Second Reading Speech

Land Use Planning and Approvals Amendment Bill 2013

Mr Speaker, this Bill brings together a number of minor amendments, which will make statutory planning assessment and approvals processes clearer, simpler and more efficient, and will significantly reduce the administrative burden for local government, applicants and the community.

These amendments address issues raised by both local government and building industry representatives, and they have been subject to extensive consultation with these stakeholders.

Mr Speaker, before I turn to the detail of these amendments, I want to highlight the Government's response to another issue that was raised at the recent Jobs Summit: the issue of appeals. The Government is introducing regulations to substantially raise the fee for lodging an appeal to the Planning Tribunal and will look at further changes to match the interstate approach of setting the fee, based on the value of the development project.

Mr Speaker, in advising the House on the current Bill, I would like to address each of the amendments individually, as they are, to a certain extent, discrete, and target different elements of the statutory planning system.

Enforcement Provisions

Mr Speaker, the amendments provide our planning system with new enforcement provisions.

The new provisions will primarily affect local government which has indicated its strong support for them. They provide councils with a more efficient, responsive and less expensive system of enforcement procedures.

This is achieved through a new system of 'authorised officers', 'infringement notices', 'intention to issue notices' and 'enforcement notices'.

At this point Mr Speaker, I should emphasise that these new enforcement procedures supplement and do not <u>in any way</u> reduce a council's existing obligations in enforcing its own planning scheme.

In fact Mr Speaker, it provides councils with improved and more cost effective tools, which make it easier to enforce planning scheme and permit conditions.

There will be no excuses not to act under this new process, whilst the existing obligations on individuals to comply with planning schemes and planning conditions remain unchanged.

Mr Speaker, this Bill still allows for the existing civil enforcement arrangements currently available to an individual who believes someone else has breached a planning scheme.

However, the existing arrangements have been changed to require a person with a complaint to, in the first instance, apply to the relevant council for redress.

This is a change to the current process, where an initial complaint is made to the Resource Management and Planning Appeal Tribunal.

This initial complaint to the Tribunal may prove to be premature, as it is only the relevant council that has the necessary information 'on-hand' to determine if an offence has, or is likely to occur.

Mr Speaker the Government is also of the view that it is inappropriate for individuals and community organisations to act as the 'watch dogs' of the system. Section 48 of the current Act clearly places that obligation with councils.

Because of this, the amendment requires a person with a compliance issue to initially apply to the council, but retains access to the court or tribunal where a council fails to act on a matter, or for other procedural contraventions.

Mr Speaker, this new arrangement, whilst it may place some additional obligations on councils, nevertheless, provides them with more efficient and direct powers to fix breaches, and removes a significant workload from the Tribunal which will then have more resources to deal with its core business.

Private Certification

The issue of private certification, Mr Speaker, also stems from the Better Planning Outcomes Discussion Paper of 2005, which suggested that suitably qualified private practitioners could potentially reduce the day-to-day pressures on councils.

Furthermore, stakeholder consultation conducted in support of the discussion paper concluded that private certification could significantly improve the

efficiency of the development assessment process, and there was general in principle support for the concept of private certification.

On 14 August 2012, Mr Speaker, I directed the Tasmanian Planning Commission to consult with key stakeholders on a draft Bill, which involved amending the *Land Use Planning and Approvals Act 1993 to* provide for private certification, and the issuing of a 'planning compliance certificate' by an 'accredited person'.

Two major issues were raised during consultationinvolving the protection of councils from liability in respect to privately issued planning compliance certificates, and concerns related to competitive neutrality and a consequent escalation of costs.

Mr Speaker, these issues have now been satisfactorily addressed.

The amendment includes provisions that indemnify the planning authority from any liability for, or in respect of, anything done, or omitted to be done, in reliance on a planning certificate unless the planning certificate is issued by the planning authority itself.

In regard to competitive neutrality, the Commission has been advised by the Office of the Tasmanian Economic Regulator that, because the requirement for a certificate will be regulated, these concerns are unfounded. Regulatory and policy functions and the imposition of fees and charges associated with performing such functions are not considered 'business activities' for the purpose of the competitive neutrality principles.

In addition, Mr Speaker, the amendment now provides for private certifiers to also issue planning compliance certificates for permitted uses or developments. During consultation, it was noted that, in practical terms, there is little difference between 'no permit required' and 'permitted' uses or development.

The only real distinction is that a permit is issued for 'permitted' use and development and therefore can have conditions applied.

The additional process retains the council as the permit authority which can then add conditions.

This simple model of private certification is considered by all stakeholders to be the most practical for Tasmania, compared to a more complicated system of having the private certifier act as the permit authority.

The stakeholder feedback indicated that if the private certifier acted as the permit authority, this would discourage involvement of the private sector because of the liability, administrative complexity and lack of guaranteed continuity of the operation of the consultant into the future. In short there was no overriding benefit in duplicating the existing council processes. The private certification process is therefore the same for both the 'no permit required' and 'permitted' categories.

