SECOND READING SPEECH

Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014

Madam Speaker

The purpose of this Bill is to amend the *Land Use Planning and Approvals Act 1993* and the *Local Government (Building and Miscellaneous Provisions) Act 1993* to streamline the processes for interim planning schemes, amending planning schemes, and for a range of other planning reforms.

The proposed amendments represent the first phase in the Government's comprehensive program of planning reforms and will bring the current interim planning scheme process to an efficient and fair conclusion which will provide for the transition to a single statewide planning scheme within the next year.

Madam Speaker the Bill has been widely consulted on and supported by industry stakeholders and local government and been subject to careful scrutiny by the Planning Reform Taskforce which has also offered its support. The Taskforce along with the Local Government Association of Tasmania has been vital in assisting with timely and quality consultation with stakeholders.

During that process issues around some of the detail were raised and the Government has listened and made adjustments accordingly without compromising the drive for efficiency and cutting unnecessary 'red tape'.

This Bill is the first step in achieving the Government's planning reform agenda and we recognise the need to consult further on some issues, however, it brings to a timely close the previous Government's interim planning scheme process. Importantly, these reforms will position us to more efficiently move to a truly consistent statewide planning scheme which will encourage investment and job creation.

The current Bill brings to a close the interim scheme process in a timely manner by providing a clear pathway to deal with the issues arising from representations and those that planning authorities themselves have identified with their interim schemes. This will allow the Government to get on with the important job of developing a statewide planning scheme.

The current Act does not allow for amendments to be made to interim schemes. This means anyone who has been affected by a change to their zoning or who has sought a change has either had to wait, or to face the uncertainty of seeking a dispensation from the interim scheme which is still subject to assessment, and possible further change.

The hearing process has only been undertaken for one interim planning scheme to date. The long waiting time for anyone who has been affected by the declaration of the other interim schemes is unacceptable, in my view. Without the changes in this Bill, that situation could continue for some time, potentially for another four years.

Madam Speaker, the Government acknowledges that in streamlining these processes there is a need to provide for fair and equitable consideration of the views of all parties on planning matters and property rights. I am confident that the processes in this Bill can achieve that without the need for long drawn out legalistic proceedings on matters that are not contentious.

The Bill retains the important checks and balances of due process where there is any chance of the public interest being prejudiced. The Planning Commission remains at the centre of determining which changes to the planning schemes can be made through a new efficient process and which require a full public process to ensure all views are considered.

I now turn to the contents of the Bill.

The current hearing process for interim schemes has a number of inefficiencies which this Bill addresses. Under the current Act all

matters, including minor technical errors with the scheme itself require a public hearing, leading to an inefficient process.

The Bill will allow the Commission to deal with certain representations on the written submissions including the planning authority's report under section 30J, where the public interest will not be prejudiced.

Everyone will have a right to make a representation in relation to the changes brought in through declaration of the interim schemes.

Any matters raised that may affect individual's property rights or the public interest, will be subject to public hearings under the amendment process.

The new process will ensure however that issues with the interim schemes such as errors and translation issues can be resolved quickly, so the interim schemes can operate efficiently.

Agreed amendments where all the representations support a proposed change, and both the planning authority and the Commission agree that the proposal has planning merit and should be supported, will also be able to be resolved quickly where the public interest will not be prejudiced.

It is very important that the public interest is not prejudiced when these changes are made, which is why the Bill includes a public interest test for all the matters that can be resolved through a process based on the written representations.

The Principal Act provides criteria for where the Commission can amend an interim scheme with the authorisation of the Minister, and another set of criteria for where the Commission can dispense with the requirements for public exhibition and hearings for an amendment to a planning scheme other than an interim scheme.

The Bill will provide a single consolidated set of criteria for when the Commission can make an urgent or administrative amendment to any planning scheme, including an interim scheme, only where the public interest will not be prejudiced.

