

DEVELOPMENTS - FRIVOLOUS THIRD PARTY APPEALS

[11.07 a.m.]

Mr HALL (Western Tiers - Motion) - Madam President, I move -

That this House supports the urgent implementation of appropriate legislative or regulatory measures to ensure that developments, particularly irrigation infrastructure, are less vulnerable to costly delays and obstruction from frivolous third party appeals.

Madam President, it is very timely that I bring on this motion because we are graced with the new Minister for Planning in our House and, as members would recall, I brought on an urgency motion in relation to this matter a few weeks ago. This notice of motion is consequential to that.

As a matter of interest before I get down to business, Madam President, I went to the Meander Dam on Sunday to have a look. Despite another very dry winter and the fact that most of our Hydro storages are very low, it was great to see that the Meander Dam is spilling about 1 100 megalitres a day over the spillway. It is generating power, I think, even at this stage for about -

Mr Parkinson - Did you send Kim Booth a photo?

Mr HALL - No, but he was up at the Meander on Sunday. I did see him around this particular establishment.

It is generating enough power for about 750 homes and eventually that will peak at about 1 500 homes. It is all good. It has given water security for the Meander Valley for this coming season. It has and will provide an environmental flow for the Meander River and it also will provide security for town water supplies. I also must commend the Government and the Rivers and Water Supply Commission for the work that they have done in the precincts of the Meander Dam. It will become a really big tourist attraction this coming summer in terms of fishing, boating kayaking and all of those quintessential Australian pastimes, like barbecuing. I know that it must be rather galling to the minority who opposed this dam, saying it would leak, it would not hold water, it would not fill up and all those things.

The tribunal's recent decision to reject the frivolous and vexatious third party appeal by a local activist against the first of the Meander Dam pipelines strongly reinforces the need for an appropriate response from the State Government. Mr Knowles' vexatious third party appeal, despite being rightly rejected by the tribunal, has already inflicted significant damage on local farmers and the Meander Valley community. I know that there are those who have an ideological and political motive in abusing the planning appeals system and they will say that the system has worked because the appeal was rejected. I would contend that that is certainly not the case.

Mr Harriss - The new minister will sort it out.

Mr HALL - The new minister will sort it out.

The delay caused by this third-party appeal has resulted in the delay of the construction of the pipeline until next year, meaning that local farmers will miss out on water for this coming irrigation season. Farmers will suffer financial disadvantage from the lost production and the cost of borrowing for the deposit on their water entitlement. The local community will suffer economic loss and potential new jobs because of the production opportunities lost this season. Yet what has the appellant suffered? He has lost an outlay of some \$64 in lodging the appeal and you can bet that even if the costs are awarded against him they will pale into insignificance compared to the costs borne by the farmers and the local community. We have the prospect that, despite this third-party appeal having been rejected, people can still continue to lodge the same type of appeal against the other pipelines proposed, causing further unnecessary delays and imposing further significant costs. This, I submit, is the crux of the problem with the present system.

Let me be very clear, I am not talking about the abolition of appeal rights or any such thing. What I am talking about specifically here is third-party appeals where there is no direct interest in and is not being directly affected by a development. This is not about affecting the appeal rights of, say, home owners whose homes are directly affected by a development next door, as one particular media organisation would have people believe. It is also not about affecting the appeal rights of farmers who are directly affected by a pipeline on their land. If there was a pipeline going through Ivan Dean's land - that new block he has down the Tamar - he would still have an appeal right.

Mr Wilkinson - It'd be a big pipeline, wouldn't it?

Mr HALL - Yes, a big pipeline.

This is about third parties that are not directly affected by a development such a pipeline that does not affect their amenity or anything of a direct nature, but rather, is only of an ideological and political nature in that, in this case, Mr Knowles is apparently opposed to irrigation development and agricultural production per se. In my view, it could be argued that people such as Mr Knowles, if they wish to give legislative expression to such a political view, should run for parliament and not seek to abuse the planning system for political purposes.

Therefore the State Government, in my view, needs to urgently implement an appropriate legislative or regulatory measure to reduce the vulnerability of developments, particularly irrigation infrastructure to these types of vexatious third-party appeals. This motion is deliberately not prescriptive on the State Government in terms of the exact nature of such measures; however, I believe that a suitable measure in relation to irrigation infrastructure could well be the use of a planning directive.

I have raised in this Chamber on a previous occasion that I believe the State Government should consider implementing as a matter of priority a planning directive to make irrigation infrastructure a permitted use. A planning directive under LUPAA could be an appropriate mechanism to give permitted use to irrigation infrastructure, which would then remove the ability of third parties to object to such developments. I stress that that does not deny affected people having recourse to appeal but it would deny an appeal to those who are not directly or tangibly affected by any development.

I also acknowledge the advice of the honourable member for Launceston who advised me that in proceedings in the Supreme Court, for example, whereby a claim is seemingly without merit, an application can be made for that claim to be struck out. That can be done very expeditiously, as I understand. Therefore it follows that in the event of an objection being lodged, the Planning Appeals Tribunal could also strike out an appeal if it is deemed without merit, but they need to be able to do this quickly and they need the resources to do that. I think this is where the Government must step in and ensure that this is the case. That is something else for the new Minister for Planning to muse over.

Whilst the planning system as a whole is in need of an overhaul - and I think a lot of people recognise that - I am concerned that it would take far too long to wait for any improvement in the appeals process as part of any overarching reform under the State Government's planning review. A planning directive could prove to be a simpler mechanism to expedite change to the way irrigation infrastructure is treated in the appeals process.

As I pointed out in the urgency debate, it is inherently logical that where agriculture is a permitted use, associated infrastructure such as irrigation infrastructure should be entitled to the same protection from third-party objections. To my knowledge, agriculture is a permitted use in all planning schemes in rural zones in all municipal areas of Tasmania. Telecommunications infrastructure has benefited from a similar previous planning directive.

Unless we see the State Government implement a measure such as a planning directive, I feel that the State Government's entire \$220 million Water Development Strategy could become the target of a coordinated political strategy by those opposed and their support networks, whereby abuse of the planning appeals systems becomes their weapon of choice. This is not what the planning appeals system should be used for and something needs to be done to reduce the ability of third parties to abuse the system.

I know that most, if not all, members of this House would have constituents who at some time have been or could become the victim of a vexatious third-party appeal, and I am sure that everybody at some point would have had a frustrating situation relayed to them. We know in recent times that the Housing Industry Association has expressed its own concern and abuse of third-party appeals. We know that the TCCI is conducting its own independent review into the planning appeals system.

We know about such cases as that experienced by Dick Smith and the potential damage to Tasmania's reputation for investment that can have. Here we have Dick Smith, a committed environmentalist and philanthropist, willing to invest a lot of money into Tasmania and, at the end of the day, he was just absolutely jack of the whole process of third-party appeals, particularly from the National Parks Association, and walked away from a \$2 million investment and gave Tasmanian some pretty bad press, saying, 'Don't bother coming here, it's all too hard'.

Ms Forrest - There are others who are saying that too - through you, Madam President - relating to the Dick Smith story. I have heard of similar experiences, perhaps not quite as big but still significant to the State's economy.

Mr HALL - Yes. As Dick Smith pointed out, he went through the whole process; he had local government planning approval and all those things cemented in place and still it dragged on so long that eventually the developer got frustrated and building costs went up -

Ms Forrest - Just the holding costs are a killer in that situation.

Mr HALL - Yes. We know also about the massive escalation in the cost of the Meander Dam due to delays and that the first of the pipelines is a target.

I contend that abuse of third-party appeals is a very serious matter that can have a very damaging effect on our State. I know that the State Government recognises the planning system is in need of an overhaul. That is why it is conducting the planning review and I look forward to what the new minister will do when it is implemented.

Ms Forrest - Expedite it.

Mr HALL - I am sure she will. She is a new broom and she will be into it at 100 miles an hour.

Ms Forrest - We will see a result very soon.

Ms Ritchie - Don't worry about that.

Members laughing.

Mr HALL - I do hope that, amongst other things, the review takes into account the recommendations of that select committee on planning schemes from a couple of years ago.

There is no doubt that planning schemes need to be reviewed as there are so many of them that are outdated in this State and are not underpinned by current strategic plans. As I stand here, I know that when I was involved in the Meander Valley Council, before I left as Mayor we had started the review of our planning scheme and it is still not ticked

off, something like six years later. Unfortunately there is a dearth of planners right throughout Tasmania and Australia, and that does no help. I think the honourable member for Windermere would concur that the Launceston Planning Scheme has had so many amendments over time.

Mr Dean - Absolutely.

Mr HALL - It becomes a very difficult process for local governments to get a new planning scheme up and running. Having said that, though, we have an immediate problem, Madam President, that needs action that cannot wait for the wheels of government to slowly implement a response to the review in a year's time, bearing in mind that the review, as I am noting to the Planning minister now, was announced back in March of this year. Time is marching on so we do need an appropriate response now. I know that there is some acceptance of this within the State Government.