Under the amendments local councils will be required to process the permit documentation within 10 working days, if it is lodged with a planning certificate and will only be able to charge half the normal planning fee. This time limit is a considerable reduction from the normal 42 day period currently allowed and brings Tasmania into line with South Australia.

Digital Planning Documentation

Mr Speaker, the Tasmanian Planning Commission is implementing a project to enable the submission, exhibition, approval and registration of the state's planning schemes in digital format. This is the first step in a long-term program to transition administrative processes within the resource management and planning system from paper to more efficient digital systems.

As well as planning schemes, it is intended that other key planning system documentation, including state policies, planning directives and regional land use strategies be accepted and recognised legally in digital form.

Interim planning schemes are already being prepared, viewed and stored using a digital online 'content management system'.

The purpose of the proposed amendment, Mr Speaker, is to formally establish the digital planning system as the authorised, legally recognised, version of planning documentation in force in Tasmania. This will eliminate the uncertainty regarding the up-to-date legal version that is inherent in the current paper based system.

Combined Permit and Dispensation Application

Mr Speaker, section 43A of the *Land Use Planning and Approvals Act 1993* provides for an application for a planning permit to be lodged concurrently with a request to amend the relevant planning scheme.

This has proved a far more efficient alternative to the two stage process where an applicant was required to first seek an amendment to a planning scheme, and then subsequently had to submit a development application. Requests under section 43A have, over the years, saved applicants several months in approval time and therefore significant costs.

All of the state's existing planning schemes are currently being replaced by new standardised template based schemes, which come into operation upon being declared interim planning schemes. Already over half of the councils have these schemes in place.

Mr Speaker, under the Act, an interim planning scheme cannot be amended until it has been declared as the planning scheme.

In the meantime, if a development is proposed which is not allowed under the interim scheme, the applicant may apply for a dispensation from the provisions of the scheme. This request must be agreed to by the relevant council and approved by the Commission. If the dispensation is granted, the developer can then subsequently lodge a permit application with the relevant council.

This two stage process, Mr Speaker, is in contrast to the combined process currently available under section 43A of the *Land Use Planning and Approvals Act 1993*.

Given the scale of the planning reform task, it is likely that interim planning schemes may be in force for some time.

This amendment modifies the current dispensation process to enable a combined development application and dispensation process while the interim planning schemes are in place, similar to that combined process already available under section 43A for existing schemes.

This amendment will again save time and money through a single simplified process.

Interim Planning Directives

Mr Speaker, planning directives are statutory mechanisms that enable standard statewide planning provisions to be applied consistently across all, or selected, planning schemes. Currently planning directives undergo a comprehensive assessment by the Commission before they come into operation.

This amendment empowers me, as Minister for Planning, under certain, circumstances, to forego this lengthy process and instead, issue an interim planning directive which has effect straight away.

Its introduction will be followed by the formal representation and assessment process currently in place.

Mr Speaker, this will enable immediate and responsive action to address emergent planning issues. The rebuilding process after the January 2013 bushfires for example, raised a number of significant planning issues that could have been much more effectively addressed through an interim planning directive.

The amendment is similar to the current section 12 of the *State Policies and Projects Act 1993*, which provides for the Governor to declare that an interim state policy will come into operation immediately on a temporary basis.

It should be noted Mr Speaker, that the amendment provides for an interim planning directive to cease to operate if I, as Minister for Planning, terminate its operation by notice in the Gazette or if it is superseded by a planning directive that is finalised through the normal assessment process and comes into operation under section13 of the Act.

In addition Mr Speaker, a sunset clause will ensure that it automatically expires at the end of a 12 month period from the day on which it came into effect.

The ability to establish an interim planning directive will substantially improve the efficiency and responsiveness of the planning directive process and facilitate the timely introduction of consistent planning provisions, again improving the efficiency of the planning system.

Project of Regional Significance

Mr Speaker, the Project of Regional Significance process provides a mechanism for the assessment of major projects, which make a significant economic or social contribution to a region, and/or are of a scale that would be likely to

significantly affect the provision of infrastructure, including social infrastructure, in the region.

This minor amendment will enable projects to be assessed as projects of regional significance, even if they are technically prohibited under an interim planning scheme or the finalised planning scheme made under s.30N.

This would allow assessment of significant projects which might not have been foreseen at the time an interim planning scheme was drafted.

Mr Speaker, it should be noted that although an interim planning scheme is required to be consistent with, and likely to further the objectives and outcomes of, the regional land use strategy, it would normally be drafted with a 5 - 10 year time horizon, as opposed to the 20 - 40 year horizon of the land use strategy.

This means that the planning scheme may not reflect all aspects of the land use strategy, so that a particular priority development might emerge that is generally consistent with the strategy but not specifically provided for in the planning scheme.

Mr Speaker, this amendment will provide greater flexibility for the consideration of significant and priority projects without them requiring a planning scheme amendment or dispensation process before they could be considered.

Mr Speaker, that concludes my outline of the proposed amendments and I commend the Bill to the House.