The criteria are based on the current sections 30IA and 37, with the addition of two new criteria – for zoning translation issues, and agreed amendments to interim schemes.

As part of the determination of whether the public interest will be prejudiced for these two new criteria, the Bill provides a requirement for the Commission to publicly exhibit a draft decision for 14 days and take into account any submissions.

Where any submissions are received that suggest the public interest may be affected, these proposed amendments will be subject to a public hearing through an amendment process.

The Commission may request authority from the Minister to make an immediate amendment to address a technical or administrative matter with the scheme, for simple zoning translation issues and for agreed amendments.

The Commission may also request approval from the Minister to direct a planning authority to initiate an amendment to a planning scheme that requires a further public process.

The Bill also provides a mechanism for an owner or occupier of land who made a representation under section 30I in relation to an interim planning scheme that contains a change to the zoning of that land, to request a planning authority to amend a planning scheme. The Commission is then to decide whether to direct the planning authority to initiate that amendment, with the Minister's approval.

Madam Speaker, the experience with the public hearing process which has only been held for the Launceston interim planning scheme to date is that in many cases, people who have made representations on the scheme did not appear to make a further oral representation at the hearing.

This has meant that public hearings are being held on some matters where no one will attend that hearing, in practice.

Further, and more importantly, other persons who may have their property rights or interests affected by a proposed change in a

representation may not necessarily have been aware of the representation, and therefore could have been denied a right to be heard if a further public process did not occur.

For example, a representation could be made that a further change be made to the zoning that is provided in an interim scheme, and there is no requirement under the Act for other persons to be notified, or for broader public notification, of that representation before the public hearing.

In some cases during the Launceston hearings, to ensure that the public interest would not be prejudiced, the Commission sought further submissions from the public and provided a hearing on those matters.

Where it was determined that a proposed change could not be dealt with as a modification to the interim scheme without re-exhibiting the scheme, these amendments have been put on hold until the interim scheme process is completed.

The Bill repeals the dispensation process and instead provides that amendments can be made to an interim scheme.

This means people will be able to seek amendments to the interim schemes immediately, where there is an issue in relation to zoning that needs to be dealt with quickly.

The Bill retains the ability for the Commission to modify and 'make' a new scheme, following the public hearing process that has been completed in relation to the Launceston interim scheme. This scheme will be retained as an interim scheme, pending the introduction of a statewide planning scheme.

The Bill will not allow for broad modification of any further interim schemes, such as substantial redrafting of the use and development standards and local provisions under the interim scheme process.

While I understand the redrafting of provisions has made substantial improvements to the Launceston interim scheme, it would in my view, be very inefficient to repeat this process separately some 28 more times across the State for each other interim scheme, when

these drafting matters will be addressed through the introduction of new statewide planning provisions.

I have asked the Planning Reform Taskforce to review the Launceston interim scheme as part of its consideration in providing advice to me on the statewide planning scheme.

Madam Speaker, the Bill also introduces shorter timeframes for finalising the interim scheme process.

The public exhibition period for an interim planning scheme will be reduced from two months to 42 days and the period for a planning authority to provide a report to the Commission under section 30J will be reduced from four to three months.

The Bill provides a new statutory period of three months, or such longer period as the Minister may allow, for the Commission to consider the representations and the planning authority's report.

The Bill removes the requirement for a planning authority to provide a copy of each representation on a common provision to each other planning authority in the region, in recognition of the fact that this process will be in part overtaken by the development of new statewide planning provisions.

This change does not prevent planning authorities from sharing information on representations, but removes the statutory requirement as this is now considered to be an unnecessary administrative process.

The requirement for the Commission to provide a full report to the Minister on all representations on common provisions has also been replaced with a power for the Commission to provide a report on the common provisions generally, within two months of completing its consideration of the applicable matters for an interim scheme.

This will allow the Commission to give strategic advice to me on the common provisions to inform the development of a statewide planning scheme, without creating a further and unnecessary administrative burden.