When we previously debated my urgency motion the Leader flagged that consideration was being given to making irrigation infrastructure a permitted use. The Leader said, and I quote:

'I can also indicate that my advice is that the Minister for Primary Industries will be, with the Premier, giving some consideration to including irrigation infrastructure as a permitted use in relevant zones such as rural zones, road zones, and so on. It is important that this consideration is given effect as a matter of urgency and using a planning directive may be the most efficient way to achieve this rather than waiting for the finalisation and implementation of the State Government's planning review.'

I would also like to quote the Minister for Primary Industries, Mr Llewellyn, who recognised the problem in Burnie in Parliament last week when he said:

'Unfortunately I also fully expect that all of the usual tactics will be deployed to obstruct each and every one of these projects but I warn the obstructionists, the Greens, that the Government has learnt from the past. Water development is amongst the Government's top priorities and we have the right combination of financial support, expert science, experienced governance and community support to bring our vision to reality. I hope that part of what the State Government has learned from the past is that the issue of frivolous and vexatious third party appeals needs attention.'

Mr Llewellyn also made the following comment recently in conjunction with the historic spilling of the Meander Dam that itself was subject to a guerilla campaign by the Greens and their allies based on misinformation and abuse of the planning system:

'The Greens who have opposed this project have been proved to be completely wrong and should apologise to the Meander Valley community for the delay and expense caused by their baseless opposition.'

I totally agree with the minister but the State Government must also do what it can to reduce the ability for baseless third-party appeals. I would also like to quote from a recent media release from the Labor member for Braddon, Bryan Green, on the subject of the appeal against the Meander Dam pipeline. Mr Green's media release reads:

'The member for Braddon, Bryan Green, today called on the Tasmanian Greens to support new irrigation projects for Tasmanian farmers and stop trying to delay future water development. Mr Green said that the Green's track record of opposing major water developments was holding back the State's primary industry sector. Mr Green said he was concerned at the latest attempts to stall irrigation works from the Meander Dam. The unrelenting, delaying tactics of this kind we are still seeing today with attempts to stall irrigation works for the community from the Meander Dam only serve to highlight the Greens' motives. Tasmania now has the opportunity and the funds, \$80 million from the State Government and \$140 million from the Commonwealth, to help accelerate water development to provide additional irrigation water equivalent to that from ten more Meander dams. "It is time for the Greens to stop opposing water developments for the sake of opposition and get behind our primary producers and the community and support the priority projects currently on the table to provide valuable irrigation for Tasmanian farmers", Mr Green said.'

Once again on this matter I agree with the member.

But let us face it, Madam President, I do not think the Greens will be changing their opposition to water developments. Frankly, of course they are entitled to that view, even though I might disagree with them, but they should not be entitled to abuse the planning appeal system to achieve political objectives. This is where the State Government has a responsibility to implement appropriate measures to reduce the vulnerability of our planning appeal system to this type of abuse from people of that ilk.

What I am trying to achieve in bringing on this motion today, Madam President, is a parliamentary expression of the community's frustration with the abuse of third-party appeals. The State Government needs to take appropriate measures as soon as practicable to address this problem. If you do not believe that there is any misuse of the planning appeal system then I would not expect individual members to support this motion but if you accept that there is clear evidence that the present planning appeal system is open to at least some abuse by third parties then you should accept that the State Government has a responsibility to take appropriate action to address it. This is what I am seeking support for today.

I believe that the system of third party appeals can and must be improved in the interests of this State.

[11.26 a.m.]

Mr WING (Launceston) - Madam President, I support this motion. I have a sympathy for the farmers in the Meander area who have to wait at a time of drought for the right to use the irrigation waters that are now available with the construction of the Meander Dam. I want to say that I have been a supporter of the construction of the Meander Dam since the early 1970s when the Liberal Party developed a policy, a Tasmanian policy package, for the Federal election and that was arrived at jointly by the late Sir Billy Snedden, Sir Max Bingham and former senator, Peter Rae, in the main. I think it was a 10-point Tasmanian policy package and the construction of the Warners Creek Dam, as it was then known, was a very important part of that policy. It is now the Meander Dam and I think the lake is called Huntsman Lake but it is the same area, the same dam that was proposed for the 1974 or certainly the 1975 Federal election by the Liberal Party. It has taken a long time to achieve and it is disappointing that there is a delay in the farmers in the area enjoying those benefits.

I am not familiar with the circumstances of the appeal that was lodged but I understand that it was ruled to be frivolous and completely lacking in merit; that is what I have been informed. This motion, Madam President, is limited to frivolous third-party appeals and I agree that there should be some mechanism to reduce the adverse impact of frivolous third-party appeals on any development for very obvious reasons. The honourable member for Western Tiers has given a number of examples and many are very valid reasons some action needs to be taken about this. The motion is showing support of this House, if it is carried as I believe it will be, for appropriate measures, either legislative or regulatory, to ensure that developers, with some particular emphasis on irrigation which is appropriate because of the drought situation we are in, are less vulnerable to costly delays and obstruction from frivolous third-party appeals.

The honourable member for Western Tiers has referred to a discussion that he and I had when I told him that in Supreme Court actions, if it is considered by one party that there is no cause of action for the other party to take proceedings, if it is lacking a recognised cause of action, an application can be made to a judge in Chambers and probably to the Master of the Supreme Court for an order to strike out the proceedings. That happens from time to time.

One solution to the problem being dealt with by the honourable member in moving this motion could be for a procedure to be established for development applications, so that an application could be made to the appropriate authority for an order striking out an appeal on objection which is found to be frivolous. This would not be the case for one that is merely lacking in merit because it would take some more time to deal with matters such as that, but where an objection is frivolous or vexatious then that could be readily seen and dealt with by a preliminary hearing without a lengthy, costly hearing. That could be a solution and would be one solution to the problem being dealt with by this motion.

As I have indicated before, this motion is limited to frivolous third party appeals and I am pleased that it is because we have to be very careful in dealing with the right of people to lodge valid objections that have some firm basis. They do not always need to be directly involved in the development. For example, if there were any development proposed that was going to have an adverse effect, say on the water flow down the Cataract Gorge in Launceston, I believe any citizen of Launceston should have the right to lodge an objection to that. It should not be thought that only those who have a very direct pecuniary or other direct interest should be allowed to lodge appeals.

There is no suggestion of any unnecessary or inappropriate restriction in this motion. I have looked at the wording very carefully. I know the circumstances. I support the particular project and I hope that even now it may be possible for the farmers to get the much needed water before Christmas but it does seem, from what the honourable member says, that that is unlikely and that is extremely regrettable. I support the motion.

[11.33 a.m.]

Mrs RATTRAY-WAGNER (Apsley) - I also take this opportunity to rise to support the member for Western Tiers and speak to this motion before the House. I note that the honourable member spoke of the timely manner of this motion and I wholeheartedly agree with that comment because over the weekend, I attended two functions to launch the Midlands water scheme proposal for the northern and southern parts of the Midlands in our State. This was a very significant announcement of the proposal, as well.

It certainly is a very timely motion and I congratulate the honourable member for bringing it to the notice of the House because I know that this debate will be of great interest to the newly announced Minister for Planning, the honourable member for Pembroke, who will be listening intently to the contributions. I trust, Madam President, that the new minister, as part of the Government, will be able to support this motion because I know she has a farming background so I would expect that it would be -

Ms Ritchie - For the last nearly seven years.

Mrs RATTRAY-WAGNER - Absolutely.

Ms Forrest - Not a background of recent experience.

Mrs RATTRAY-WAGNER - No, but certainly a background of farming and understanding the plight of those needing to get water into some of our farming districts.

Madam President, I am well aware of a previous attempt, in 2004, when the Resource Management and Planning Appeal Tribunal Amendment Bill was debated in this House and the honourable member for Huon put forward an amendment to clause 5 relating to costs. The member for Western Tiers talked about the fact that even if costs were awarded against the person who put forward an appeal it would not have nearly as

big an impact as the actual appeal process itself has been. But times have moved on since then and that amendment was not passed at the time. I have some regret in the way I voted at that time because, looking back and hindsight is a wonderful thing, sometimes we wish we could have a chance again. I do hope that that chance does come again because I certainly heard what the honourable member for Western Tiers said about the impact of costs which will nowhere near impact on the development as what has already happened through the process.

You would have had to have been out of the State over the past few weeks not to have heard why this matter has been raised by the honourable member. There has been a huge degree of media and discussion in the community surrounding people's right to appeal. As the previous speakers have indicated, I want to make it perfectly clear, Madam President, that I am not promoting abolishing the appeals process. But I also clearly understand the massive impact and impost, financial and otherwise, that a frivolous and vexatious appeal can have on the landowner or developer. I certainly support the way the wording has been put together by the honourable member.

