckets" Jackson, all those corrupt grubs who had their time in this Parliament—and says it has this great anti-corruption measure; they will take the powers off local councils and centralise them in the Minister for Planning.

It is as though part 3A never existed. It is as though they did not realise there has been report after report after report from the Independent Commission Against Corruption [ICAC] about how the planning powers have been abused time after time by government Ministers in this place. There was the report on Frank Sartor and part 3A where ICAC was tearing its hair out and saying, "How could you possibly have a law that centralises all these powers in the Minister for Planning without any oversight?" It is corruption ready, they said. There was the report about the Planning and Assessment Commission and how all the so-called independent members of the commission are chosen by the Minister for Planning, are able to be removed by the Minister and have no genuine independence and are corruption ready. ICAC said not to do that. It said that if people are to be appointed they should be appointed through the Parliament and the Minister for Planning should not be in charge of these appointments because it is a corruption ready situation.

What does this Government do? It ignores all of that and decides to put the Minister for Planning in charge of appointing everybody to planning panels. Corruption by politicians at a local level is not removed by centralising the power in the Minister for Planning at a State level. That is a lesson of history that this Government really should have learned by now, but it has not. Instead, we get this bill. There is the pretence that this bill came out of the New South Wales Liberal-Nationals Coalition Cabinet. There is a polite myth going around that the legislative agenda on planning is actually set by the Liberal-Nationals MPs in their party room and in their coalition Cabinet. We all know that is not where policy is set when it comes to development and planning laws in this State.

Policy and legislation is determined by the NSW Property Council of Australia and then it is written into law by the Liberal-Nationals who follow along like a little tame puppy, hanging on to those Federal donations they get from the property industry. They are holding on and waiting for the post-political appointments to boards, the post-political consulting jobs, running along like a little tame, well-fed puppy behind the property council that actually determines what the law will be in New South Wales. If proof is wanted of that, the property council, bless them, has done it again. Every MP has received a letter from the property council—as though we would care what the property council says—telling us that the property council is cheering this legislation on. It has been on their wish list now for about four years. Now we get the correspondence from the property council, the shadow Cabinet of New South Wales, saying, "The Property Council of Australia welcomes the introduction of legislation to produce independent hearing and assessment panels in Sydney and Wollongong and we urge you as a member of Parliament to support the passage of the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017."

As a Greens MP you know you are on solid ground when you are opposing changes to the planning law being put forward by the big developers in Sydney. I can tell members this: What the property council wants is almost always bad news for ordinary mums and dads and residents in this State. It wants to remove democratic oversight and power and to centralise power in just one politician so that it does not have to go out and corrupt many councillors, it can just go and get in the ear of one politician and get what it wants. That is what this bill does. What does it actually do? It requires local planning panels to be established in the whole of the Greater Sydney region and also in the City of Wollongong. It says that where that planning panel exists it becomes the consent authority instead of the councillors on the council. It takes over all the power of the democratically elected councillors.

The Government is calling them independent local planning panels and there will be four independent members. How independent are they? The chair of the planning panel is selected by and imposed on the local council by the Minister for Planning—whoever the Minister for Planning wants. It could be someone who has expertise in economics—read property developer. It could be somebody who has expertise in local planning issues—read real estate agent. It could be whoever the Minister for Planning wants. We have seen the kind of noddies that the Minister for Local Government has imposed on councils as unelected administrators; former Liberal Party hacks, former Nationals hacks, being appointed as unelected administrators. The same bunch of noddies are going to be appointed by the Minister for Planning to chair the planning panels—Noddie A, Noddie B, Noddie C, Noddie D. They will be the reliable ones who will do what the property industry wants. They are the so-called independent chairs we will get from the Minister for Planning—more of the same.

This Parliament is like a dog returning to its vomit when it comes to planning laws; it just keeps going back and looking at the same ugly mess that previous governments have made. There are the so-called independent chairs. On these four-member panels—just in case there was any concern that there might be some kind of genuine operation of these panels—the Government has said that their imposed chair, the Minister's select chair, will also get a casting vote. If it is two-all, the chair gets to decide what will happen. The chair is chosen by the Minister for Planning. But there will be two other so-called independent members that the Government says the council can choose. Does that not sound nice? The council can choose those two other independent members. But who does the council get to choose from? Wouldn't you know it, the council gets to choose from a pool of people who have been chosen by the Minister for Planning.

The other two so-called independent members are also chosen by the Minister for Planning; just another bunch of pro-property noddies who the Minister for planning puts in. Three of the four members are noddies chosen by the Minister for Planning, reliable pro-development property industry types that the Minister will choose to have an absolute majority in these four-member planning panels. The last poor sod who gets pulled out and put on the planning panels, the irrelevant, embarrassing position of community representative—who cannot be elected by the way, cannot be a councillor—is actually chosen by the council.

They can choose a bunch of community representatives and then the pretend independent chair chooses the community representative they want to become the fourth member of the planning panel. There is this poor little member of the community who gets dragged in as a one-vote-in-four, laughed at by the experts, probably treated with contempt by them, and they are meant to be the community representation on planning panels.