Madam Speaker as I've indicated, amongst the changes proposed in the Bill is a range of efficiencies around timeframes for the many processes that planning schemes, and amendments to them, require.

The Bill provides that a relevant decision-maker, whether this is the Minister, the Commission, or a planning authority, will be able to make, declare or amend a planning scheme where he or she is of the opinion that it complies with the specified sections of the Principal Act for the contents of the scheme.

This change reflects that it is more usual in drafting terms that a decision-maker is of the opinion that a scheme complies with such requirements, rather than it being a matter of fact and law. It will require the decision-maker to consider these matters whenever a planning scheme, including an interim planning scheme, is introduced or amended.

The Bill streamlines the amendment process by introducing statutory timeframes for certain steps, and providing clearer requirements for requests for additional information, including an ability to request a review from the Commission.

The Bill provides that where a form for a request to amend a planning scheme or for a permit, is approved by the Commission, it must be used. This is to allow for a consistent statewide form to be introduced. Planning authorities will be able to continue to use their existing forms until such time as these forms are provided.

The Bill provides that where a planning authority decides to initiate an amendment it must also certify the amendment within that period. The current Act does not set a period for the certification of an amendment, meaning this process can take many months, in some cases.

There is also a new power for a planning authority to withdraw an amendment that it has initiated of its own motion. Currently there is no process that allows withdrawal of an amendment, where a planning authority decides it is no longer required.

It also extends the power of the Commission to assume the responsibilities of a planning authority where it has failed to comply with a provision of the Division within the period specified, from the initiation of an amendment to include its certification, as these steps will now occur in the same period.

This Bill also seeks to bring more efficiency to the development approval processes by introducing shorter timeframes for applications that are deemed to be permitted and do not require public notification. Currently the same 42 day time limit applies to all development applications whether it involves 14 days of advertising or not.

The Bill will introduce a new 28 day period for those developments that are permitted accompanied by a shorter time period within which the planning authority can seek further information. This will shift to within 14 days rather than 21 days of receiving the application.

This will allow applicants to receive approval quickly for the types of use and development that a planning scheme clearly allows for.

Madam Speaker, the Government's election policy was to reduce the timeframe to 21 days however due to transitional arrangements required as the result of the complex drafting of some of the interim planning schemes and the interaction with TasWater and the Gas entity, we have agreed to extend this to 28 days, with the view to reducing it to 21 days when the statewide planning scheme comes into effect.

Madam Speaker the Bill also introduces amendments that although relatively minor in themselves have the capacity to streamline and facilitate a lot of development.

These include providing that interim planning directives can be introduced to override or modify planning directives already in place. Currently interim directives can be given effect for issues where there is no other planning directive operational but not where a change is required to one in place. Consequently problems

like those which have become apparent with the Bushfire Code will be able to be fixed quickly.

The Bill will extend the right to reconstruct an accidentally destroyed building or works from non-conforming uses to conforming uses. This is simply a matter of equity which emerged during the reconstruction after the Dunalley bushfires last year where it became apparent that destroyed houses which would not be allowed under the current planning scheme could be reconstructed 'as of right', while those allowable were required to get a permit.

Madam Speaker, currently the Act provides for a 2 year permit within which development must substantially commence, with the possibility of a 2 year extension where the planning authority considers it appropriate. Recent global financial circumstances have resulted in situations where developments have been unable to secure investors within that timeframe and to proceed they have to start the entire development application process afresh.

The Bill will bring Tasmania into line with other jurisdictions such as Victoria, by allowing for a further 2 year extension should the planning authority agree. It will also provide for the opportunity to seek an extension within 6 months of the permit lapsing which provides for situations where the end of the permit was overlooked or circumstances have changed after the expiry.

In each of these circumstances the planning authority can refuse the extension, which it might do because the planning scheme has changed from when the permit was first granted. The possibility of a 6 year permit life will add to the attractiveness of Tasmania as a place to invest.