One only has to follow the path of the topical Meander Dam pipeline to understand how significant a third part appeal process has been by delaying the construction of the pipeline in time to take full advantage, as has already been stated, of the water supply. In difficult farming and producing times, that will mean a loss of production and significant dollars to our communities and, of course, to the State's economy, neither of which we can afford as a small State, where every opportunity is extremely, vitally important. No-one, I believe, is suggesting that RMPAT is not doing its job because in the Meander pipeline example, the tribunal did what we expected, given the nature of the appeal which it threw out. It is the time that it takes to go through the process that, in this case and I expect others, frustrates the proponent and obviously, as I have said, delays mean time and time means money. We cannot stress that enough.

As has already been stated, Mr Dick Smith, who has been a friend to this State, stated exactly that recently when he was involved in an appeal process and the process took far too long. He is taking his bat and ball and unfortunately he his development dollars and going back to the big island. There have been plenty of losers all round in this case.

Mr Finch - If the process takes too long, your interest and enthusiasm and your morale just drop away through frustration.

Mrs RATTRAY-WAGNER - Absolutely and it has been cited, the costs just gather that extra that often will tip a development and make it fall over, if the costs have gone above what any developer can afford.

Ms Forrest - It is all about getting returns, isn't it? That is what developers are there for, returns and when your returns are undermined to that extent you have no choice.

Mrs RATTRAY-WAGNER - Absolutely and albeit that Mr Dick Smith has been a strong friend of this State, he is a developer and he is still looking to make money and so he -

Ms Forrest - So he can give it back to some people who need it.

Mrs RATTRAY-WAGNER - Absolutely. So, as I said, he will be taking his money back to the big island. Ecotourism has been bandied around as a key component for Tasmania moving forward in the tourism market. How can that be achieved when there is a flaw in the system that will undermine this vision? That is certainly a challenge for the new minister and her department. But, as I indicated yesterday, Madam President, I feel sure that she has the capacity to address that in the short term rather than the long term.

Madam President, over the past few days I have attended the forums at Tunbridge and the launch of the Midlands water scheme proposal, which is the first cab off the rank in the community consultation process for the Tasmanian Irrigation Development Board. This preferred option is a long-awaited and much-needed proposed scheme that will guarantee the water supply to the Midlands region. I do not have to tell this House again, but I will, that there has been an absolute lack of rain falling in the southern part of the State. I know that we are desperately in need of some water storage and capacity for people on the land to be able to make proper and good use of their land. I read this morning with interest that a particular farmer in the Tunbridge area is 70 per cent reliant on his income from the wool industry this year, where in the past, when good rainfalls had been around, it was down to 30 per cent. We all know that you cannot afford to put all your eggs in one basket in this game and that is a significant amount of reliance of one particular industry. We only have to see a downturn in the wool industry that might put that particular farming person in severe hardship, so it is certainly a key area.

One of the key comments that was raised at the forum was the process and how the process would deal with the environmental arm of the proposal in a manner so as not to cause unnecessary delays, as we have heard occurred with the Meander pipeline to Quamby Brook and Osmaston. As I already stated, time is money and, in the case of the agricultural sector, especially in the Midlands region and around the State, these are both aspects of survival that many in the industry just do not have. To be perfectly honest, Madam President, the time frames to deliver surety for water - and we are looking at 2010, 2011, 2012 and 2013 - in some cases regrettably could be too late for some of our landowners and the people who work the land. I sincerely hope not but there are many on the land who are hurting badly and are not sure where their future lies, next week or next month, let alone next year or up until the water delivery part of the plan, which is 2012-13. It certainly is a significant proposal. We are looking at requiring public and private capital totalling \$74 million, which is a huge amount of money for the public to have to rally around and find in severe drought circumstances.

There were about 120 or 130 people at the Tunbridge Hall on Sunday morning, a fantastic roll-up. That is how significant water development is to that particular area, despite the fact that it was the day after the AFL Grand Final.

Mr Finch - And they still poured in.

Ms Forrest -They still poured in, and they were looking pretty chipper, I can tell you.

Ms Forrest - They were probably poured in.

Mr Wilkinson - We any refreshments offered?

Mrs RATTRAY-WAGNER - Absolutely.

Ms Forrest - The hair of the dog.

Members laughing.

Mrs RATTRAY-WAGNER - The Tunbridge community are a fantastic community, member for Nelson, and I am sure you probably even know some of them, you know so many people.

Mr Wilkinson - More than some.

Mrs RATTRAY-WAGNER - So of course there was morning tea and then there was lunch and it went on and on. Unfortunately I could not stay for lunch because I attended the Levendale Farmers Market. I know that you all received an invitation to attend and I am sure that I just missed you as I was not there for the whole five-hour period. About 500 people went through the gates.

Mr Dean - They weren't all from Levendale, I can assure you of that.

Mrs RATTRAY-WAGNER - But they were people supporting the Levendale community. It was absolutely a wonderful day and just showed what you can do when you are proactive in a small community, despite being small in numbers. You just get people on board and come up with some good ideas and then put it into practice.

Mr Parkinson - Was that the one where you were going to get me a bag of sheep manure?

Mrs RATTRAY-WAGNER - I did not actually buy any sheep manure but there were fantastic bags of apples. I could have bought you a whole bag of apples for \$2; they were terrific.

Mr Parkinson - I needed sheep manure and still do.

Mrs RATTRAY-WAGNER - Madam President, there is frustration within the community, and I know that the honourable member for Western Tiers suggested that if

honourable members were not aware of that frustration they probably do not have any rural areas in their electorates - perhaps might be the best thing to say - because there is enormous frustration about this third-party appeals process.

Given that water development is a key priority for this Government, I would sincerely urge that we have urgent action and it needs to commence very soon to address this very real issue in the community. As already indicated, I congratulate the honourable member for bringing this motion to the House. It is extremely useful to be able to talk about something as significant as this and be able to promote a really significant event that took place over the weekend with the Midlands water scheme.

Of course that is only one of 11 projects that are mooted for around the State, so I would like to congratulate the Tasmanian Irrigation Development Board on the work they have done. They have identified some fantastic projects which will all be very useful and absolutely vital to the ability of farmers to best utilise their land into the future. John Lord and his team are to be congratulated but also the minister, the Honourable David Llewellyn, has made this a key priority on behalf of the Government so we need to do everything we can to support the enabling of these schemes to be put into place and obviously the pipes that need to come from developments out of this type.

I have no hesitation, Madam President, in supporting the motion and if any honourable members need any advice on whether they think it is a good motion, I am happy to give them that advice and urge them to do the same.

[11.48 a.m.]

Mr WILKINSON (Nelson) - Madam President, it was interesting that when driving up to Launceston and Burnie and then driving back on Monday a number of us in the car made mention of the fact that there was some water in the dams.

Mr Parkinson - How many times were you overtaken?

Mr WILKINSON - I do not know, it depended on who was driving.

Mr Parkinson - I was trying to work out how fast you were going.

Mr WILKINSON - Three of us drove, but there appeared to be water in the dams and it certainly was green but everybody commented that that was only short-lived because the soil down below is still pretty dry.

Ms Forrest - It's a little bit green but there's no real growth.

Mr WILKINSON - What we have here is a motion really to allow people on farms to continue to be able to farm their property to the best of their ability without people making frivolous and vexatious appeals. I do not think anybody would deny the farmers the right to do what they do. They do it well and certainly they are not there to waste

water. I believe the majority of them in Tasmania do all they can to protect what is a precious resource.

I do not believe anybody has a problem with the motion as it stands because it says that this House supports the urgent implementation of appropriate legislative or regulatory measures to ensure that developments, particularly irrigation infrastructure, are less vulnerable to costly delays and obstruction from frivolous third-party appeals. The real question is how do you do that? Everybody wants it to happen but how do you do it? I suppose that is a difficult area as far the Government is concerned, and I know that there are more than experienced people in that planning area, some of whom are sitting on the other side of the Chamber now. I am looking to see if anybody else is there, but I think we know who we are talking about. I think that there is some experience within the Government to get over the problem and most people believe there is.

I know the honourable member for Western Tiers spoke about the Supreme Court and what happens there. If I touch on this very briefly, you can apply to the court for an application to strike out the other party's action or proceedings or what it may be, but to do that you have to show that the other party really has no case. In the criminal law it is the same as a no case to answer-type submission, that is there is no case that the other person could properly prosecute. That is what happens in the Supreme Court, but if the person has a triable issue and can show that there is a triable issue, then the matter must proceed. It is not done on many occasions and therefore I do not think that in itself is enough.

I believe the best way of dealing with the matter is the same as what occurs in the Family Court. There is a registrar of the Family Court, why could we not have a registrar, or another person of that same ilk, in the resource planning division with matters coming before that registrar before they go to court? I would have thought that in matters where there are complaints like this that can be deemed to be frivolous, if they come before the registrar or another person - I will call it the registrar - of the resource planning division, then that person could look at the case on both sides and decide whether, on the basis of both arguments, there is a case. Alternatively that person with the experience in the area would be well able to state, 'I do not believe that there is a case at all; I think that what is occurring here is a situation where you might be well-meaning, you might believe that you are doing the right and nobody wants to stop those people from appealing, but I think that they need some guidance as well'. That guidance could be given from the resource planning and that registrar can then say to the person that they do not think that they have a case, they think that the procedure which is obviously not going to be successful, if they still want to proceed then they will be liable for costs.

