Speech by

Hon. J. ELDER

MEMBER FOR CAPALABA

Hansard 8 June 1999

STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Hon. J. P. ELDER (Capalaba—ALP) (Deputy Premier and Minister for State Development and Minister for Trade) (11.06 p.m.), in reply: I thank most of honourable members for their contributions to this debate. I have to say that the contributions from the One Nation members and some Independents were intellectually bankrupt and factually wrong. However, I will deal with their contributions in the Committee stage.

I thank all the members for their support for the amendments that relate to the environmental impact processes, the State development areas and project boards. I will deal with some of the substantive issues that were raised during the debate. One issue that was raised by the Opposition spokesperson and the Scrutiny of Legislation Committee, and which relates to penalties in a State development area ,requires a specific response. I have provided a detailed response on this matter to the Scrutiny of Legislation Committee. However, the short answer is that guaranteeing the integrity of a State development area is an important part of attracting users to those areas. Of equal importance is being able to satisfy the community that the users of the State development areas will respect the environmental and planning controls that have been established to ensure that SDAs are good neighbours to their adjoining properties.

The major issue raised in this debate has been the proposed powers of compulsory acquisition and the access for infrastructure projects undertaken by the private sector. After listening to the members from both sides who have taken part in this debate, one thing is clear: none of us take the need to legislate for compulsory acquisition powers lightly. All of us in our time in Parliament have been asked to help constituents whose lands have been required for infrastructure projects and all of us have been moved by the impacts that those decisions have on people's lives. Similarly, we have all seen the despair of people in small regional communities as young people leave town in search of work. We have also seen the renewed hope that arises out of jobs resulting from properly planned infrastructure projects and the development opportunities that those projects provide. The development that can occur when infrastructure is in place has the ability to transform the future of many communities.

All of us share the desire to create sustainable jobs, particularly in rural and regional Queensland. Finding new ways for the development of key economic and social infrastructure is one very practical way in which job creation can be pushed along. Again, after listening to the speakers from both sides in this debate, I am in no doubt that we share this common objective. The difference between the members on this side and members opposite is the method by which any compulsory acquisition should occur when State Government agencies do not provide infrastructure directly. What should be the rules when, in addition to the broad community benefits that infrastructure brings, there is also a direct benefit for the private company that provides the infrastructure?

Honourable members opposite have painted a picture of an epidemic of private infrastructure projects breaking out across the State. Let us stop and think about that for a moment. How many infrastructure projects can members point to that are self-financing, whether built by the Government or the private sector? The honest answer is very few. Therefore, even if we move to an environment where the private provision of infrastructure is commonplace, few projects will occur without some Government financial involvement. However, Governments will not be able to take advantage of private sector

efficiencies of delivery or share the risks with the private sector unless they can provide an interest in the land to the private sector. This basic level of security underlies most financial arrangements.

The picture painted by the Opposition is not a picture of the real world. The appetite for infrastructure is finite. What we are talking about here is a different method of delivery that, if managed well, will provide us with more infrastructure for the dollars that the community is willing to spend, either through taxes or direct user charges. We are not talking about an exponential increase in infrastructure provision. Even the most bullish estimate of our infrastructure needs does not begin to suggest that we should give any credence to emotive statements that no home is safe from an uncontrollable flood of infrastructure projects. The real issue for this debate is whether any home is more or less safe after this Bill becomes law than it is now. The objective answer is that, on balance, all homes are safer.

If we can agree that under either full public provision or partly public/partly private provision we will have about the same number of infrastructure projects, the comparison becomes simple and the answer is obvious. Where all infrastructure is publicly provided, the processes for entry onto land for investigations and for compulsory acquisition do not provide the land owners with the opportunities and safeguards that this Bill provides in terms of this acquisition power. Where in the public sector processes are the requirements for commercial negotiation—the reasonable steps in this Bill? Where is the requirement to report to Parliament on the use of the acquisition power or the power to set conditions that guarantee the land-holder's interests are respected during investigations and any damage or loss restored quickly and effectively? Do I need to give an answer to the question, because there is not any.

