Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

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STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (4.13 p.m.): I rise to support the Bill and, in particular, to refer to the safeguards for landowners as regards acquisition and access. In doing so, I point out that critics of this Bill would have us believe that, if this House agrees to this legislation, we will be opening the way for Executive Government to play fast and loose with the property rights of ordinary Queenslanders. These are the same people who would have had us believe that native title legislation meant that every suburban block in Queensland was at risk, as we saw from some of that rapacious advertising in recent years. They would also have us believe that powers of the sort contemplated in this Bill have never previously been legislated for. As I will show in this speech, neither of those propositions has any merit. To do this, I would like to particularly address the acquisition and access provisions within the proposed Bill and the safeguards that are built into these amendments.

Over the past decade in Queensland there has been an increasing interest in private sector ownership and operation of infrastructure projects, such as the Surat/Dawson project involving the private sector provision of a proposed dam, port, railway and power station. One of my colleagues will discuss the importance of that project more specifically. It is anticipated that the private sector involvement in similar types of major project infrastructure developments is likely to occur increasingly in the future. As has been stated, the Bill to amend the State Development and Public Works Organization Act 1971—the Act—recognises this fundamental shift away from the public sector to the private sector in the financing and operation of public infrastructure.

For most of these things to happen, access to land for the purposes of investigating the feasibility of an infrastructure facility is of critical importance. In order to ensure that a person proposing to develop an infrastructure facility is able to access land for an investigation, a process is included within the Bill for the granting of access to land for the purpose of that investigation. Once the viability is established, certainty of availability of the land is then required.

I want members of the House to remember that, for many classes of infrastructure, the land requirements are very specific. There are only so many dam sites or port sites and only very limited corridors for railways and roads. So there are usually very few options for which land is required. That is why access and acquisition powers are needed, but compulsory acquisition is something no democratically elected Government contemplates with great equanimity and this is why the Government has been determined to safeguard the rights of landowners. I would like to address at some length the safeguards that exist in terms of those acquisition and access provisions.

The Bill contains a provision which will allow the Coordinator-General to acquire land for an infrastructure facility development by persons other than the State only under very specific circumstances and only if approved by Governor in Council. Acquiring land for such purposes is not a decision which will be taken lightly by any Government, and the proposed amendments ensure that there is a high level of accountability and transparency in the acquisition of land for third parties. The previous speaker's flippant suggestion that somehow another authority within a Government department is going to be just as good is very shallow. Indeed, the hurdles in the Bill are much higher than those that confront local governments exercising acquisition powers for the benefit of persons other than the State under parallel powers in the Integrated Planning Act. Need I remind the House that that Act was introduced by the former Government?

In considering whether land should be taken for the purpose of providing an infrastructure facility which may be built, owned and operated by a person other than the State, there are a series of critical tests which must be passed before the Coordinator-General can move to acquire land compulsorily. First, the facility must be an infrastructure facility as defined within proposed section 78(5), unlike a similar definition within the Commonwealth Native Title Act 1993. There is no discretion to be exercised by the State Minister as to what constitutes an infrastructure facility. Either a proposed facility meets the definition within section 78(5) or it will not be considered by Governor in Council. It is a very clear test.

The acquisition power is limited to those infrastructure facilities within the definition and nothing else. This power cannot be used to build a new corner store. Secondly, through the Coordinator-General, persons proposing an infrastructure facility must be able to demonstrate the economic or social significance of the facility to the national, State or regional economies. This economic or social significance must take into account the effects that the facility may have in terms of stimulating a number of critical factors, including the potential impacts that will flow on in terms of economic growth, technological development, agricultural development, industrial development, resource development, employment opportunities or community wellbeing. The underlying concept is that infrastructure is not built for its own sake. It is built to enable other economically or socially beneficial activities to occur.

