



## Hansard of the NSW Legislative Council

### ENVIRONMENTAL PLANNING & ASSESSMENT AMENDMENT BILL 2008 AND COGNATE BILLS

#### 2<sup>nd</sup> Reading Speech 17 June 2008

Planning is more than just an academic interest in handsome buildings and preserving items of heritage as though they are exhibits in a museum. Good planning is about creating buildings and places where people, households and communities can thrive. Ultimately, planning is about people and how they live their lives. Most people love their homes—from Vaucluse mansions to modest flats, from owners to renters, from farmhouses to units in high-rise buildings—because of what their homes represent: not just where they live but where their life happens, where their children grow up, where they invest both financially and emotionally in creating secure and peaceful environment.

People treasure their home's favourite features: a view, a sunny garden, a beautiful streetscape, a friendly neighbourhood. Good planning laws can result in better lives. Good planning laws should help people create and nurture that secure and peaceful home environment that is essential to a decent life.

Good planning laws, however, are about more than just individual households. They are the linchpin to stronger, more vibrant, more engaged communities that create opportunities for involvement and inclusion. Communities are entitled to have a say about developments that affect their homes and their lives. And when they do, the outcome is always much better.

Heritage is about living with our history in continuity with the future. Heritage elevates the community and informs a future about the best features of the past. When that continuity is severed, our future is cast adrift by the loss of a key part of our culture. This is the Greens' vision for the New South Wales planning system—laws that protect the things that people love about their homes, laws that protect their emotional and financial investment in their homes, laws that help communities gel and thrive.

The Environmental Planning and Assessment Amendment Bill 2008 is the exact opposite of the Greens' vision. The bill reduces the power of ordinary people to have a say about developments that affect their homes, handing that power over to bureaucrats and the Minister; weakens controls to protect heritage and the environment; exacerbates the perverse incentives for private certifiers; and betrays the vision that lay behind the original 1979 Act, a vision that was groundbreaking and served this State well.

Having said that, I wish to echo the remarks of my colleagues concerning the places of public entertainment changes, which are exempt from my previous comments.

The question that must be asked is: Why is the Government doing this? Why is the Government going against the vast majority of community sentiment about a planning system that respects the community's rights? Clearly, the answer is the massive profit that developers make at the expense of the community. The gain that developers make is all too often the community's loss. Regardless of whether it is a parcel of irreplaceable wetland drained for a supermarket, a heritage building bulldozed for a block of flats, or a park overshadowed by a high-rise tower, it is today's community and future generations that are poorer and the developers who are richer.

This legislation is a developer's wish list, weakening the community's ability to resist the developers who paid for the legislation with more than \$6 million—and possibly much more—in donations to the Australian Labor Party. It has been described as State-run distortion, whereby property developers are allowed to tear apart neighbourhoods and the natural environment.

This is the \$6 million bill, paid for by donations from developers. It is a rip-off on a giant scale. As surely as if a developer breaks into your living room and steals your DVD player and your family photo album, you will be poorer and the developer will be wealthier, if this legislation goes through the people of this State will be poorer. The bill jemmies open the door and lets the developers steal from communities. The impacts of years of developer donations are writ large in the dramatic degradation of the 1979 Act, in a series of about 20 attacks on the original legislation. They are writ large in the concrete, bricks and tiles in the poor-quality, badly designed, overdeveloped and inappropriately sited buildings that have been approved by that Act. If this legislation passes through the Parliament, there will be much more to come; it will leave an appalling legacy for future generations.

The legislation is supported by an organisation called the Coalition for Planning Reform. Something must be said about that organisation. The best one can say about it is that the name sounds better than Developers Inc, or the Bulldozer Club. These bills are so bad, the Coalition for Planning Reform says it got 95 per cent of what it wanted on its wish list. All I can say is thank goodness it did not get 100 per cent. The only point of common agreement between the Coalition for Planning Reform on one side and the Greens and the community on the other is that there is a need for planning reform. But what the Coalition for Planning Reform wants is self-interest masquerading as reform. The coalition's reform will take away what little say ordinary people have left with so-called independent assessment panels. It will increase the power of private certifiers, fast-track so-called complying development, undermine local government and the community, centralise planning powers with the State Government, and homogenise the State with a one-size-fits all approach.