The honourable member for Burnett and other opposition speakers have acknowledged that the coalition recognises the need for legislation of this sort and had indeed contemplated introducing legislation when it last held Government. The Leader of the Liberal Party also acknowledged that there are times when the public benefit is paramount to private interest and that the State is entitled to use its legislative power for that end. At one stage, members opposite were contemplating using the Acquisition of Land Act, which has much broader powers than this Bill does.

When they were put to the test of introducing legislation, for reasons best known to themselves they baulked at the generic legislation. I do not know the reasons that were given in Cabinet or caucus meetings, but they baulked. I know that it was being contemplated because I have the briefs. They continue to suggest that any land required for infrastructure provision by the private sector should be taken by an Act of Parliament. Let us look at the legislation that was introduced by the honourable member for Burnett, which was the Transport (Gladstone East End to Harbour Corridor) Act 1996, which we supported. That was the model that the coalition used. Has the honourable member read that Act recently, because it was his model? He says that this Bill provides sweeping powers, but I point to the one Act that he used to acquire land. If he has never read it, it is about time that he did so.

That Act did not contain any of the guarantees that I have put into this legislation. That Act was site specific. It was single project legislation. It simply and forcefully said that the land is taken: no ifs, no buts, no prior negotiation, no appeal on the merits—especially no appeal on the merits. In fact, even judicial review, which my friend opposite belittles as being too costly and providing too little protection, was specifically denied to property holders. The member outlines the type of model that he wishes to support, and I show him his own legislation. When in Opposition the Labor Party supported that legislation because we recognised the need for that particular infrastructure. The model that the honourable member prescribed when in Government contained none of the safeguards that are contained in this legislation.

An issue that has been raised in debate and by the Scrutiny of Legislation Committee has been why appeal on the merits has not been provided for. I have made a formal response to the legislative committee on this point and I refer members to that response.

As to reasonable steps to acquire the land by agreement, I have a recollection of a Minister of the Crown stumbling around East End with a chocolate cake. The honourable member for Gladstone would be aware of that. Of course, for native title interests there was not even a chocolate cake. The House might recall that the Leader of the Opposition as Premier had a permanent solution to native title. His solution was a one-point plan. His plan was to extinguish all native title in Queensland by one Act of Parliament, known in the Public Service as the Armageddon principle, that is, "I'm a gettin' pretty nervous". It was known as that for a long time. Is this the model we should follow? The hypocrisy drips off members opposite when it comes to their argument on native title.

The Opposition talked endlessly about the potential for corruption. How does one guard against corruption in a legislative model like this? Does one deal behind closed doors, walk into Parliament with a Bill proclaiming that the land is taken and guillotine it through—end of story. Compare that to the situation in this Bill. There was public notice in the Gazette that the acquisition power is enlivened by the decision of the Governor in Council. To make that decision even more public, I will amend the Bill to provide for a statement of reasons to be tabled when that decision is taken. There is a requirement for prior negotiation, with the process set out in guidelines which will be a statutory instrument. Decision

making will be constrained by judicial review, the accountability procedures of the Financial Administration and Audit Act, the Public Sector Management Act and the Criminal Justice Commission Act. That decision will be taken by an official holding an honoured statutory office who will be required to report to the Parliament annually. In other words, if members opposite want to do it, they wander in with their model. If they want a process that is open and accountable, they should support the legislation before the House. There will be a further report to Parliament on how the compulsory acquisition power has been exercised.

What about the certainty of process? Our approach is to set that process in clear words that anyone can follow, so that everyone knows what the rules are. Land-holders will know what to expect of the developer and the Government, and developers will be able to go to their bankers with a clear explanation of where they stand in terms of the availability of the land. To amplify the requirements set out in the Bill, there will be a set of statutory guidelines with the force of regulations which must be followed by the Coordinator-General and the development company. Compare that to a situation where the Government of the day may or may not go to the Parliament with a project specific Bill. How would members feel if they were an affected land-holder, sitting there with the axe poised but not knowing when or if the axe will fall or even whether it is an axe or a spear. That is what members opposite advocate. In other jurisdictions this would be constitutionally prohibited as cruel and unusual punishment. That is exactly what the Opposition is prescribing in project specific legislation.