The Coordinator-General will, of course, seek additional information from the proponent to support any recommendation to the Governor in Council, such as the land proposed to be acquired, details of the proponent's financial and technical capacity to implement the proposed facility, details on environmental impact assessments undertaken, geotechnical survey information on the land proposed to be acquired, or any information in support of the project such as likely demand for services, et cetera.

To encourage the private sector involvement in infrastructure development, the amendments allow for Governor in Council approval to apply even if the rights and interests in the land taken by the Coordinator-General were conferred on a person other than the State. The Governor in Council will be well aware if rights or interest in land taken were to be later conferred to a person other than the State. A user's guideline, which is currently being developed by the Government in consultation with stakeholders, will further elaborate on the form and type of information to be presented to the Governor in Council. Most importantly, there will be a requirement to demonstrate to the Governor in Council that provision of the infrastructure will, however financed, provide benefits to parties other than the proponent.

As a measure to encourage acquisition of land by agreement, if the infrastructure facility is to be built, owned and operated by a person other than the State the Coordinator-General cannot and will not move to acquire land compulsorily unless he is satisfied that reasonable steps have been taken to acquire land by agreement with landowners. The guideline discussed above will also make very clear what reasonable steps will be required by private infrastructure proponents to acquire land by agreement. It is the very clear preference of the Government that private providers of infrastructure be fair dinkum in efforts to acquire land by agreement with landowners, but the legislation recognises that in some cases agreement may not be reached between the parties.

Only if the facility has been provided with Governor in Council approval and there is no agreement between the parties will the Coordinator-General act to acquire land. The provision does not rule out, however, that the parties may agree to an acquisition under section 15 of the Acquisition of Land Act— taking by agreement. Taking by agreement is a common practice for acquisitions of a similar nature by public utilities. If there is no agreement—including the section 15 Acquisition of Land Act, taking land by agreement—land may be acquired for provision of the infrastructure facility. The procedural rights of landowners to compensation for land taken and ability to object are prescribed within the Acquisition of Land Act process.

In the event that any land is taken for a person other than the State, a provision has been included in the Bill requiring the Minister to cause a statement of reasons for the taking to be provided to this Assembly within three sitting days of that taking. The statement would provide details of the steps taken by the proposed infrastructure provider and the landowner to acquire land by agreement or otherwise. Again, the guideline will specify the type of information that may be contained within the statement. It can be expected, though, that the contents of the statement will be very similar to the information provided to the Governor in Council in the consideration of whether the facility is of economic or other significance, and it will provide specific details of the land to be taken. The requirement that a statement of reasons be provided to the Parliament is an enhancement of the normal acquisition process. This statement will be open to public scrutiny, as will the Governor in Council's decision to approve the facility.

If the interest in land taken by the Coordinator-General is to be conferred on a person other than the State, provisions within proposed new section 79A and section 80 of the Act will ensure that

the State is duly compensated for all costs, including compensation costs. Section 80 of the Act allows for all costs and/or compensation payable for the taking of land for the infrastructure facility to be paid to the Coordinator-General.

Further, under proposed new section 79A the Coordinator-General may enter into contractual arrangements with the infrastructure proponent which may address issues such as the payment of costs associated with any resumption. For example, if the land is to be acquired for a person other than the State, under a section 79A agreement the Coordinator-General may seek to have funds made available before land is acquired.

If land is taken, either voluntarily or through the acquisition process, and on-sold to the proponent but is not subsequently required for the infrastructure facility, provisions will be made through an agreement between the Coordinator-General and the infrastructure proponent to offer the land back to the original landowner at a price to be determined by the Valuer-General. This arrangement will mirror provisions within section 41 of the Acquisition of Land Act which apply when land taken remains in State ownership.