Planning Minister Frank Sartor and the developer lobby argue that changes are needed to increase efficiency. However, efficiency in this context simply means lowering the developer's cost by doing away with important rights and protections for the community. Development decisions can last for centuries. It is therefore worth spending time to get those decisions right; we should not rush to make such decisions. Decisions made in haste tend to be poor decisions. In this case, speed kills. The issues of speed and delays in development have been used as an excuse by developers and their mates in the lemma Government in order to ride roughshod over the rights of communities.

My colleagues Ms Sylvia Hale, Mr Ian Cohen and Ms Lee Rhiannon have outlined the ways in which the bills inflict this outrage. They have also pointed out ways in which some of the bills' provisions are somewhat positive. I concur with their sentiments and wish to draw attention to some additional issues.

The Environmental Defender's Office prepared a detailed submission on the legislation, which has been a useful guide in unpacking the damage being done by it. One of the most obnoxious features of the proposed legislation is that it leaves too much important detail to regulations and codes that are not yet available for public comment. Voting on this legislation is voting in the dark; it is voting for an outcome that is uncertain; it is voting for an outcome that resides in the hands of planning Minister Frank Sartor; it is voting for an outcome that is entirely unpredictable and could inflict devastating impacts beyond those we can foretell from the legislation.

Many of these important details are left to the codes and to the regulations, in particular, complying development codes in environmentally sensitive areas and the community consultation guide, to name just a few. I cannot help thinking: In putting so much into the regulations is the Department of Planning deliberately seeking to avoid parliamentary scrutiny, both now and in the future? The hallmark of the current planning Minister is to put as much as possible into regulations and codes that are beyond the reach of the Parliament. It is highly undemocratic and it is also highly damaging to the urban and built environment, and the natural environment.

The plan-making proposals in the bill are deeply flawed. The removal of the community's right to be consulted on the final local environmental plan is completely unacceptable. Community consultation at an early stage is a good idea, but it is no substitute for the real thing—an opportunity for the community to comment on the final version of the local environmental plan. Similarly, I find outrageous the provision in this bill that will enable the Minister to decide that no consultation is required on minor plans. This discretionary power will remove from the community any right to have a say on plans that, although supposedly are relatively minor, might still affect households in a major way.

This sort of discretionary power is wide open to corruption, and abuse and should be removed from the bill. Further, the generic nature of many of the plans is a one-size-fits-all approach that inevitably will lead to a loss of local character. Diversity in the existing character of built form, diversity in open space and diversity in a natural environment are valuable assets to this State, as are diversity in the culture and demography of various communities that come together and comprise the people of New South Wales. While developers seek an easy ride to vanilla homogeneity, communities have a right to be supported in their struggle to maintain their neighbourhood integrity.

Planning to specifics is difficult, and development assessment that takes account of the local character might take a little longer, but communities and households deserve the respect, the time and the effort that has to be put into this legislation to ensure that their future is not compromised.

The proposals for planning panels are outrageous. Planning panels will have only a Clayton's independence, given the way in which the Minister will appoint them. If we must have these panels—the Greens do not accept that they are required—at least there should be an arm's-length appointment process. It is a basic truism of politics that we can determine in advance a decision that a committee will make if we make the appointments.

Further, there is a total lack of clarity about how these committees will be appointed and how they will operate. We do not know what role they will play, but we know that councils will have to pay for their existence.

This bill does outrageous things to the Land and Environment Court appeals process. Effectively, the bill makes the terrible mistake of encouraging forum shopping. In some cases developers will be able to choose to go either to the court or to panel. Of course, developers will go to whichever body is the more favourable. As a result, planning decisions will be inconsistent and potentially politicised. There is a reason to think that developers will ignore the court and prefer the panels.

For example, there is provision in the Land and Environment Court for the joinder of a person in the public interest. Moreover, court processes are comparatively open and transparent. It is still very unclear just how these panels would work in practice. What is clear is that they will not have the transparency that an open court hearing will provide.