Not only that, because some people do not care about that, some people are quite happy to have the debt and immediately after the matter proceeds they might leave the State, they do not want to pay, they say they do not the money to pay or whatever it is and it is very difficult to get money off a reluctant debtor. But if they have to put up some security for costs it is a wholly different matter. If that security for costs remains within

the department and if the person then loses after being told by the registrar that they have no argument to pursue, then those costs are used in the way that they should be.

Mr Parkinson - You are talking about refundable deposit.

Mr WILKINSON - Yes, but it is not only a deposit it is a sting, because what you are doing, and registrars can see whether there is a real case or not or people doing it in a frivolous or a vexatious way. Registrars would have the necessary experience to determine whether the people are being reasonable or not, and if those people are not being reasonable then what should happen is that they should have to foot the bill.

Why should the Greg Halls of this not be able to properly irrigate their crops for somebody who is just being an obstructionist? I do not think that it is fair and I do not think that anybody thinks it is fair.

Mr Hall - Through you Madam President, to the honourable member - in what sort of time frame do you envisage that somebody could make that decision, given the expertise and resources?

Mr WILKINSON - A lot would depend upon, I would have thought, the matter before the planning division. If it is a very complex issue it is going to take longer than what it would be if it is just a person who puts in yet another appeal against a matter that has been dealt with on a number of occasions. Let us say it is about salinity. On three or four previous occasions the resource planning board has come back with a decision, 'That is wrong. Your argument is wrong, it has been proved to be wrong. We've had this discussion over the last year on four different occasions. It is obviously wrong'. Hopefully, that could come within a month and you could get the parties together and discuss the issue within a month. I believe that that might be the first step in endeavouring to sort the matter out. I do not believe any person here wants to stop people from appealing. That is, I think, a right and it should be a right if they honestly believe that there is a real problem and from time to time they have been shown that there has a real problem and they have been correct with the appeal. We do not want to stop that; what we want to stop are the people who just do it for the sake of it. There are numerous people who do it for the sake of it in courts; numerous people take people to court at the drop of a hat. They are known as 'vexatious litigants'.

Ms Thorp - Bet you can't spell that.

Mr WILKINSON - T-h-a-t.

I believe that might be a way out. I agree with the motion. I think it is a good motion. What it does is it enables people to confidently go about wanting to develop their property, wanting to become more productive and to do that in the best way possible. What we are here to do is to stop the stoppers of this world who just want to stop for the sake of it and for no other reason at all. I believe the best way that that might happen is if there is a system where there is a person who is the same as a registrar in the Family

Court. When those matters come before that person, that person then decides, 'Yes, there is an argument that you have that can continue on', or 'No, what you're doing is just being vexatious or frivolous', or, alternatively, 'You are going to lose because the matter has been dealt with on numerous prior occasions and has always lost'. Then if the person still wishes to proceed, what happens is that they have to put up security for costs and put their money where their mouth is, so to speak, and if they lose those costs are not recovered by them. I believe that that might stop some of these people making these claims just for the sake of being stoppers of this world and certainly antidevelopment. I support the motion.

[11.57 a.m.]

Mr MARTIN (Elwick) - I intend to support this motion because it is specifically worded, as all the other honourable members have mentioned. Basically I have had a long involvement in the planning industry - 20 years on the planning committee. I have always been a strong defender of the Tasmanian planning system. I think LUPAA is a very good piece of legislation, which I think was introduced by the current Treasurer when he was Minister for the Environment and he deserves a lot of credit for that. As I have said, on many occasions the biggest weakness is that it was premised on the fact that there would be a raft of State policies, which have never been forthcoming because of lack of resources over successive governments. Other than that, I think LUPAA has stood up pretty well.

I have always been a strong defender of appeal rights and I think the mover of the motion has indicated that he is also, as every other speaker has also indicated. The important thing is that appeal rights are very important for people who have valid objections. Sometimes whether the objections are upheld comes down to a subjective point of view, but so long as they are valid concerns then their right to object should be protected.

Sorry, my phone is actually on 'silent' but it is a new phone and I do not know how to stop the alarm from going off.

Mrs Rattray-Wagner - That's a \$50 fine, I believe.

Mr MARTIN - Yes, I thoroughly deserve it.

Mr Wilkinson - Shout the House afterwards.

Mr MARTIN - I think it goes to charity, doesn't it?

Mrs Rattray-Wagner - Charity, I think.

Mr MARTIN - Sorry about that, Madam President, and it has really thrown me.

In my time at Glenorchy there was a series of objections we used to get from one particular organisation in relation to any development that came up on rural land. I rate

these objections as being frivolous mainly because they were basically pro forma letters that were sent by the particular organisation, so I always treated them with the respect that they thoroughly deserved. I do understand the frustration in this particular case from what little I know of the particular instance and I can understand the honourable member looking for a solution, especially in relation to the farmers in this particular case.

There are many possibilities. As I said, I think appeal rights certainly should not be abolished but perhaps some of the alternatives that have been put forward such as the honourable member for Launceston's suggestion that power of the Supreme Court or someone else to strike out frivolous or vexatious third party appeals has some merit. The mover of the motion's suggestion in this case of making irrigation infrastructure permitted use again may very well have some merit.

The honourable member for Nelson put forward basically what I think is probably the best solution in that it should be RMPAT or a registrar or someone with those sorts of powers who would actually strike out very quickly something that they can determine to be a frivolous or vexatious objection.

The honourable member for Nelson went on to talk about a deposit. I certainly think the awarding of costs could be a big factor here but I would need some convincing of the idea of a deposit because that could actually stop genuine people, who cannot afford it, from raising a deposit. Again, I would need some convincing of that but basically I think there are ways around this. I know when I was at Glenorchy I looked at ways of maybe dealing with this issue of frivolous and vexatious third-party appeals. The problem comes down to defining who has a relevant interest in a DA under the legislation. When you actually look to try to change the legislation it is very, very difficult. For example, for residential development it might just be adjoining a new body of owners, neighbours, depending on the intensity of the development, but then, for example, a development in, say, the waterfront area; you would not suggest that only people in the waterfront area have an interest in that. I think an iconic location like that or Coles Bay or Cradle Mountain or something on Mount Wellington, for example -

Mrs Rattray-Wagner - A cable car.

Mr MARTIN - Cable cars - certainly of interest to the wider community. Changing the legislation to deal with this is very difficult but I think some of the ideas put forward are certainly worth merit.

What I would like to do, though, is just look at the broader issues and a lot of the criticism that has been forthcoming over recent months. It comes up every now and again; I have seen it, probably, the tenth time in 20 years that there has been a wave of concern about the Tasmanian planning system. From my long experience in planning I know that some of the criticism is sometimes unfounded or, in fact, based on a lack of understanding of the reality of the Tasmanian planning system, especially when you compare it to other States. I sat down to research over the weekend what is the reality of the situation in Tasmania and one of the first things I came across was an article by the

Planning Institute, Tasmanian Division. Having read this article I was hoping to get very lazy because I am just going to quote from the article because it puts forward some facts and figures that I think need to be tabled here today and it articulates it much better than I could if I tried to do it. I am about to quote extensively from an article by the Planning Institute. It reads:

'I think it is useful to consider some basics facts. Each year in Tasmania, councils around the State process somewhere between 9 000 and 10 000 development applications. Under our State legislation, LUPAA, it allows for 42 days for a council to make a decision and if it fails to do so in that time the application is deemed to be approved.'

I think we are the only State where that is the case. The applicant must then apply to the Resource Management Planning Appeal Tribunal for appropriate conditions and costs may be awarded against the council. This process provides a very strong incentive for councils to deal promptly with development applications and sometimes it is very difficult to stick to within that 42 days.

In other States, those permit applications that fall outside of the statutory time frame are often deemed to be refused. These permit applications are generally divided into two categories. Either an application is permitted use, which complies with the standards of the relevant planning scheme, or otherwise there is the discretionary use, assuming they are not prohibited.

Mrs Rattray-Wagner - Did you get any numbers?

Mr MARTIN - Yes, I am coming to that. That is the main point I wanted to make. In the latter instance LUPAA, of course, requires the council to publicly exhibit the application by placing an advertisement in the paper, notifying the neighbours and placing a notice on the site.

So the difference between a permitted and discretionary application, especially in a house in a residential zone, is that an applicant has sought to vary the permitted standards of a planning scheme and therefore the application becomes discretionary.

I am talking about this because there has been a lot of criticism about the fact the building of housing is delayed by the planning system and I do not think that is the case. Of course, there are tourist developments that have also been raised. Again, I quote:

'These standards reflect the type, form, location and scale of use and development that council wish to encourage in a particular location.'