What would a developer say to the bank in those circumstances? "My mates in George Street have got this snappy little Bill drafted and they'll push it through when I say the word. Don't you worry about that!" Is that how project finance is arranged? I think not!

What I find hardest to understand about the Opposition's position on this Bill is that it gave almost identical powers to local governments in the Integrated Planning Act. As a Government, in the Integrated Planning Act it gave to all councils identical powers that I am seeking now for the State. There was no mention of these powers in the Explanatory Notes that accompanied the Bill and there was no mention of them at the time when it was in Government. I ask the entire Parliament to have a look at section 5.5.1 of the IPA. The Opposition apparently has no concerns about 132 local councils in this State having access to this power, but it will not trust it to the State. Can it explain that to me? If it can explain that to me, that will go a long way towards my understanding the position it has taken on this Bill. It gave it to them in the IPA and they have had it under the IPA. All I am seeking is simply the same power.

The Leader of the Opposition and other Opposition speakers raised some concerns about native title. He drew the attention of the House to the similarity of the definition of "infrastructure" in the Bill to the definition in the Commonwealth Native Title Act, as if he had uncovered some great secret. What he did not tell the House was that the Explanatory Notes circulated with the Bill had already made that similarity quite clear. The honourable member then sought to claim that the adoption of the definition in this Bill was somehow a watering down of undertakings given by this Government to native title holders about how land involving native title would be dealt with for infrastructure projects. He, of course, overlooked the requirement for developers to take reasonable steps to otherwise acquire the land prior to consideration being given to compulsory acquisition. For native title interests, this will be done through the negotiation of indigenous land use agreements.

My advice is that it is not necessary to spell out the exact processes to be followed in detail in this Bill, because they are covered elsewhere in other legislation. Failure to adhere to those processes would render the action invalid. However, to avoid continuing misrepresentations of the Government's intention that I have heard from members opposite, I will be bringing forward in Committee amendments that will address this issue. The important benefit of using an approach involving indigenous land use agreements is that it keeps open the option that non-extinguishment principles may apply in cases where agreement is reached. Moving straight to compulsory acquisition closes off the option where the taking of this is for the benefit of the third party. But perhaps that is what the Opposition would prefer to see happen.

The Opposition's hypocrisy in relation to native title is also quite stunning. The Leader of the Opposition made the suggestion that the native title provisions in this Bill were somehow dependent upon Senate approval. The Bill makes it clear that the independent body for the review of objections in relation to the compulsory acquisition of native title is the Land and Resources Tribunal. The legislation establishing that tribunal is not subject to disallowance. Action is being taken to appoint the registrar and tribunal members now. It is not subject to disallowance.

A recurring theme in the Opposition's contribution to this debate has been the need for generosity in compensating affected landowners. I have been careful to ensure that we are not creating a new acquisition code in this Bill. As I have mentioned on a number of occasions, these amendments are about infrastructure projects from which we expect a wide range of community benefits. Furthermore, the existing public sector infrastructure providers are potentially in direct competition with

private sector infrastructure development companies, and the same rules for compulsory acquisition should apply in both cases.

Private sector organisations enjoy a degree of flexibility not enjoyed by the public sector. I would expect that this flexibility would be apparent during the mandatory negotiation period before the resort to compulsory acquisition could occur. In other words, they are going to be far more favourable in dealing with land issues so that they do not go through a compulsory acquisition power. But if they do, they go through the same power that exists now for the public sector. If the Opposition understands anything about the private sector, it would know that time is money, and they will negotiate far better outcomes.