Equally concerning in the bill is a provision that will allow developers to go straight to an arbitrator when a council rules that insufficient information has been provided. Clearly, that will create an incentive for developers to provide a scarcity of information to councils so they can go off and find a sympathetic arbitrator to rule in their favour.

One of the most appalling features in this bill is that it gives even greater powers to private certifiers. As has been stated before, there is already a major problem with private certifiers. It is not entirely the fault of individual private certifiers as they operate under perverse incentives to deliver for those who pay for them, with appalling outcomes for communities, neighbourhoods and building purchasers. This afternoon crossbench members of Parliament were given an example of a building that did not come within a local environmental plan that had been certified as acceptable by a private certifier. Effectively, the purchasers of the building were unable to use the roof level of

their dwelling as a habitable space. Effectively, they were ripped off by the connivance of a private certifier.

This problem arose because commercial pressure to attract clients conflicted with and contradicted professional judgement and impartiality. There is no question that a private certifier would go out of his or her way to find in favour of clients when the clients choose developers and the applicants choose private certifiers. No private certifier could survive commercially if he or she developed a reputation for being scrupulous, for paying attention to detail, for enforcing development approvals, and for enforcing council environmental planning instruments. Major complaints about existing planning laws leading to councils and communities losing control of developments are well known. However, this legislation magnifies problems relating to private certifiers.

This legislation will give private certifiers even more power and it will place them in the role of a consent authority. So-called complying developments are to be fast-tracked. In reality, it is a fast track to a neighbourhood version of hell; it is a fast track to a guaranteed conflict between neighbours. Neighbours will have no recourse against intrinsic buyers. They will not even have an opportunity to make a submission in respect of a development application. In fact, neighbours will not even know that there has been a development application until the bulldozers move in and start demolishing a property next door. This is a case of approvals for sale—a massive increase in the opportunities for private certifiers to engage in adverse behaviour.

The Local Government Association and the Shires Association refer to the market advantage to certifiers who behave improperly. This bill is an invitation for even greater corruption in the planning process at the neighbourhood level. It will create excessive discretionary judgement for certifiers and provide no way to police the exercise of that judgement. In effect, planning approval for complying development will be for sale. Certifiers will amplify their current behaviour of building up a reputation for being an easy mark and we will see a rapid decline to a corrupt planning system.

This bill rips off councils. It not only strips councils of many of their regulatory powers and roles; it also takes away from them complete control of section 94 contributions that pay for the impacts of planning decisions. This is another example of councils paying but not being given any control. To add insult to injury, councils will be forced to pay the costs of panels and arbitrators without any control over their appointments or functions. This is a developer's dream. It will impoverish councils and reduce their ability to regulate development. This is massive example of cost shifting onto local government and power shifting out of local government.

Earlier Reverend the Hon. Fred Nile said that he had received a letter from planning Minister Sartor who said, "Don't you worry about that. Everything will be okay." It is all very well for him to have a letter from the planning Minister. I congratulate conservative members on the crossbenches in this place on their rather spectacular collection of letters from the Minister. I hope that they hang on to those letters. I hope that, as Reverend the Hon. Fred Nile is made into a complete Patsy by Frank Sartor—

**The PRESIDENT:** Order! I ask the member to address the Chair.

**Dr JOHN KAYE:** I hope that Reverend the Hon. Fred Nile keeps his letters. As he is turned into a Patsy by planning Minister Frank Sartor and his successors I hope he realises the gravity of the error he has made—an error that will enshrine in legislation an opportunity to rip local government of its power and its money on the promise that it would be all right as he has a piece of paper from the planning Minister that makes that promise.

**Reverend the Hon. Fred Nile:** In his speech in reply.

**Dr JOHN KAYE:** And in his reply to the second reading debate.

**Reverend the Hon. Fred Nile:** Be patient.

**Dr JOHN KAYE:** Reverend the Hon. Fred Nile can be patient too. No doubt all sorts of nice words are said in the second reading speech, but those speeches are just words and intentions on paper. Once legislation is enacted, it is the force of law. Once these changes come under the force of law there is no question that local government is vulnerable to a State Government—not just this State Government but the many State governments before it that sought to undermine and destroy the powers of local government.

