Speech By

Hon. Jeff Seeney

MEMBER FOR CALLIDE

Record of Proceedings, 4 June 2014

SUSTAINABLE PLANNING (INFRASTRUCTURE CHARGES) AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. JW SEENEY (Callide—LNP) (Deputy Premier and Minister for State Development, Infrastructure and Planning) (4.40 pm): I move—

That the bill be now read a second time.

I thank the State Development, Infrastructure and Industry Committee for its detailed and robust consideration of the bill. I now table a copy of the government's response to the report from the committee.

Tabled paper: State Development, Infrastructure and Industry Committee: Report No. 41—Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014, government response [5325].

The submissions to the committee showed clear support for the objectives of the infrastructure reform contained within the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014, which set out to simplify, streamline and clarify the infrastructure framework and provide a system that supports local authority sustainability and development feasibility. I have considered the committee's report and I am pleased to advise the House that this government supports seven of the nine recommendations of the committee either fully or in principle. I will move amendments to the bill to give effect to those recommendations as the process proceeds.

Specifically, in response to recommendation 3, I will move an amendment to new section 94A of the bill to remove unnecessary processes and restrict the involvement of external consultants who were engaged to prepare the respective local government infrastructure plans.

In response to recommendation 4, an amendment will be moved to clarify that credit is to be provided where a previous infrastructure charge has been paid. In relation to recommendation 5, an amendment will be moved to clarify that the examples about how to negotiate in good faith in relation to an infrastructure agreement relates to subsection 3 of section 671, not subsection 2. This is a correction to a simple drafting error.

With regard to recommendation 6 from the committee, although an amendment to the bill is not proposed as the benefits of including the provision to negotiate in good faith are expected to outweigh the possible impacts raised by the stakeholders, the recommendation is supported in principle. The Department of State Development, Infrastructure and Planning will continue to work with the Queensland Environmental Law Association to address its concerns.

Recommendation 7 of the committee was that the bill be amended to provide that an infrastructure agreement cannot override a development approval decision of the court. Recommendation 8 was for consideration to be given to amending the Sustainable Planning Act to enable a development to continue despite an appeal process relating to infrastructure matters. There

are no amendments proposed in response to recommendations 7 and 8. However, my department is committed to investigating these matters further during the preparation of the proposed planning and development bill.

The committee's recommendation 9 will be addressed by amending the State Development and Public Works Organisation Regulation to ensure that the key assessment documentation will be published on the internet. This includes public notification of the draft protected matters report and any amendment applications. The use of the internet in this way is consistent with the current practice of the Coordinator-General's environmental impact statement process.

I am also intending to move amendments to address some of the issues raised as points for clarification by the committee. Regarding the first point of clarification, which was the issue of transitioning existing priority infrastructure plans into the new framework, an amendment will provide for local governments that have commenced the drafting of an infrastructure plan to be able to continue to draft and adopt that plan in accordance with the legislation that is currently in place. Therefore, local governments that have commenced drafting a priority infrastructure plan under the current legislation will not be required to redraft it in an unreasonably short time frame.

Point of clarification 2 asked for further information on offsetting and refunding against an infrastructure charge. Currently, the value of offsets and refunds is determined through a negotiation process and set out in an infrastructure agreement. The ability to determine the real cost of infrastructure and provide an offset or refund for that cost will provide greater equity to the framework. It is also important to note that local authorities will be required to provide offsets and refunds across all of the infrastructure networks.

Regarding the committee's third request for clarification on whether local governments will be able to include self-assessable development in the determination of demand, an amendment is proposed to new section 635, which clarifies that this will occur.

The committee's fourth point of clarification was in regard to the use of the term 'existing uses that are lawful' as opposed to 'lawful use' as defined in section 9 of the Sustainable Planning Act 2009. The term 'lawful use' has a different definition from 'existing uses that are lawful' and was not functional in relation to infrastructure matters. As such, the term 'existing lawful use' will be used in place of 'lawful use'.

Regarding the fifth point of clarification as to why prior lawful existing uses and previously paid infrastructure charges were not included in proposed new section 636(2), an amendment will be moved to ensure that these matters are covered in new section 636.

The last point for clarification on infrastructure matters is in relation to whether a distributor-retailer is considered a public sector entity for the purposes of new section 673. The only reason a distributor-retailer would need to be considered a public sector entity under new section 673 is so that they are captured by a requirement to provide infrastructure agreements to local governments. This is a way to ensure that local governments are informed of upcoming development and changes to infrastructure plans. This outcome is achieved by an amendment, which will be moved today, to directly require that local governments and distributor-retailers provide each other with a copy of infrastructure agreements that will affect the other entity's business.

In regard to clarification point 7, the committee sought a response on whether all processes relating to the assessment of a bilateral project declaration and a coordinated project declaration can occur concurrently. This is the stated intention, as reflected in the legislative amendments. In response to the committee's point of clarification 8, the committee asked for consideration to be given to the Coordinator-General's discretionary power in proposed section 54W(3)(b) and advise whether any safeguards are in place in relation to this power. Proposed section 54W(3)(b) would allow the Coordinator-General to consider—

Any other matter the Coordinator-General considers relevant.

The government considers that there are adequate safeguards in relation to the exercise of section 54W(3)(b). First, the discretion of the Coordinator-General is limited by proposed section 54T(3), which requires—

... the Coordinator-General must not approve the undertaking of the coordinated project to the extent the project will impact an environmental matter protected by a specified provision in a way that, in the Coordinator-General's opinion, is unacceptable or unsustainable.

Secondly, proposed section 54W(2)(b) requires that the Coordinator-General must—

Ensure the approval and conditions are not inconsistent with the bilateral agreement.