In other words, why they would be permitted if you stuck to the standards under the scheme. If the reasons for the notification of a discretionary application are to report natural justice to those individuals or communities, as the approval of such may have adverse effects on neighbouring landowners, the local environment or the wider

community, any of which could be adversely affected by the proposal not complying with the permitted standards and conditions.

The statistics are really interesting when you look at the criticism that has been prevalent in the media recently:

'In terms of assessment times, the average time in Tasmania's councils for a decision is approximately 20 days for a permitted application and 34 days for a discretionary application.'

These are, in fact, the second-fastest approval times in the nation, trailing only behind the Northern Territory. Compare this to New South Wales, where applications for a new home have an average assessment time of 78 days, or South Australia where the average assessment time is, incredibly, 120 days. Third party appeals only arise when there is a discretionary application. While there are no current statistics available in the number of third party appeals each year, let us consider that of the 9 000 to 10 000 applications that are assessed each year only approximately 4 per cent to 5 per cent of the decisions are appealed to the tribunal each year. Of those 400 or 500 appeals over 60 per cent are settled through mediation without expensive and time-consuming legal battles. Again, I think that is a really good feature of LUPAA that needs to be protected and sometimes gets overlooked by those criticising the system.

The remaining cases that go to a fully contested hearing constitute the tiny minority that is, of course, reported in the media. I am not blaming the media, they are newsworthy stories, but it is only a very small percentage of the planning applications that are dealt with each year in Tasmania. Unfortunately, these receive a disproportionate amount of media attention and thus generate the unwarranted perception that planning is in a mess and must be reformed.

These criticisms are not new. In response to similar criticisms concerning third-party appeal rights the Edwards Report, back in 1977, stated:

'Quite clearly the system is working and is not an impediment to development. Those who suggest otherwise are obviously basing their assertions on the anecdotal evidence of some who have been disappointed at a particular decision rather than considering the complete picture.'

That report was done by Andrew Edwards, who is a real estate person, not a planner, and someone who certainly you would rate as being very pro-development. That report, from a person such as Andrew Edwards, was very important at the time.

While it is acknowledged that some parties seek to use the appeal process inappropriately, the rare examples of such appeals does not warrant the wholesale abandonment of public participation which is a critical component of the RMPS. The existing legislation allows the RMPAT to apply a proper interest test which, with the cost

implications, generally avoids any inappropriate time-wasting by third parties. I was pleased to see the decision the other day in relation to the Geoffrey Cousins issue where he was awarded significant costs. As I said, I think that is probably the way of dealing with vexatious and frivolous third-party appeals but I do have a problem with the idea of a deposit unless it is means-tested somehow or other.

I just wanted to put those facts on the table because with planning you often get these waves of concern whenever there is one or two high-profile developments that go astray. Quite often it is the fault of the developer because of lack of understanding of the planning system and not putting forward all of the information needed in a timely fashion, and there are some well documented cases of that which I will not go into today.

Basically, I think the system works pretty well. There is certainly - and I have experienced it myself - frustration with frivolous complaints, but they are a very small percentage of the appeals that are conducted each year. I just want to make sure that we keep the whole issue in perspective but, having said that, I congratulate the honourable member for Western Tiers for putting forward this motion because, quite clearly, this was about a frivolous and vexatious appeal that was designed to frustrate a very worthwhile development. I support the motion.

[12.13 p.m.]

Ms FORREST (Murchison) - Madam President, interestingly, I have exactly the same article that the member for Elwick has just quoted extensively from and I was planning to do the same myself, so I will not.

Ms Thorp - Rats! Don't you hate that?

Ms FORREST - Not necessarily, it just means that great minds think alike, I would like to suggest.

Mrs Rattray-Wagner - There's another part to that saying, but we won't go there.

Mr Parkinson - If you hadn't said that nobody would've noticed.

Ms FORREST - We do not need to continue further.

Members laughing.

Ms FORREST - The reason for me making a contribution today was really to focus on the importance of keeping this in perspective. I support the motion and congratulate the member for Western Tiers for bringing it forward. I note that the motion particularly refers to frivolous third-party appeals and not appeals per se, and I think it is very important to make that distinction. Also in the motion it particularly mentions irrigation infrastructure, whilst not excluding others, and the reasons for that are fairly clear from the members' previous contributions, Madam President.

I think there has been a great degree of frustration in some of the farming communities and the communities at large that with water being such a precious resource, it is potentially being denied to farmers at a time of great need through what have been, in the case referred to by the member for Western Tiers, frivolous and vexatious appeals.

There are other instances of frivolous appeals that do not relate to irrigation and they also should be addressed in a way that is encompassing whichever appeal process we put in place that nips in the bud this sort of inappropriate use of legislation.

I acknowledge that there have been concerns raised in some quarters. I was listening to an ABC program the other day in the car - I only heard a part of it - when this issue was debated in Burnie about the water projects in the State and the irrigation of the Midlands area, and the pouring of water of any quantity on to land that has issues of salinity does need to be looked at. We cannot just say that it does not matter, just pour it on and we will grow different crops. It is a big issue. It is important that we do not damage our land because sometimes damage to our land through inappropriate use of water, or even fertilisers or whatever, can have long-lasting and in some cases irreversible damage. It should not be ignored and just because someone has a different view does not mean they are always wrong, either, so I think it is important to keep those issues in mind.

As I said, the member for Elwick went through some detail provided by the Planning Institute that clearly showed that we were actually looking at a very small percentage of appeals that actually go right through the process to a RMPAT setting where there is a hearing and potential costs involved. Most of the others are resolved. Unfortunately some of the ones that fall into this category are big developments that have big dollars attached and potentially if they succeed there is great value to the economy of the State and perhaps the tourism opportunities to the State, as in the Dick Smith proposal and others, and so we tend to hear more about them. Generally it is only discretionary applications that ever fall foul of this process. I guess the other developments that are not discretionary will be approved anyway, but they are not subject to that appeals process.

I just wanted to go further on from where the member for Elwick left off and cover a couple of the comments made by the Planning Institute in the article. They made the comment that if the predominant concern is in relation to third-party appeals we should be very careful how we approach this. There has been a comment made by other members that it is not about removing third-party appeal rights, it is addressing particularly the frivolous and vexatious appeals, and any decision to change the third-party appeal process needs to be addressed with great caution to be sure that we do not disadvantage people who have genuine appeal rights, even though they may appear frivolous at first glance - 'Oh, here is another person who is appealing this development', or whatever. It is a bit like the boy who cried wolf, Madam President. These people might have put in a number of complaints that have been vexatious or frivolous - we might call them serial complainers - but then if something does directly impact on them they could be overlooked or shunted off to the side through the process because they have earned themselves that title, whether rightly or wrongly.

The Planning Institute went on to say that if the predominant concern around this appeal process is with limited resourcing and subsequent delays of the tribunal, then clearly more funds and resources should be allocated. I think that is a fair comment and I am sure the Minister for Planning will have some ideas about this, but when you look at the forward Estimates and where the planning funds are coming from, we are not seeing any great increase in this area. Either the Government does not believe that that is an issue, that resourcing and support for these processes and the time delays that might occur within these systems are relevant and they do not need to increase that resourcing, or it has not been factored in at this stage. Maybe that will be reviewed in the next budgetary process. I will be interested to hear from the minister about that.

The Planning Institute made a further comment that proper land use planning and public participation in accordance with the guidelines and objectives of the planning system should not be compromised because of resourcing problems, and I could not agree more.

The member for Elwick also noted a number of reasons that delays can occur. The Planning Institute of Australia did have some comments to make in relation to that in that article. They raised the question of perceived delays rather than actual delays. As the member for Elwick said, sometimes it can be that proper understanding of the planning systems and schemes is not there for the applicants, whether they be big developers or smaller ones. They may not have had a pre-lodgment discussion with councils that has helped identify what they need to do, so they may not present their development application with all the relevant information. They may not appreciate that the site is in a special area such as a heritage-listed site, threatened species or Aboriginal heritage issues. There is a whole range of reasons things can be held up. One comment that the Planning Institute of Australia made is that sometimes when advice or referral to State agencies is required that advice is not provided in a timely manner. If that is the case, that is something that the State Government can do something about. If there are processes and systems that need to be smartened up, where time frames are not being adhered to or there are inordinate delays that are the responsibility of the State agencies, then that is something the Government can look at and address.

Other members have also commented on the general and widespread shortage of qualified planners. It is an issue and a lot of councils are having to look at sharing their resources in this area, but that is not a reason to compromise the planning system. The fact that there is not enough of them does not mean that we should say, 'It's all too hard. We don't have enough planners so we'll do what we can' and delays occur. It is not a reason or excuse for allowing that to happen.