New South Wales is on the verge of a planning revolt. It is a complete understatement to say there is widespread community opposition to these proposed laws. It is remarkable that of the 42 members in this Chamber it appears that half of them have beans in their ears and are not listening to what is happening in the community. Everywhere I travel in rural areas, urban areas, the inner city, whenever I mention the planning laws there is uniform fear and revulsion at the idea that the planning Minister will acquire so much more power and that so much more power will be handed over to the dreaded system of private providers. Not just the Local Government Association, the Shires Association, the National Trust, the Total Environment Centre, the Nature Conservation Council and the Environmental Defender's Office oppose this legislation. When I accessed my email inbox at 5.00 p.m. this evening I had more than 2,621 emails from individuals.

**The Hon. Amanda Fazio:** I am glad that you are so popular.

**Dr JOHN KAYE:** No, I am not popular.

**The Hon. Amanda Fazio:** I know you are not popular.

**Dr JOHN KAYE:** It just proves that we are not popular.

**Reverend the Hon. Fred Nile:** We all got them.

**Dr JOHN KAYE:** I acknowledge that we all got them, but some of us take our democratic duties more seriously than others and some of us recognise the importance of the right of people to protest.

**Reverend the Hon. Fred Nile:** Did you organise them?

**Dr JOHN KAYE:** I most certainly did not organise them, but I rejoice in the right of people to use technology to make their opinions known. Without question this bill more than any other bill in the 18 months I have been in this Chamber has the community in a state of outrage—that is a tiny tip on a tiny tip of an iceberg. Members should go out into the community and talk to neighbourhood people, people engaged in battles against developers, talk to the community and hear what they say; they make it very clear how they feel. I congratulate the Keep It Local campaign because it has galvanised community anger: it has turned community anger into writing. That positive approach gave us the opportunity to hear from the community.

I shall not read all 2,621 emails into *Hansard*—I have been invited to do so by the Hon. Charlie Lynn, but I decline his kind invitation. I shall read one email sent to my colleague Ms Sylvia Hale from Polly Seidler. Polly is the daughter of well-known architect Harry Seidler. I put on record that I am not a fan of the late Harry Seidler's work and certainly am not a fan of some of the buildings he imposed on the city of Sydney. If the Hon. Amanda Fazio could take the advice of Reverend the Hon. Fred Nile, which I know she does regularly, and have a bit of patience, she will find this interesting. The email states:

Dear Ms Hale

I urge you NOT to support the current planning laws as proposed by Frank Sartor and approved by Lower House of Parliament early this morning. The proposed laws allow automatic demolition of houses and buildings, with no "demolition notice" being erected to notify the community thereby giving them a chance to assess whether they are worthy of

heritage protection. This will allow developers to be recklessly indifferent to our community's heritage, and bulldoze their plans through, and do irreversible damage to our built environment.

I note that without a demolition notice out the front, my late architect father (Harry Seidler's) 1953 Williamson ("Igloo") house of Parriwi, Road Mosman would have been demolished. If it was not for the fact that my friend saw the demolition notice and told me and then I was able to tell my parents who then alerted the NSW Heritage Council which then eventually led to an interim and eventual permanent heritage order by the NSW State Government. Under the proposed changes, the house (which many consider to be of architectural merit, though it has been modified) would have automatically been demolished. It is now being slowly restored to its original architecturally worthy condition because of our current demolition notification system—which the current Lower House of Parliament wish to undo.

Please be the responsible elected member of the community and act to ensure our heritage (which may not yet be heritage listed) has an opportunity to be assessed to be preserved.

Sincerely,

Polly Seidler

She provided her address. It is not just Polly Seidler, it is not just the Local Government Association and the Shires Association, the National Trust, the Nature Conservation Council, the Environmental Defender's Office and 2,621 emails; it is also the Legislation Review Committee of our Parliament.