Thirdly, the Coordinator-General is limited to relevant matters only. The overall intent of proposed section 54W is to ensure that the Coordinator-General's decision criteria are co-existent with existing part 4 of the State Development and Public Works Organisation Act, whilst being bound by and within the scope of the proposed bilateral approvals agreement. It should also be noted that under section 136(1)(g) of the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999, the decision maker must consider 'economic and social matters', which provides a very broad discretion. The government, therefore, considers that no amendment is required.

In response to the committee's clarification point 9, an amendment is proposed to the definition of a proponent's environmental record in new section 54I to include reference to the environmental history of a corporation's parent corporation and its executive officers. In clarification point 10, the committee sought further information about the rationale for the general exclusion of the statutory time frames within the State Development and Public Works Organisation Act 1971. Statutory time frames are generally put into environmental legislation to protect the interests of the proponents who can be subjected to long delays. Our Coordinator-General has a strong record of managing assessment times within statutory time frames. Over the past two years the Coordinator-General has reduced assessment time frames by 55 per cent compared to the historical averages of other Coordinators-General under Labor governments.

The committee sought advice, in clarification point 11, about the rationale for the apparent exclusion of those acting in the public interest from bringing a proceedings relating to an offence provision to the Planning and Environment Court. It is the view of the government that these provisions are sufficiently open to any party that is genuinely affected by the project—that is, a person whose interests are significantly adversely affected by the subject matter of the proceedings.

The committee also requested, through clarification point 12, information on the Coordinator-General's process for selecting external consultants. The method of selecting external contract advice is influenced by (1), the availability of technical experts to provide the specialist advice; (2), the exclusion of potential consultants who may be conflicted by relevant previous or current work for the proponent and the proponent's competitors or other relevant project stakeholders; and (3), prior consultation with the proponent about the scope, methodology and approximate cost of the advice. The procurement process of external advice is subsequently conducted in accordance with standard government procurement processes. The majority of coordinated projects have required no external contractor advice.

As foreshadowed by the committee's report, I will move amendments to enable the suspension and reinstatement of an environmental approval in addition to a cancellation. This responds to a number of submissions made to the committee and provides for a more flexible approach to enforcement.

The government's response to the committee's report also addresses the 12 points for clarification identified by the committee. There are also some changes that I will make as a result of further consultation. I will move amendments to the bill relating to matters identified during this consultation. One of these amendments will provide for infrastructure charges to be levied on self-assessable development when that development is at a building works stage. This amendment ensures that local governments and distributor-retailers can levy charges to account for the additional impact on infrastructure which is produced by the self-assessable development. A further key amendment provides for those local governments that have started drafting their priority infrastructure plan to be able to continue to draft that plan in line with current regulation. This negates the need for local governments to have to undertake unnecessary drafting, saving both time and money.

Other amendments are identified to clarify parts of the bill which stakeholders identified as uncertain. As a result of the robust consultation through the committee process and also the ongoing consultation undertaken with stakeholders, I intend to move an amendment that provides for transitional provisions for the new, streamlined water approval process, the utility model, which will be contained in the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009.

The bill will align the distributor-retailer infrastructure charging and planning arrangements under the South-East Queensland Water (Distribution and Retail Restructuring) Act with the local government framework under the Sustainable Planning Act. During consideration in detail the Water Supply Services Legislation Amendment Act 2014 was amended to remove the transitional provisions from the utility model so that further transitional provisions could be provided which accorded with the Department of State Development, Infrastructure and Planning infrastructure reforms. Both the utility model and the infrastructure reforms are proposed to commence on 1 July 2014.

I intend to move an amendment to section 96 of the City of Brisbane Act 2010 and section 94 of the Local Government Act 2009 to specify that in deciding a rating category local governments may categorise residential land and decide differential general rates according to whether or not the land is the principal place of residence of its owner and to confirm that this has always been the case.

I also propose to amend the Industrial Relations Act 1999 to repeal provisions setting out requirements for spending for political purposes. Chapter 12, part 12, division 1B currently provides for balloting to approve spending for a political purpose. It is also proposed to repeal schedule 2C of the Industrial Relations Regulation 2011 which sets the rules for the conduct of an expenditure ballot. A proposed transitional provision makes clear that no prosecution can be instituted or maintained during the time the provisions were in force. These provisions were introduced to ensure that members of industrial organisations have a say in how their organisation spends their fees when pursuing a political agenda. The Queensland government's commitment to transparency and accountability of industrial organisations is firm. However, a recent decision of the High Court in Unions New South Wales v New South Wales in December 2013, where provisions in the New South Wales Election Funding, Expenditure and Disclosures Act 1981 were struck down, indicates that the High Court will read widely the implied right of freedom of communication on government and political matters. That decision has given the government cause to review the provisions for balloting to authorise spending for a political purpose provided for in the IR Act. We firmly believe in the transparency and accountability of industrial organisations in Queensland.

There is no doubt that this bill delivers on the government's clear commitment to deliver an efficient and effective infrastructure charges framework. This legislation will give local governments, water distributor-retailers and the development industries the tools needed to deliver new development to grow Queensland in a balanced and predictable manner. It will contribute to removing the existing duplication between Commonwealth and state regimes for environment assessment and approval processes and therefore to growing the Queensland economy.

I conclude by once again congratulating the members of the committee. This is a highly technical bill. It involves a range of amendments that I have accepted on the points of clarification that were sought by the committee that do not change any of the essential elements of the bill. They clarify a range of technical matters and I thank the committee for bringing the need for that clarification to my attention. I commend the bill to the House.