# DRAFT SECOND READING SPEECH

## Hon Michael Ferguson MP

## *BUILDING AND CONSTRUCTION (REGULATORY REFORM AMENDMENTS) BILL (NO.2) 2020*

I move that the Bill now be read a second time.

Today I am pleased to introduce the Building and Construction (Regulatory Reform Amendments) Bill (No.2) 2020.

This Bill is the second of its kind that I have presented to Parliament this year.

Members will recall the first Bill of the same name was introduced back in June and passed this house unamended. It progressed through the other place with only one minor change to the number of days Council have to make a request for additional information.

The first Bill focussed on implementing a range of regulatory reforms to tighten up the permit and approval processes within local government, TasWater and TasNetworks.

I think it is important to note that there was broad support from just about everyone in this house, and in fact, the other place, for these reforms to be extended to our own state government agencies in this tranche.

Madam Speaker that was June, and here we are just months later with the second tranche of reforms that will hold our own agencies to account. Whilst the conversations were not always easy, I am pleased to say that we did not need the blow torch.

The Interdepartmental Committee chaired by DPAC oversaw the development of Tranche 2 of the Building and Construction Reforms. Through those discussions, 10 reforms have been agreed with agencies.

A number of the reforms still have some implications for Local Government and we have been actively consulting with LGAT to refine those reforms.

Of the 10 reforms in Tranche 2; 7 reforms require a legislative intervention and 3 reforms are being dealt with by Ministerial Directives or Policy changes.

It is my intention to briefly cover the non-legislative reforms before turning to those covered by the Bill.

<u>No Permit Required Certificates</u>

There are a number of developments that can occur in this state that do not require a planning permit including residential houses on land zoned 'residential'' and provided those houses comply with prescribed conditions relating to such things as height and setback from boundaries.

The Premiers Economic and Social Recovery Advisory Council in Recommendation 26 specifically stated:

*"The State Government should change the regulatory framework for developments that fall within "no permit required" and "permitted use" under planning schemes to deliver an efficient and timely approach for dealing with planning outcomes".*

To this end, we have considered a legislative reform but that is problematic, so after discussions with LGAT it was decided an option could be for the Director of Building Control to issue a Building Directive. This would allow private planners to issue a NPR certificate that can be relied upon by the Builder or a Building Surveyor.

This would not prohibit local councils continuing to provide advice on whether a project is, or is not, a NPR project.

The Director of Building Control has advised he is prepared to work through this process but would need to be satisfied the Private Planners have Professional Indemnity Insurance to cover this type of assessment.

Further discussions with the Building Surveyors, Builders and Planning Consultants will occur to facilitate this reform, which we believe is the best way forward.

## Crown Land Leases and Land Holder Consent

As it currently stands if a person wants to undertake a project on Crown Land they need to enter into a lease or license before land holder consent will be granted.

Council will not currently consider a development application unless the proponent can prove they have land holder consent from the Crown.

There are instances where someone may wish to secure planning permission and not spend time and money negotiating with the Crown over a lease or license until such time as they know if Council will grant planning approval.

To overcome this very real obstacle, Crown Land Services will amend their internal policy to acknowledge applicants do not need to apply for a lease or license in order to secure land holder consent prior to lodging a development application.

This reform has the potential to save both the department and the proponent considerable time and money negotiating leases and licenses that may not ever eventuate if the planning permit is rejected.

## Minor Works and No Planning Permit Required (NPR)

Like the earlier reform this reform also addresses the PESRAC Recommendation 26.

It has been agreed through the work of the Planning Minister and the Planning Policy Unit that a range of minor works will be exempt from requiring a planning permit.

These works will include incidental works associated with dam construction including vehicle access; storm water infrastructure projects including removal, maintenance and repair of pipes and minor road works including maintenance and repair of roads.

These are all minor works incidental to projects that have already been approved under other planning mechanisms and should not require individual planning permits.

This planning directive will be made following normal government protocols and when announced will greatly reduce the time taken to perform these ancillary minor works projects.