Much has been said about the Legislation Review Committee, and I note Reverend the Hon. Fred Nile launched a rather unusual attack on the competence of that committee. In his attack Reverend the Hon. Fred Nile quoted a letter from the Minister for Planning, Frank Sartor. It is naive in the extreme to give any value to a response from the key proponent of the bill. I would have some concerns about the quality of the findings of the Legislation Review Committee if an independent had criticised the committee, but it is a zero-information statement when the planning Minister says the committee is wrong.

I shall refer to just three of the many committee's passages I intended to read. The first is on page 30 and states:

The Committee has concerns about procedural fairness and the right to review with respect to the proposed section 79C (1A) by legislating away the need to give notice and the right of review, and considers individual rights and liberties may be unduly trespassed.

The next passage I refer to is on page 33 and states:

The circumstances of where there is no requirement for consultation with other Ministers and public authorities (other than the Director-General of National Parks and Wildlife) in the drafting and preparing of the SEPPs, along with a wide power of the Minister to determine any matter that is, in the opinion of the Minister, of State or regional environmental planning significance, may make personal rights and liberties unduly dependent on an unfettered discretion on the making SEPPs and an insufficiently defined administrative power.

The third and final passage I quote is on page 35 and states:

The Committee is of the view that the proposed section 118AG is very broad. It has the potential to deny a person natural justice by removing the opportunity to even review any question of compliance or non-compliance by the Minister or the Minister's delegate to any function conferred or imposed on the Minister or a delegate of the Minister.

The Legislation Review Committee's report goes on and on in the same vein. One can extract dozens of quotes that make it very clear this report will have an adverse consequence on the rights of the individual and the community of New South Wales. The bill has been resoundingly criticised by every sector of society, except by those who stand to directly benefit from its being passed—developers and hired guns in the development industry. If for no other reasons than overwhelming community opposition and quality expert advice the Greens have received indicating that we should oppose the bill, members should vote against it.

It has been suggested during the debate and on a number of other occasions that we should pass the Environmental Planning and Assessment Amendment Bill in response to the need for change in planning laws, and then hold an inquiry in the hope that it will produce the great gem of a redrafted Environmental Planning and Assessment Act and a new planning system. That concept is flawed not only at its inception but also throughout its entirety.

Such an inquiry will be a distraction. Passing this bill into law will leave us with this legislation being in place for approximately five years or perhaps longer. It will take at least five years to redraft appropriate legislation, during which time considerable irreversible damage will be done to homes, neighbourhoods and communities. How much devastation will be wrought upon our built environment? Even so there will be no guarantee that a review will fix the problems, or even provide marginally better protection. A review certainly will do none of those things if we do not first cure the planning system of its problem of developer donations. It is a little like suggesting that the *Titanic* should be allowed to sail with an inadequate number of lifeboats because someone somewhere will carry out an investigation into a safer design for transatlantic ships! The proposition simply makes no sense.

The Greens support the motion moved by the Hon. Don Harwin to refer the legislation to a parliamentary committee for inquiry. Certainly more time is needed to consider radical changes provided by the bill and the huge currently unforeseeable consequences that implementation of the bill will wreak on the built environment and communities. The changes effected by the bill are presently unforeseeable because we have not yet seen the codes and we do not yet know how the panels will work. We also have not seen the regulations and we do not know the manner in which panels will be appointed.

I must say that the preferred solution of the Greens is to reject the Environmental Planning and Assessment Amendment Bill outright because it is close to being irredeemable, but the Committee stage is the best option on the block. We urge members, given the range and depth of community opposition to the bill, to support the motion moved by the Hon. Don Harwin and create an opportunity for an upper House committee to check the legislation by thorough examination prior to its being reintroduced in September.

Could much more damage be done in a few months by a system that has been in place more or less unaltered for approximately four years while we wait for a committee to take a thorough look at this legislation, particularly in the light of opposition that has been expressed by communities and councils?

If this bill is passed we, as legislators, will set in stone laws providing for dramatic changes. There is a desperate need for the community to be assured that a responsible body will closely examine the bill.

The Environmental Planning and Assessment Amendment Bill is an appalling example of the type of legislation that can be purchased by massive campaign donations and an appalling example of what happens when communities and local government are shut out of the decision-making process. This bill is a disaster in the making. I urge the House to reject it.