In terms of addressing native title, if any, associated with land to be taken for a person other than the State, procedures within the Commonwealth Native Title Act 1993 and relevant State legislation will be followed. That says a lot for the scaremongering we have heard today from those opposite. If land is taken for an infrastructure facility as defined in section 253 of the Native Title Act, native title claimants must be given the same procedural rights as would the owners of freehold under the Acquisition of Land Act. Under section 24MD(6B) of the Native Title Act, the acquisition process for non-Government providers of infrastructure follows an enhanced, mandatory notification period.

In Queensland, affected native title interests have recourse to objection through the Land and Resources Tribunal, which is provided with the necessary jurisdiction and constitution under the proposed section 78B of the State Development and Public Works Organization Act. The constitution of the tribunal with the "standard panel" has the highest regard for the special nature of native title interests. If the infrastructure facility is not defined within section 253 of the Native Title Act, any native title interests must be dealt with through the right to negotiate process as prescribed within native title legislation.

I now turn to the issue of access. The Bill provides extensive provisions which, while permitting investigations of land under consideration for an infrastructure facility, safeguard the interests of landowners. The provisions have been modelled on access provisions for rail investigators within amendments to the Transport Infrastructure Act 1994, passed by the Legislative Assembly in November 1998. Again, in that sense there is nothing terribly new in this Act.

I will highlight the additional safeguards that have been incorporated into the access provisions of the Bill. First, before issuing any access authority the Coordinator-General must be satisfied that the person has made efforts to secure access by agreement with landowners and that the person is genuinely considering construction of an infrastructure facility as mentioned in section 78(1)(f) before the powers under that section are exercised. It is recognised that if a project is to proceed the prospective private proponents are able to access the land for the investigative purposes before land is taken.

Also, before consideration of an application for an investigator's authority, the Coordinator-General must be satisfied that efforts have been made by the applicant to negotiate voluntary access to the land. The Coordinator-General will be seeking detailed information from the applicant on the steps taken in seeking voluntary access to the land. The proposed guideline will provide the basis for steps to be taken by the proponent. Only when the Coordinator-General considers that voluntary access agreement is unlikely will consideration of an access authority be progressed. The Coordinator-General will be seeking information of the proposed infrastructure facility including, for example, the likely demand for services associated with the facility, the technical and financial capacity of the proponent to implement the proposed facility and so on.

To provide the landowner with advance notice of the access application, the Coordinator-General will notify the affected owner that an access application from a prospective infrastructure provider is under consideration and the power that may be exercised if that authority was granted. To ensure that landowners are kept informed, the Coordinator-General is also obligated to consult with the landowner when considering the access application. This consultation could include, for example, input into conditions that might be applied to the authority, if granted. It will also provide an opportunity for the landowner to put forward reasons why access should not be granted. As a condition of the access authority, the Coordinator-General may require the investigator to lodge a bond or security deposit for a minimum period in the event of any claims against the investigator by the landowner for any loss or damage resulting from the access. The bond will only be released 12 months after the expiry of the authority and only if there has been no claim by the landowner for loss or damage, unless that loss or damage has been rectified or compensation paid.

Aside from the bond, there are extensive provisions within the proposed Bill in relation to compensation to landowners in the event of loss or damage suffered as a result of the access. Landowners will also have access to the Land Court in the event that agreement cannot be reached on any loss or damage which has resulted from the access to land. Landowners will have 12 months from the time that damage occurred to make a claim against the investigator—or a later time determined by the Land Court.

In summary, the proposed amendments to the acquisition and access powers within the State Development and Public Works Organization Act are consistent with the Government's objective to facilitate private sector investment in the development of infrastructure. They are the next logical step needed to encourage private sector involvement in this rapidly growing field. They provide a means, under very specific circumstances, by which land can be acquired for the provision of infrastructure by the private sector. The process allows for negotiation between the proponent and the landowner in terms of obtaining access to land and for acquisition of land. Only if there is no agreement between the parties will the Government act to acquire land or grant statutory access to land. It is anticipated that successful passage of the Bill will encourage private investment in the development of Queensland's major infrastructure facilities. I support the Bill.