I will now turn to the reforms outlined in the Bill before the House.

## EPA Timeframes

The first reform addressed by the Bill commences at Part 2 on page 6.

The EPA currently have a 28 day time frame for assessing whether an activity is a class 1 or 2 type activity.

The EPA also have a timeframes for issuing assessment guidelines of 21 days for class 2A activities, 28 days for class 2B and 63 days for class 2C.

The EPA however does not have any timeframes for assessing whether a proponent has complied with those guidelines.

This is what we intend to rectify.

The Bill requires the EPA to make a decision on whether or not the case for assessment has been accepted by the EPA Board within 42 days of the request for assessment.

You will also see throughout this Bill that we do not expect the regulators to make a decision in the absence of having all the information they need.

To this end, the EPA is allowed to make as many Requests for Further Information (RFI) as it needs during the first 40 days of receiving the request for assessment.

However once the proponent provides the information requested by the EPA it must consider the information and make a decision within a defined time period of 42 days.

The EPA must notify the proponent within 8 days as to whether the response to the RFI is satisfactory or not.

Finally, you will see throughout this Bill a recurring theme that stops the clock on the decision-making timeframe when the first RFI issued and ends when the regulator is satisfied the information provided meets the requirements of the RFI.

In this case the stop the clock provisions for the EPA are detailed in section 27FA (6).

## Planning Permit Conditions

The next reform establishes a new statutory set of times frames for permit authorities (councils) and associated regulators to determine if planning conditions have been satisfied or not.

Most planning permits that are approved have conditions attached which must be satisfied before building can commence.

Sometimes it might be additional information such as how parking will be dealt with or the setting of conditions by another regulator such as the Heritage Council or TasWater.

Under the current legislation there is no timeframe for the permit authority or the associated regulator to determine if the applicant has satisfied the permit condition they have imposed.

To give certainty and finality to what is currently an open-ended process we have introduced a series of timeframes for the approval of planning permit conditions in part 3 of the Bill commencing on page 12.

Section 60(2) requires the planning authority to give notice to the applicant within 20 working days as to whether the planning conditions have been complied with after receipt of the applicant's response to the conditions.

Under Section 60(3) the planning authority must, within the first 15 days of receipt of the information from the applicant, advise if any further information is required.

This section is very similar to that imposed on the EPA earlier.

Like the EPA provisions, Section 60(4) then requires the planning authority to assess any RFI requests within 8 business days of receiving the applicant's response to the RFI.

In a similar fashion to the EPA provisions, the Bill then has stop the clock provisions in S60 (5) which operate in the same way for permit authorities with the clock starting the information is lodged, stopping when an RFI is made and recommencing when the response to an RFI is deemed satisfactory.

The remainder of this section details the interaction between the permit authority, associated regulators and the applicant in responding to permit conditions imposed by those regulators such as Taswater or the Heritage Council.

These provisions also have RFI and stop the clock provisions that operate in the same manner as just described.

This reforms is one of the most critical in the Bill as it requires councils and associated regulators to be accountable for responding to permit conditions they have imposed in a timely manner once they have the information requested.

It is not reasonable for any regulator to set permit conditions and then take as long as they wish to determine if those conditions have been met.

## Sealing of Plans by Council

I now draw your attention to the next reform which institutes a new statutory timeframe for councils to approve or reject a final plan for subdivision of land.

Under the current legislation, namely s.89 of the Local Government (Building and Miscellaneous Provisions) Act 1993, there is no timeframe in which a council needs to seal the final plans for a subdivision.

Consistent with other reforms we have brought before this house we are seeking to close this gap and bring certainty to the permit approval process.

Therefore, the Bill requires Councils within 20 days after a final plan is lodged to determine if the final plan complies or not.

Consistent with our other reforms the council 10 business days to make an RFI in case any documentation is missing or the Final Plan is deficient. This ensures the council has all the information it needs to make a decision.

Council will then have 8 workings days to determine if the response to the RFI is satisfactory or not.