I will quote one section of this article. It is called 'Is the Planning System in Crisis?' and this section is from the Tasmanian Times web site, the Planning Institute of Australia's paper. It says:

'While it is important that we strive for an efficient permit assessment process within RMPS, the Institute strongly believes that too much time and resourcing is focused on perceived problems with permit assessment end of the planning system. However this end of the planning system cannot operate efficiently in the current state and regional policy vacuum within the planning schemes currently exists. This "policy vacuum" is largely responsible for the differences and inconsistencies in planning schemes between Councils that is often ridiculed by some in the land development industry.

So I think it does require action by government to look at the policies in place. The planning system review hopefully will shed a lot of light of this. As the member for Western Tiers has rightly pointed out, we need some urgent action on this particular aspect of it now. The other ? planning system overview can take place in a time frame that hopefully is not too far away.

I know, from talking to departmental officers, that there are some potentially good things in the wind there and we will be keen to see these changes potentially come forward for debate at another time. Having said that, I support the motion.

[12.23 p.m.]

Ms RITCHIE (Pembroke - Minister for Planning and Workplace Relations) - I will take this opportunity to thank all honourable members in this Chamber who have sent their congratulations and best wishes, cards, flowers and all sorts of messages upon my appointment as Minister for Planning and Workplace Relations. It was very much appreciated from you all, not only as my colleagues but certainly as people I count as friends in this place. Thank you very much.

As Minister for Planning and Workplace Relations, I am aware that there has been some concern raised over the delays to irrigation schemes caused by problems of appeals against planning approvals for pipelines. I congratulate the member for Western Tiers for bringing forward this motion, and indeed his previous urgency motion. I understand the issues and concerns that he has. The concerns are that the planning system allows for open-ended third-party appeals, which can be vexatious or are simply designed to frustrate and delay the rollout of previously-approved irrigation schemes. In particular, there has been commentary about the appeal lodged against the Meander Valley Council's approval of the Quamby Brook and Osmaston pipeline by a Mr Knowles. Members of the Council will be aware that the Resource Management and Planning Appeal Tribunal, RMPAT, has ruled that Mr Knowles' appeal is outside of the planning jurisdiction and invalid. Although the appeals process has added a little over six weeks to the process, I am pleased that the planning system has the capacity to deal with this sort of issue without, I think, requiring a lengthy hearing process. I have to say that I do not agree that planning appeals are out of control or that the State's planning system is fundamentally broken. In fact, Madam President, I agree with the statement found in the 2006 Legislative Council select committee report into planning schemes that said, and I quote:

'While Tasmania's planning system is underpinned by sound principles, there is nonetheless a need to improve some elements of the system in order to appropriately address future development.'

It may interest honourable members, as was pointed out by the member for Elwick, that Tasmania does have the second shortest approval times in the nation, second only to the Northern Territory. Also of interest, is that planning applications have almost doubled over the past five years, so I agree with the statement that was made by the select committee. While I think it is fair to say that Tasmania's planning system has served us well, I accept that in more recent times and particularly as our economy has blossomed with such positive growth, the implications have obviously been that more demands have been placed upon our planning system under the weight of the prosperity, if you like to think of it that way, and has uncovered some of the issues that we see today.

Of the roughly 8 900 development applications processed by planning authorities each year in Tasmania, and this is the context which the honourable member for Elwick and indeed the honourable member for Murchison were trying to bring to the debate, less than five per cent are appealed. More than three quarters of that five per cent are resolved through the tribunal's mediation process. In short, and I think these figures have been updated from the ones that the honourable member for Elwick gave, 99 per cent of development applications are approved and settled without drawn-out appeal hearings. Unfortunately it is that small minority of appeals that do progress to full hearings that are often the subject of enhanced media scrutiny and really project a biased perception in terms of a broken planning scheme, in my view.

Whilst I agree with the statements made by members that some parties may seek to use the appeals process inappropriately, these relatively scarce examples do not, in my view, necessitate major changes to community involvement in the planning system. As was recently indicated to the House by the honourable Leader during the previous urgency debate in this place, the existing legislation does provide for the tribunal to dismiss frivolous and vexatious appeals and also to award costs against parties in certain instances. Reference has been made specifically to applying costs in situations where an appeal is designed to delay and obstruct a project and, in fact, section 28(3)(a) of the Resource Management and Planning Appeals Tribunal Act 1993, currently provides for the tribunal to order a party to pay costs taking into account whether the appeal appears to the tribunal to have been instituted merely to delay or obstruct.

Honourable members would have seen the recent headlines in the *Mercury* : 'Shock Appeal Costs Ruling' where RMPAT had ruled that costs be awarded following a recent failed planning appeal. Of course, members would appreciate that regardless of the way that things go in planning decision, whether there is a dispute or an appeal, the planning system is going to cop the flack regardless from a person or a party that may not have had things determined in their favour; they are always going to come out and give the planning scheme or the planning system a bit of a kick because things did not go their way.

In relation to the Meander irrigation pipeline, it is also my understanding that the Meander Valley Council and the Rivers and Water Supply Commission will both be making an application for costs against the appellant, Mr Knowles. In the vast majority of cases, I think the powers available to the tribunal under the existing legislation to dismiss an appeal early on or award costs discourage the lodgment of appeals designed solely to delay or obstruct.

However, Madam President, given the importance of the irrigation infrastructure to the Tasmanian community, it is clear that we need to ensure that planning approvals for pipelines associated with irrigation schemes are consistent and are streamlined. The State planning adviser has been requested to further reinvestigate this matter and advise me accordingly of what measures may be implemented to address this issue. This will include my department working in collaboration with the Rivers and Water Supply Commission to identify land use planning requirements concerning future irrigation infrastructure proposals and the risk of future delays, also exploring the option of introducing a planning directive to standardise the approval of irrigation infrastructure in the State and looking at the way a government's regional land use planning initiatives may be used to deliver a consistent approval framework for irrigation infrastructure within each region of Tasmania. That regional initiative that we have going is going to be, in my view, the critical thing driving things forward in terms of planning.

Ms Forrest - Maybe they could look after the Tamar River as well then.

Ms RITCHIE - The honourable member for Nelson put forward options. There are lots of things that have merit that can be put forward into what I have asked my department to look at and we will be looking at a whole range of things and once these options have been further investigated the Government will be in a better position to make recommendations on the best options for more consistent and efficient planning approvals for irrigation infrastructure. I want to make clear here today to honourable members that the Government is in no way less keen than anyone else in the Parliament to resolve this issue.

That being said, Madam President, I do have to indicate that I will not be able to support the motion put forward by the honourable member for Western Tiers today. We have had a discussion about this. It is only on the basis of the wording of the motion and I will explain why. As it reads, 'That this House supports the urgent implementation of appropriate legislative or regulatory measures', I think requests that the honourable member give consideration to putting the word 'investigate' in instead of 'urgent implementation', and he has elected not to do that and that is fine. We had a discussion around that and I respect that choice by the honourable member. I am sure he and other honourable members understand, as I have just outlined, that while I am in the process of waiting for very specific advice that we have requested to address this issue, I think it would be inappropriate of me to undermine that request for advice by indicating agreement to one course of action here today.

I just wanted to indicate that it is not any overriding difference in philosophy here, it is just that we are in a process that I -

Ms Forrest - The motion is not prescriptive. It does not say what you have to do as far as that change. It depends on 'urgent'. Urgent time frames can vary.

Ms RITCHIE - Yes, but this is talking about regulation in legislation and I am not going to go down that track of committing to anything until we have had the advice back that we have already sought. That has already been requested. It is already happening. That is the point I am making here.

Ms Forrest - So you could effectively see some more irrigation projects held up for months.

Ms RITCHIE - I am not going to be wedded to anything until such time as the advice that I have requested comes back down. What I am trying to say here is that I greatly appreciate everything that has been put forward, I understand it, I respect it and certainly I would. I think I would have as much reason as anyone to understand farming communities in this place. I just wanted to make that point on the record. I do not have a problem with the motion other than I am going through a process that I do not really want to undermine and so I am not going to do that.

As I said, Madam President, the Government is prepared to resolve this issue but it is essential that our response is appropriate, that it is measured and that it is based on the sound advice that I am seeking at the moment. With the resolution of the Quamby Brook and Osmaston pipeline and with the next scheme not requiring planning approval for a few months, we do have a window of opportunity to identify a solution and a process of implementation.

Honourable members know, of course, that this matter also coincides with the Government's current review of the States planning systems. The review is not predicated on any notion, as I have said before, that the planning system is flawed or broken but is intended to identify and make recommendations on further streamlining decisions, making for the facilitation of improved planning outcomes.

The review includes looking at the processes of third party appeals and what measures can be explored to deliver better planning outcomes whilst maintaining the key role of community involvement in the planning scheme. The review will not place wholesale restrictions on the opportunity for third party appeals and I respect that the honourable member is not trying to wipe out appeals processes, he is talking very specifically about frivolous and vexatious issues. But public participation is one of the cornerstones of the Tasmanian planning system.