The requirements of this Bill and the provisions of the Acquisition of Land Act and the native title regime together provide a very strong incentive for the proponent to offer attractive terms so as to get a quick settlement. I would expect that that would be the outcome in the majority of cases. We do that now for the public sector. We are creating a vehicle for the private sector to create public infrastructure. The Opposition has gone on with some nonsense tonight. It happens now. Everything that the Opposition has outlined happens now in terms of public sector delivery. This is a mechanism by which the private sector can do this, and I would expect that it would be out to do a deal. However, let us say that it is not. There will always be cases where agreement cannot be reached. In these cases, as a last resort the acquisition power is necessary. Where compulsory acquisition is the outcome, there is a well-established system for determining market value and for compensating for disturbance. Views will differ on the fairness of compensation under the system, but this Bill is not the context in which to debate those differences of opinion; other legislation applies.

The Opposition has had plenty of chances to change the compensation rules for land acquisition. When it was in Government, it did not grasp the nettle on that issue, either, no matter how much it talked about it. This provides a provision for the private sector to deliver public sector infrastructure. If an agreement cannot be reached, it will go through the other processes. All of this nonsense about going in and grabbing land in people's backyards is just that—nonsense. A process is in place by which the public sector deals with land acquisition under the Acquisition of Land Act right now. It is going on today.

I wish to take up another point, namely, the suggestion that going to the Land Court for compensation issues is beyond the financial reach of most land-holders. The Land Court is the least costly and most accessible of all of our courts. It has an established record of dealing with compensation cases speedily and equitably. For the access issues, the first recourse for land-holders seeking restoration of damage or loss is to claim against the bond held by the Coordinator-General. What I have done is put in a bond element. That will be the first area of recourse. On occasions I think we will find that it will be rare that the matter would go any further. That does not happen now with respect to public infrastructure being provided by the private sector. In this case a bond will be put in place. As the first recourse, they will be able to go straight to the Coordinator-General in relation to activating that bond.

A number of Opposition speakers have claimed that the definition of "infrastructure" is capable of being widely interpreted and that this will allow acquisition by some future unscrupulous Government for purposes well beyond what the Government intends. If we are not the villains here, whom are we being warned against? There are not too many other candidates, are there? We have heard from honourable members opposite and we have read in the press that the provisions will enable acquisitions for shops and golf courses. That might be the case under the IPA, a power which presently exists for local governments, but it is not the position here. Obviously, these irresponsible statements have created anxiety in the community. All members opposite have been guilty of it. They are irresponsible, because they are not based in fact and they are not based on an objective consideration of how the scheme in this Bill operates.

There are three hurdles to get over. Is this an infrastructure facility as defined? Will it stimulate a range of economic or social activity? Is the activity significant to Australia, Queensland or the region? I am convinced that taken together these provisions comprise an adequate test to ensure that the powers provided for are used, and used wisely. But again, for the sake of further clarity about the Government's intentions and to guard against deliberate misrepresentations by selective quotation, I will be introducing amendments that make our position crystal clear. The only social infrastructure that will qualify is education or health infrastructure. There must also be both social and economic benefits to the community in respect of those two pieces of infrastructure. The only social infrastructure that will qualify is education and health, and both social and economic benefits must arise from the project.

As to the scale of impact, I am of the view that the regional scale impacts are both appropriate and desirable. An important objective of this Government—and I would have hoped of the Opposition—is regional development. I make no apology for being clear about that in this Bill. I would have thought that members opposite would also have had a commitment to sustainable futures for

regional economies. Apparently that is not the case, given their criticisms in relation to the regional elements of this Bill.

Selective quotation is a favoured technique of those members opposite. How many times did we hear them refer in horror to the provisions in this Bill allowing companies granted a permit to enter land for investigation purposes "to do anything on the land or bring anything onto the land"? They of course forgot to mention that these activities are for investigations to prove the feasibility of the project and are subject to conditions set out by the Coordinator-General in consultation with the land-holder. It is also through this condition making power that access for investigation by more than one company will be handled, for example, by requiring the companies to coordinate their investigations and share the results.