A further reform is in clarifying the process for making minor amendments to permits under section 56 of the Act. It appears that a misunderstanding of the Act has resulted in planning authorities being reluctant to make minor amendments to permits that have resulted from a Tribunal appeal decision even where the modification sought was not in respect of, and did not affect, a

condition the Tribunal required. The consequence of this is that on some occasions a whole new application has been made just to change a condition in a minor way.

Madam Speaker, this is a minor amendment that has the capacity to significantly enhance development and reduce the regulatory burden and cost for those projects approved but needing to slightly adjust. It does not remove the rights of third parties to contest the changes to the permit.

This amendment also ensures that where the Heritage Council has required conditions to be attached to the permit, it is advised of any changes as is the case with the Board of the Environment Protection Authority (EPA) in respect of conditions it has required.

Madam Speaker, when changes are made to legislation which provides for processes which can take some weeks or months, there is always the need to ensure that appropriate transitional arrangements are in place to provide certainty and continuity.

The Bill provides for a range of transitional processes which ensure that where applications have been made for permits under one planning scheme they are dealt with under that scheme even if a new scheme comes into effect prior to a decision or appeal being decided.

Transitional provisions are also provided where dispensations have been requested from the controls of an interim planning scheme which translate that request into an amendment. Transitional provisions are also included to provide a process for translating dispensations that have been granted through a public hearing process into amendments to the scheme.

Madam Speaker, the Bill also provides for a number of amendments to the Local Government (Building and Miscellaneous Provisions) Act 1993.

This Act still sets out a range of requirements for local councils to determine if a subdivision should be approved. It operates parallel

to the Planning Act and despite years of intent it has not been reviewed or consolidated with LUPAA properly.

As a consequence there are two sets of controls for subdivisions and even where planning schemes set out all the basic requirements for lots there is still a need to assess them under the Local Government (Building and Miscellaneous Provisions) Act.

This means that subdivisions can never be dealt with as permitted development even where they conform to all of the standards a planning scheme prescribes for a zone. A residential lot in a residential zone which provides the correct frontage and minimum size and shape has been subject to the time delay and costs of advertising simply because of the duplication of process.

This Government will introduce some immediate relief and provide that planning schemes can treat subdivisions as permitted developments where they include all the standards required. However, as some planning schemes in operation are old and there is no certainty that all safeguards are in place, the Local Government (Building and Miscellaneous Provisions) Act will remain as a safety net until the statewide planning scheme is in place.

The changes will allow a planning scheme to determine where subdivision development may be permitted or discretionary.

This will allow for a planning scheme to legitimately provide acceptable solutions for permitted development and performance criteria for discretionary permits and other provisions to address various matters in the Local Government (Building and Miscellaneous Provisions) Act, such as provisions in relation to public open space and roads.

In most cases the specific requirements of the Local Government (Building and Miscellaneous Provisions) Act will still apply, such as the requirements for an agreement in relation to open space, or a permit from the Minister responsible for the Roads and Jetties Act. In these cases, the acceptable solution will be that such an agreement or permit is in place. Where the acceptable solution

cannot be met, the specific provisions of the Local Government (Building and Miscellaneous Provisions) Act will continue to apply.

The Bill also makes a series of changes to ensure the effective operation of this Act and LUPAA, including changes to definitions of terms, and internal referencing of sections.

Madam Speaker, the totality of changes in this Bill indicate that the Government is not just talking about planning reform but putting in place a first set of carefully considered, and broadly supported amendments that fix some long standing problems, streamline processes and cut 'red tape' where it doesn't reduce appropriate community involvement and due process.

Moreover, the Bill establishes a clear path forward for moving to the statewide planning scheme by bringing to an end the regionally based interim planning scheme process.

By ending this process in a timely fashion it will enable the Government to introduce legislation next year to give effect to the single statewide planning scheme.

I commend this Bill to the House.