We could not write this stuff. This is the Government's proposal to deal with planning anticorruption in Sydney: three noddies chosen by a politician from the property industry who will determine whether to approve development applications lodged by the property industry.

What corruption measures do the people of Sydney and New South Wales want this Government to implement? What is the one local government reform they have repeatedly said they want? Have they said they want three members of the property industry to make a decision about their neighbour's development applications? No, they have never said that. However, they have said they want the law changed to prohibit property developers and real estate agents being elected to councils. The legislation could easily be changed to provide that property developers cannot be elected. The election of real estate agents should also be prohibited because they have such an obvious conflict of interest. What are we getting instead from this Government? We are getting this undemocratic, corruption-ready nonsense. It is disgraceful.

Meanwhile, no-one is policing the existing provisions of the Local Government Act. I have checked the most recent council nominations. The laughable so-called anticorruption provisions in the Act require candidates to state whether they are property developers. I double-checked and found that Doug Eaton, the former mayor and notorious property developer from Wyong has nominated. He is on record as saying that it is great to have a property developer as mayor because they know about business. He said, "I know about business, and I know how to get a sand mine approved in Wyong." He is running for council and he says that he is not a property developer. For heaven's sake, if he is not a property developer, this is not the Legislative Council and the New South Wales Parliament does not have a history of corruption. These absolutely nonsense statements are being made.

This Government needs to do the right thing with local councils. It should not take democratic control of planning decisions away from councils; it should get rid of the property developers and grubs on councils. It should also stop preselecting them to run for councils in places like Fairfield and Liverpool, where a real bunch of grubs are being preselected by the major parties. We know they will betray the public interest and decency. They will be making pro-developer decisions left, right and centre. Government members keep preselecting them and then they have the temerity to come into this place and to say they are dealing with corruption at the local government level. It is embarrassing.

The Greens know that we cannot take the politics out of controversial planning decisions. Big developments that will fundamentally change the character of a local area have a political aspect. However, local residents have the right to have those kinds of political decisions made by political representatives. Of course they should be made in accordance with the planning legislation. I think all members would be mortified by some of the planning decisions made by the former Kogarah, Hurstville and Botany Bay councils. We were disgusted by them. They were obviously pro-development and were often blind to the planning legislation and ignored the advice of council staff. What ugly stuff.

We have a collective obligation to prevent that kind of corruption in the local government sector. However, we should not remove all power from all councillors across Sydney because there are some bad apples. Rather, we should change the law to prevent those kinds of people from being candidates at local government elections. We should not remove planning powers from councils like Ku-ring-gai Council, Woollahra Municipal Council, or the Inner West Council because there has been corruption at the former Auburn Council. That would cruel the entire local government sector because of a couple of bad apples.

The Greens do support one aspect of this bill; that is, the amendments to the Parliamentary Electorates and Elections Act 1912 to allow the Electoral Commission to commence proceedings for offences under the Local Government Act and to undertake investigative functions. The need for this change has been exposed in investigations undertaken by the *Sydney Morning Herald*. The Greens have repeatedly pointed out the obvious flaws in the existing oversight arrangements. The Local Government Act provides that candidates must submit a statutory declaration asserting that they are not a property developer.

Despite that, a number of obvious property developers have nominated for election to councils. These are people whose businesses routinely submit development applications. It is proven, as sure as night follows day, that they are property developers according to the definition in the Act. Despite that, they have falsely asserted that they are not, and nothing has happened because no-one has had the power to do anything about it. The amendments in this bill will give that power to the Electoral Commission retrospectively. That is a tiny aspect of the bill that The Greens support. However, there is not enough good in it for us to support the second reading.

We do not believe that development industry controlled planning panels are the answer to local government corruption problems. We also do not believe we should have panels comprising architects, environmental consultants, heritage consultants and urban planners, who all live and breathe economically on the next contract they get from a developer. The Greens do not believe that having those people running the planning panels will be a good thing for residents or for achieving balanced planning decisions. We also do not believe that having the property industry approve their own development applications is a good thing. For those reasons, The Greens will vote against the second reading of this bill.

The Greens also have a series of amendments designed to strip the planning panel provisions. If the amendments are agreed to, all that will be left of this bill will be the changes to the Parliamentary Electorates and Election Act 1912. We have had the benefit of reviewing a series of amendments circulated by the Labor Opposition, and we support roughly half of them. However, we will not support the amendments extending the planning panels beyond Sydney and Wollongong to the rest of New South Wales. We also do not support the proposal requiring all development applications that attract 10 or more objections to be bounced to the new planning panels. With those observations, The Greens will not support this bill.

The Hon. PAUL GREEN (21:13): I speak on behalf of the Christian Democratic Party on the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017. The planning panels proposed in the bill are being introduced following Independent Commission Against Corruption [ICAC] investigations into at least 20 planning decisions that potentially did not meet planning rules. The Government believes that the introduction of the planning panels will reduce the risk of corruption because decisions will be made by experts who are independent of councils. The panels will be able to make better decisions and will adhere to councils' rules without being influenced. Planning panels will be established at greater Sydney councils, including Wollongong City Council, which seems ironic. I have asked why, and have been told that it is simply because the council has requested that it be part of the process.