Even the possibility of leaving equipment on the property during the course of these investigations—something that happens right now in everyday life in terms of providing public infrastructure—is somehow sinister. Would the members opposite prefer that the equipment be removed every night, to increase the likelihood of noxious weeds being spread on the properties or the gates being left open or the tracts of land damaged? Would they prefer that? Can I seriously believe their view and can I seriously believe that they represent their constituency when they make claims like that? They cannot effectively represent the constituency that they claim to represent by making claims of that nature.

I would have thought that Agforce would be one of their constituencies. A constituency that would include Agforce would be a constituency that the members opposite would support. Agforce has written to the Premier indicating that access provisions in this Bill are a model of enlightenment and urging the adoption of those provisions in other legislation. Whom do I believe? Do I believe Agforce? Who does the constituency or the community believe? Do they believe the members opposite or do they believe the organisation that represents their interests—Agforce? Those are not my words; they were used in a letter to the Premier. They are Agforce's words.

I have dealt at length with major themes raised by Opposition speakers. There are a number of specific questions raised by those speakers and by the Independent member for Gladstone to which I want to respond. The first of these is why the existing acquisition powers of the Coordinator-General cannot be used for State acquisitions that benefit a person other than the State. It is true that the Coordinator-General currently has powers for acquisition of land in a State development area that are available even when there is a benefit for a person other than the State. For these powers to be used, the Government needs to be able to predict the requirement and plan in detail for it.

For this to work for all classes of privately provided infrastructure, we have to have a complete knowledge of how the private sector would respond to the market opportunities or even opportunities that were identified by us. Anyone who has followed recent developments in the electricity markets or the development of the Surat/Dawson project will know that that is just not a realistic expectation. It is just not a real expectation, and members opposite know that. If we are going to give the private sector flexibility, if we are going to encourage the private sector to be innovative, then obviously we cannot use that power.

The Solicitor-General has provided specific advice as to the limits of the existing powers. He provided the same advice to the Opposition; it is aware of his advice in relation to it. The member for Gladstone has indicated that she will move an amendment proposing that approval for compulsory acquisition be given by regulation approved by the resolution of Parliament. I thank the member for putting this model forward, but in many ways it is little different from a special Act of Parliament. It has the same uncertainties as to timing and many of the same problems in relation to uncertainty. Above all, however, it departs from the model of government that says that Governments are elected to govern and are not expected to seek parliamentary approval for every operational decision that they make. This Bill already departs some way from that model in requiring parliamentary reporting of key decisions. Given the emotion surrounding this topic, I am comfortable with that. But, as I have already said, I do not accept that there is a need for parliamentary decision making on each project.

I have heard what the House has had to say on this Bill. I understand and share some of the reservations of some members about legislating for compulsory acquisition. It is not an easy decision for any of us. However, when we stood for election in this place, none of us expected that all decisions would be easy. I am satisfied that both sides of the House acknowledge the need to provide access to land for infrastructure projects of significance, however they are funded. In this debate the Opposition has made it quite clear that it has a preference for special legislation on education, despite, as I said earlier, having conferred upon local governments—132 local governments—powers that I am similarly seeking in this Bill.

We on this side believe that the Bill provides a better alternative for setting out a process for all to see and creates an expectation in the legislation about how the proponents will behave. It is there,

and it is there in writing. The hypocrisy from the Opposition members in this debate has just been blinding. They were looking to use wide acquisition powers when they were in Government, as I said earlier, for reasons obviously decided upon in the party room and in Cabinet. Who knows what those reasons were; they are the only ones who know that. I know exactly what they were planning in terms of using the Acquisition of Land Act, and those powers were much broader and had none of the accountability measures that are contained in this Bill. The only piece of legislation that they can use and that they can stand by in terms of special legislation for a project is the one which just took the land lock, stock and barrel—using a term that they have used previously—without any accountabilities.

The accountabilities and the transparencies are in this Bill. Agforce supports it. All the major industry groups support this particular piece of legislation. In fact, from the discussion that I have had with land-holders, they also want the certainty that is provided by this piece of legislation. To say that they would accept the powers in every piece of special legislation or project specific legislation that comes before the House and would vote against the same powers in each of those specific pieces of legislation is just the height of hypocrisy, given their previous positions on these particular issues.