However, it will look at possible modifications, which may include things like the introduction of improved mediation processes or compulsory conferences to achieve mutually agreeable planning outcomes in a timely way, and administrative

rearrangements such as the introduction of a two-stage system where additional fees may be required for appeals that are not settled by mediation and progress to full hearings, which is something along the lines of what the honourable member for Nelson was alluding to earlier.

The steering committee overseeing the review is currently considering the issues and possible options for reform. I anticipate that as Minister for Planning I will be advised of any proposed recommendations for reform by November.

Madam President, as the Premier has said before me, planning really must be the enabler of sustainable development in Tasmania and in my view it must serve. I think that planning is at its best when it serves as a tool for local communities and the people within them. Tasmania, as we know, has seen such strong economic and social growth but we know that we must do more to ensure that we are able to deliver a robust, responsive and contemporary planning scheme.

The honourable member for Murchison raised the issue about resourcing for RMPAT. Just by way of some information, a couple of years ago they did see a spike in their business but that has plateaued out. In the legislation if they require extensions to their statutory time frames that they have they actually have to request an extension from them Minister. So that serves as a check for us to understand if the resourcing is becoming a problem because they will be coming to us to ask for time frames. I just wanted to give you that bit of information so that you know that there is an ongoing monitoring of what is -

Ms Forrest - There was no much increase in the Budget for planning as a whole so you are not anticipating much change.

Ms RITCHIE - To some degree, we would see if we needed to, that is the point that I am making because they would be coming to us continually for extensions.

Ms Forrest - I am not just talking about RMPAT, I am talking about the whole system.

Ms RITCHIE - I am talking about RMPAT here in the course of this debate.

Ms Forrest - It is only one small part.

Ms RITCHIE - Yes, but I just wanted to give that bit of information about the way that RMPAT operates.

Ms Forrest - I know that, I know how they work.

Ms RITCHIE - In closing my contribution, it is important for me to highlight that the planning system review that I have talked about is an entirely separate process to the process that we have instigated specifically to address the issue of irrigation

infrastructure. I hope that that provides honourable members with a level of comfort and a level of understanding that what we do here is not going to be dependent upon the processes of the review. We would be expecting to be looking at that much more quickly than the review process. It is a separate smaller review, if you like to put it that way, that is running very separately to the regional initiative and the planning review. This issues about the irrigation stuff is being done completely separately on its own, and I wanted to make that clear to honourable members as a clear demonstration of how seriously the Government is taking this issue. As I have said before, we are completely committed to the irrigation developments that David Llewellyn in his role as minister in another place is committed to. I wanted to make that clear to honourable members, that that is the level of commitment that I will bring to this place at this time.

[12.40 p.m.]

Mr DEAN (Windermere) - Madam President, the honourable minister talked about the review that is occurring and I am not quite sure whether she identified at what stage that review is at. I remember talking to the minister, Steven Kons, I think it was about 18 months ago in relation to this very matter when it came to one of my offices and we had quite a lengthy discussion on this then. I was wondering how long it is going to take and when can we expect to get something back from it.

Ms Ritchie - The next month or so. The submissions are in and I am waiting on a report from the steering committee to come back to me in the next month or so.

Mr DEAN - There is no doubt it is well overdue and people have talked about that and I will not go into detail about that but it is causing problems. It has served us well, there is no doubt about that, but we have moved on. Huge changes have occurred in recent times and the current schemes are not working. We have a number of schemes across this State with 29 councils, and then you have the other schemes on top of that -

Ms Ritchie - It is 39, but we have come down from over 100.

Mr DEAN - I think in a small State like Tasmania we need to get well and truly under the 39.

Ms Ritchie - We accept that too.

Mr DEAN - It would be good to see that happen. It does cause lots of problems for local government. It was interesting when during the Estimates process we raised a number of these issues about the planning review and what stage we were at, it was identified there that currently some consideration has been given to the RPDC's role, RMPAT's role and all of these others and that there could be a combining of a lot of these groups after this review concludes. It may well be in the recommendations and it may well happen. I think the sooner that happens, the better.

In a recent media release I think RMPAT made the comment that many of the matters going to them ought not be there and that it was occurring because elected

members were failing to take notice of the advice being given to them by the planning staff, by people involved in the process, that a lot of the appeals ought not be getting to them and that it was creating problems.

Ms Ritchie - Did you say RMPAT put out a media release?

Mr DEAN - I am not quite sure who made the release now. I have a copy of it; there was a reference to RMPAT and I think the RPDC also in that release.

Ms Ritchie - So RMPAT did not put out a media release themselves?

Mr DEAN - I am not quite sure who made it. I have a copy of it and I can get it, where they made that comment.

Ms Ritchie - Thank you.

Mr DEAN - There are a lot of issues there.

I think it has been mentioned before that the motion identifies with third party appeals. Perhaps the member moving the motion might like to touch on that in his summing up at the end because we do know that there are appeals out there being taken by parties directly involved as well, that are seen as being frivolous and vexatious in many situations. So I am wondering why we are restricting to the third party. I can understand why you are relating this to a specific instance on this occasion but I would have thought that there would have been area there to cover any appeal that might be taken under those conditions and circumstances.

I also take up the honourable minister's comments in relation to the implementation, which I have looked at too. I do not disagree with the comment made there, that another word probably would have been better and 'investigation' is probably the word. There ought to be some investigation of this to see where it goes.

Ms Ritchie - I am not too hung up on it. I appreciate the spirit of the debate. I just had to make that point clear of where I am at with my processes at this point in time.

Mr DEAN - I agree with that but the member moving the motion might like to give some consideration to that and whether or not there ought to be a move to amend the motion to include that word.

Ms Ritchie - I am relaxed about that. I have put my position and I did have a discussion with the honourable member.

Mr DEAN - He indicated that he was not prepared to go down that track or accept that amendment, obviously?

Ms Ritchie - That is right. He is sticking to his guns on that. That is okay.

Mr DEAN - As I understand his motion, there is no attempt here to prevent third-party appeals, it is simply frivolous and vexatious third-party appeals. We know that there needs to be a position there for third parties to make appeals. There is evidence there of people who are infirm, elderly people, people with disabilities and all of those other people that are not in a position to make an appeal and therefore somebody else needs to come in and assist them and support them and take it up on their behalf. There certainly is that need for that to occur.

The world is changing and we talked about that - things like climate change and all of these things out there. The environment now is a huge issue for all of us, not just those who become very radical at times; it is a concern for all of us. As has already been mentioned here today, there are people who specifically set up groups that specifically target development and they will appeal against anything and everything, it does not matter what it is. You wonder at times at the real reason for it, and in many instances I would suspect it is probably publicity. I cannot see much other reason for these appeals being taken on because there is no substance in them, as is the case here, the one that we have been referring to involving the Meander Dam and the irrigation there, the Mr Knowles matter. Some of them defy commonsense; I think a lot of them rely on the fact that if they can hold something up long enough for whatever reason the developers will probably back out and forget about it because it becomes very costly. Time is a cost, as we know here with the farmers. Farmers today have soaring costs in everything, fuels, diesel, labour, and fertilisers in particular. The member for Western Tiers would be in a better position to talk about this than I, but cost of fertiliser has become almost prohibitive for farmers.

Mr Hall - Doubled in 12 months.

Mr DEAN - It is just incredible. I could not believe it the other day when I was talking to a farmer from that area, Mr Young in actual fact, whom you might know. He was saying that the cost now is such that they have really seriously to consider whether or not they can use it.

Mr Parkinson - What is the cause of that? It must be some of the ingredients.

Mr DEAN - I am not sure.

Mr Hall - Global demand.

Mr DEAN - Global demand. In fact he did mention that, that it is sought around the world and there is a dearth of fertilisers, I understand as well.

Mr Parkinson - Probably some of the components -

Mr DEAN - Therefore there is the need for farmers today to get the best return from the smallest area that they possibly can, which is what he said to me as well. Once you would have had farmers going into large acreages, and it really was not a huge issue to

them, but today there is the cost of working the ground, the cost of the fertilisers, the cost of everything else. Therefore they have to get as big a return as they possibly can from a smaller area, and water is vital for that to occur.

We know that the easier it is made for appeals to be taken the more appeals we will see. I think commonsense tells you that. I just want to use a very minor issue just to highlight this and it relates to the Launceston City Council and dog issues. It was very easy to ring and make a complaint about a dog barking or a dog at large, often simply to get even with someone or to have a next-door neighbour that they did not like or somebody across the road investigated by the council or the police in some instances. So they changed by-laws to include a deposit so that now if you want to make a complaint in that area in relation to a dog issue, one at large or barking, et cetera, you now are required to lodge a deposit. The deposit is fairly small, but that has cut the number of complaints alarmingly.

Mr Finch - Because you have to go to the trouble because of registering your complaint and paying your money.