And finally this reform has stop the clock to ensure the 20 day timeframe stops the moment the first RFI is made and stays stopped until the Council is satisfied the information provided in response to the RFI is in order.

This reform will provide certainty and consistency in the delivery of new land to market to support housing and other developments.

## Early Issue of Titles for New Subdivisions

Having dealt with the Sealing of Plans by Council we now turn to the issue of titles for release of subdivision land.

The Land Titles Office have long operated an "Early Issue" system for the processing of Final Plans to give title to each of the blocks of land within a new subdivision.

The next reform gives that process statutory timeframes, also under the Local Government (Building and Miscellaneous Provisions) Act 1993.

The Bill requires the Recorder of Titles to accept or reject sealed plans within 15 business days of the sealed plans being lodged.

Consistent with our other reforms, the LTO will have the capacity to RFI if documents are missing or deficient in some manner (within the first 13 days of the sealed plans being lodged).

Again, consistent with the previous clauses, the LTO will then have 8 business days to assess the information provided in response to an RFI notification.

And finally the LTO will have stop the clock provisions to ensure the clock stops once an RFI is made and only starts again once the LTO is satisfied the information provided is satisfactory.

This reform along with the former reform combine to streamline the release of land in this state and provides consistency and certainty to the permit approval process.

## Nature Conservation Act and Special Permits

The next reform is made under the Nature Conservation Act 2002 and pertains to Special Permits to take wildlife.

As the Act currently reads S29 (5) that a Special Permit granted under Subsection (2a) the taking on specified lands of specified wildlife, specified products of specified wildlife or specified protected plants ceases to operate after 12 months.

There are clearly circumstances where a permit may be required for periods shorter or greater than 12 months depending on the nature of the project.

It is our contention the regulator being Secretary of DPIPWE should be able to assign a timeframe to the permit relevant to the nature of the project and not be confined to an arbitrary 12 month cessation period.

To this end, the Bill amends the Act by simply deleting reference to the 12-month period cited in the Act.

This reform will not alter the standards under which a permit is issued but rather ensure the timeframe associated with the permit is relevant to the circumstances under which it is issued.

## Strata Titles

The final reform under this Bill relates to the Strata Titles Act 1998 and is consistent with all the other reforms namely it assigns a timeframe to a regulatory decision where none currently exists.

Under the provisions of the Bill, council must issue or refuse to issue a certificate of approval for a Strata title application within 30 working days of receiving an application.

The reform like all the other reforms ensures council is not required to make a decision until such time as it has all the information it needs which is why council can make a RFI in the first 15 days of receipt of the application.

Council has 8 working days to determine if the information provided in response to an RFI is satisfied or not.

And finally the Bill contains stop the clock provisions which ensure the 30 day decision making period is not running whilst an RFI is in place.

This reform to the Strata Titles continues our efforts to fill in the regulatory gaps.

We as a government and the wider community expect our regulators make informed decisions and hence whilst we have instituted time frames, we have also instituted their ability to stop the clock and make RFI.

However once a regulator has all the information they need the clock starts and a decision has to be made.

Sometimes that decision will be no; and that is OK.

A decision to say no enables the applicant to make a range of other decisions in a prompt and timely manner.

The applicant may redesign their project and hopefully gain approval or walk away and look for another opportunity.

What is not acceptable in a competitive environment is having a project stalled or not get off the mark at all because a regulator fails to make a decision or takes months to make a decision.

If we are to compete against other states and even other countries we need to able to give investors large and small confidence that they will be able to get a decision on all the permits and approvals they need in a timely and predictable manner.

These reforms will streamline the delivery of land, houses and industrial projects in this state.

## *Stakeholder Engagement*

In developing this Bill my office and the Office of the Coordinator General has overseen extensive external stakeholder engagement, especially with LGAT.

The Government has liaised internally with all the relevant agencies through an Interdepartmental Committee overseen by the Department of Premier and Cabinet.

I commend the Bill to the House.