Mr DEAN - It could be that some legitimate complaints are not being made because of that; yes, I accept that and take that on board. But I would suggest in the main that is not the case because in this case, if the complaint is considered to be reasonable in the circumstances and there is some other evidence to support it, the deposit is refunded in full. In some of these cases where complaints were being made it was found that the people did not even have a dog. That was the stupidity of the whole thing, so something had to be done.

Mrs Rattray-Wagner - It might have been a visiting dog.

Mr DEAN - Probably a visiting dog. The honourable minister raised her concerns about a lodgment of a sum of money or whatever it might be.

Ms Ritchie - No, that was the member for Elwick.

Mr DEAN - Sorry, it was the member for Elwick.

Ms Ritchie - What I said was that there were a whole range of propositions put forward, even by honourable members here today on the Floor, and that I think some of them have merit in terms of looking at them. The honourable member for Elwick expressed his concern at the idea of a deposit being required.

Mr DEAN - I do not believe that would really deter too many. With a lot of these complaints, and it may well have been a complaint made by Mr Knowles - I am not saying it was because I do not know - there could well have been a group of people behind that as well. Normally they would pool the money and it is taken on in that way, so in relation to the comment by the member for Elwick I would suggest that that would

be very unlikely to stop a genuine, fair dinkum appeal as such because I think the money would be raised for that process to at least commence.

Another issue taken up recently in local government in relation to a development application was where a group of people came together and set themselves up as a group against development in a certain area. They were successful in preventing this development, a fairly recent one, in fact. They turned around to me - and I think there were others there at the time - and said, 'What's next on the agenda? What's the next development coming up in this area, because we're going to appeal it?' I said, 'Wouldn't you like to know what it is about first of all?', and they said, 'No, there's no real concern; we just don't want any development in our area'. Those are the sorts of things that are happening and we have to get on top of it.

Ms Ritchie - Congratulations to Launceston City Council for signing onto the MOU; the regional approach is all part of the process.

Mr DEAN - It is, is it not. The Launceston City Council is a fairly forward-thinking council.

I already mentioned that a lot of these appeals are taken simply for other reasons, like notoriety, publicity and all those things. I do not think there is any doubt about that at all. I am not going to say too much more. I support the motion but I would have liked to have seen those changes, but the member is not anxious to do that. I understand his concern here. It has been raised by other members that they want to see something happening now so that there are no further hold-ups because of frivolous and vexatious appeals. That is the concern of people. What they are saying is that the longer we procrastinate over this, the more appeals we are going to see.

Ms Ritchie - But the important thing here is that we are looking at it now. That is the point I have raised and that is why I am not worried about getting bogged down over the wording. I just had to put my position.

Mr DEAN - In this instance it was dismissed for those reasons but there was very little publicity on it. This person survives that and goes on and, who knows, the next time something happens there in regard to water et cetera we may well get a similar appeal again. That is the concern, and as the member for the Western Tiers said, it is at huge cost to the farmers. A farmer who is also waiting for connection was saying to me at the weekend that he has to seriously consider his position and where he is going to go. He was trying to estimate the cost to me, the loss that he would incur as a result of this and it really is quite large; in fact, beyond the comprehension of a lot of us who are salary earners, and what it means to their employees and everything else that requires that employment, requires that produce, requires that return. It has a huge impact on many people.

Having said that, even though the member is not going to amend this by the deletion of one word, Madam President, I will be supporting the motion.

[12.55 p.m.]

Mr HALL (Western Tiers) - I would like to place on record my thanks to all honourable members who have made contributions in this debate and also to the honourable minister. I think some excellent and very pragmatic solutions were put forward by people like the honourable members for Launceston and Nelson, who have had experience in the courts, and other members who have also put forward ideas of how this process might be expedited in a pragmatic way.

Members talked about various things and I think there is one thing which is germane to this motion. The honourable member for Murchison talked about salinity issues and, of course, I thoroughly agree that if there are issues with salinity, particularly in those areas which are prone, then obviously they have to be taken account of.

I will just explain, for the benefit of the House, the case of this particular issue - and I think I explained this before. When I went to the special Meander Valley Council meeting where they approved this particular issue, Mr Knowles was in the audience and he had an opportunity to speak, but a local agronomist stood up and said, 'Here's 1 200 soil samples taken over a period of time from Elizabeth Town right through to Whitmore, and there has never been a soil sample showing anything remotely like elevated signs of soil salinity, nor have any of the ground-water tests shown that either'. I think that demonstrated a clear case, and Mr Knowles knew that.

If we are talking about the honourable member for Apsley's new proposals in the Tunbridge area then yes, there are some salinity issues and they will have to be fully investigated. In the case of the Meander Dam when the EMP was done, which is the environmental management plan, those issues were all looked at and they were taken into account at the time. I just wanted to explain that. I think another person rang me and put the proposition that even so, we are going to increase salinity levels in the Meander Valley.

Agriculture has changed, technology has changed, and under centre-pivot irrigation you put on small amounts at any one time. It is not like the Murray-Darling system where we had extensive flood irrigation over many decades. Here we are lucky in our current climate, quite frankly - and being an irrigator, if I can declare that interest - to even get the top root zone moist, so we are not deluging the soil and we are not bringing up salinity from down below.

In this case, as the honourable minister pointed out, I think it took about six weeks to process, so the actual tribunal system did work, albeit the issue was that the tenders had to be withdrawn and now they have been readvertised so the whole irrigation season has been missed. Part of the issue there was that lost opportunity and I do wonder, Madam President, whether the fact that so many people were infuriated in the Meander Valley by this particular instance and the media exposure it has received and by the urgency motion that I put forward in this House that the tribunal actually extracted the digit and got on with it.

Members laughing.

Mr HALL - Well, they moved more expeditiously, shall I say. The honourable member for Rosevears has trouble understanding some of my language sometimes, I know.

Ms Ritchie - Next you will be taking credit for the awarding of costs in the other decision - the Tasman one. It wasn't your influence as well, was it?

Mr HALL - No. I do accept, Madam President, that they are looking at this issue outside the normal planning review process; I acknowledge that. I think the minister talked about the tribunal's capacity to award costs but, as I understand it, the -

Mr HALL (Western Tiers) - Madam President, prior to the suspension, I was summing up this debate. I talked about the various contributions made by other honourable members. There was some very good advice given by some members, we talked about salinity and other issues relating to agriculture. We talked about processes. I also acknowledge that the minister and the Government are looking at this issue outside of the planning review process.

In closing, it is a fact that the Resource Management and Planning Appeal Tribunal have the capacity to award costs, but in the legislation that is also based upon the person's capacity to pay. They do have to take into account the person's capacity to pay. It can be argued that if a person has very little in the way of assets or income, then even though those costs might be pursued the outcome might be very small. I think that in some cases organisations do tend to put a 'straw man' upfront and therefore the opportunities to recover costs are very small.

If it could go back to when the minister talked about the wording in this particular motion, I think I have left it fairly non-prescriptive. It does give the Government plenty of opportunity to do what they would like, but in an expeditious way and the minister and I did talk about this. She would have preferred me to have deleted the words 'urgent in implementation' and rather insert the word 'investigate'. To me that is not an acceptable proposition. I know that the Government's intention is good, however in these cases there has been a lot of community angst in this process and I think a bit of salt on the tail of the Government - if I could put it that way, Madam President - is not a bad thing.

Ms Ritchie - Sorry, what was that?

Mr HALL - Salt on the tail. Just a little bit of gingering up.

Ms Ritchie - Gingering?

Mr HALL - Yes.

Madam President, I did also go down the track of one of the suggestions that came from members, and that was the planning directive method. I might quote a couple of paragraphs from a very senior planner in the State who deals with these issues all the time. It said:

'I note with interest your recent comments regarding the current appeal to the proposed Quamby irrigation pipeline. If I might make a suggestion, an avenue that may be able to be considered is a planning directive under part 2A of LUPAA. Whilst it does involve a period of formal consultation it is likely to be a more expedient process than reviewing the planning system in its entirety. Planning directives can apply logically across all councils where an issue is deemed to have a consistent relevance and I think irrigation infrastructure through rural areas would meet that requirement. A provision could be drafted whereby if a planning scheme does not call in farm irrigation specifically. I am not aware of any scheme in the State that does, and agriculture is a permitted use. It would follow that regardless of any development proscription infrastructure or utilities to service agriculture could be directed to be given a permitted status consistent with the agriculture. Hence no ability to object by third parties but councils could still condition for construction within the road, reserve ...'

As I mentioned before, Madam President, the telecommunication infrastructure was implemented across the State in exactly the same way. Once a directive is made it overrides a planning scheme.

I think basically that concludes what I had to say. I think the member for Windermere might have liked it to be expanded to not just including irrigation infrastructure, but also other third party frivolous appeals. I did word it particularly so I suppose if that takes it into account, I know exactly where you are coming from in that respect.

Madam President, I thank all members for their contributions and I thank the Minister for Planning for her contribution today. I know that she does not agree with two or three words in there but I want to make it a forceful motion and therefore I would urge members to support it.

Motion agreed to.