Speech by

Hon. NITA CUNNINGHAM

MEMBER FOR BUNDABERG

Hansard 28 November 2001

INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL

Hon. J. I. CUNNINGHAM (Bundaberg—ALP) (Minister for Local Government and Planning) (11.33 a.m.): I move—

That the bill be now read a second time.

The Integrated Planning Act 1997 (or the IPA as it has become universally known) has been the most significant reform of Queensland's planning and development assessment system ever undertaken. It leads the way nationally with regard to contemporary approaches to planning and development assessment.

Since the IPA's introduction in March 1998, approximately 250,000 individual development applications are estimated to have been processed under the IPA's integrated development assessment system (or IDAS). These range from simple proposals for small scale building work to master planned communities and major industrial, commercial and tourism projects. The IPA has for the first time brought virtually all development assessment in Queensland under a single, consistent framework, using a common set of rules, processes, rights and obligations. It is leading to better environmental outcomes while substantially enhancing Queensland's ability to attract new investment and development through efficient and more cost effective development approval processes.

I am pleased to record the continuing strong bipartisan support for the IPA and its key objective of seeking to achieve ecological sustainability when proposals are being assessed for approval, and when councils are preparing and implementing their planning schemes. Nevertheless, as with any major legislative reform of this type, there are always improvements that can be made to the operation of the system to better help it meet its objectives. It was for this reason that the previous Minister for Local Government and Planning instituted an operational review of the IPA to identify aspects of its day-to-day operation that could benefit from further improvements. At that time, the minister made it clear that the review was about the operational aspects of the IPA and not its fundamentals. This reflects the fact the IPA is still in its early stages, and any changes to the underlying principles should not be considered until its planning and development assessment systems are fully implemented.

The public consultation undertaken for the operational review yielded a wealth of constructive suggestions from a very wide range of stakeholder groups. Evaluating the substantial mass of information was a time consuming exercise, but the quality of the responses demanded they be carefully considered. Consequently, as an interim step in developing the bill, the Department of Local Government and Planning produced a comprehensive review report based on the public submissions, with over 70 recommendations for changes to the IPA.

This report was itself the subject of extensive consultation with key stakeholder groups from within and outside government, which provided further input to help guide refinements to the proposals before drafting of the bill commenced. Once drafted, the bill was subject to the same rigorous stakeholder consultation as the earlier report, and has been further refined as a result. While there will never be complete unanimity among such a wide range of stakeholders, I believe there is broad consensus about the desirability of the reforms proposed in the bill.

The bill I am now introducing builds upon the purpose of the IPA by improving its day-to-day functioning and introduces new and innovative features to further streamline and integrate

development assessment in Queensland. The bill is designed to encourage those administering the planning and development assessment system to achieve what the act expects of them.

While the bill includes an extensive range of refinements, the bill has been carefully designed so as to minimise the impacts of the refinements on work already done or under way. In particular, the bill will not substantially affect the overall structure or content of planning schemes which are now operating or which are being prepared by local governments to meet the March 2003 deadline. Even the revised proposals for infrastructure in the bill, which introduce a number of new concepts and processes, will not invalidate the underlying work that needs to be done by local governments to properly integrate infrastructure and land use planning through their planning schemes.

I shall now outline some of the key reforms in the bill. While the underlying objectives of the IPA were not at issue in the operational review, a change has been made to the definition of one of the key terms underpinning the concept of ecological sustainability in the IPA. That term is known as the 'precautionary principle'. The revised wording brings the definition into line with the definition in the intergovernmental agreement on the environment and Queensland is a signatory to this agreement. It also brings the act into line with the Commonwealth's key environmental legislation.

I believe this will not only reinforce public confidence in the government's commitment to the concepts of ecological sustainability but will help achieve better coordination between Commonwealth and state legislation. The IPA is an act about the regulation of development. Accordingly, the act establishes statutory rules about development and use and people's rights in relation to those matters. Changes have been made to the definitions of development in the IPA to simplify and clarify their scope. In particular, the definition of 'material change of use' has been changed to exclude decreases in intensity, and a number of other definitions have been combined into a single definition of 'works'.

The provisions protecting existing use rights have been substantially simplified to clarify the extent of protection for existing uses under the IPA, without changing the scope of this protection. One of the key statutory instruments in the IPA is the local government planning scheme. Planning schemes are instruments through which local governments regulate development activity in their local areas. Refinements have been made to clarify the scope and content of planning schemes, and the core matters for planning schemes have been relocated to the body of the act rather than the current schedule to assist councils and scheme drafters.

It will no longer be mandatory for planning schemes to include performance indicators. This helps clarify that, while planning schemes are key contributors to environmental outcomes, they cannot be seen in isolation from broader state and local government programs for which performance measurement is more meaningful. Similarly, planning schemes should not be seen as the sole determinants in the pursuit of desired environmental outcomes.

This measure also relieves a potentially costly burden on small local governments, whose planning schemes have a regulatory rather than strategic focus. If a council, however, wishes to voluntarily retain a range of performance indicators, this will not be precluded. The role and scope of planning scheme policies, and their relationship with planning schemes, has also been substantially clarified to help remove uncertainties about how each operates in relation to the other. The IPA currently includes uncommenced provisions allowing a person to initiate through the chief executive an independent review of planning scheme provisions. If the provisions had commenced, the cost of the review would have been funded by the person seeking it. This has attracted criticism from both community and environmental groups on the basis that it would result in inequality of access as only those with the funds to cover the cost of a review could afford to trigger the mechanism.

The independent review provisions were included in the IPA initially in response to concerns in some industry sectors about the loss of rezonings under the old Planning and Environment Act. However, the preliminary approval process under IPA provides an effective alternative for rezonings. With the substantial improvements to that process in this bill, the independent review process is no longer considered necessary and has been omitted. The IPA contains provisions to deal with the identification and designation of land for community infrastructure purposes. Numerous improvements have been made to the processes currently in place for designating land for community infrastructure, and these reflect the differing needs of designators and the key interests of the community.

The rigid processes for designation in schedules 6 and 7 of the IPA have been replaced with more outcome-focused processes that place much greater emphasis on adequate environmental assessment and appropriate public consultation while also providing greater flexibility to accommodate differences in the way infrastructure projects are developed. The procedures for designation and acquisition of designated land on hardship grounds have also been clarified and modified where appropriate to reflect the particular challenges faced by providers of infrastructure corridors, such as transport corridors, powerlines and pipelines, whose projects cross the boundaries of several local government areas. The powers of designating ministers to delegate procedural or administrative functions such as public consultation have been expanded to improve the efficiency of the designation process while the key policy decisions about designation still remain with the minister.

While the bill deals with a wide range of IPA refinements, by far the greatest number relate to the Integrated Development Assessment System, or IDAS as it is known. Because of the length of this second reading speech and time constraints, I seek leave of the House to incorporate the remainder of the speech in *Hansard*.

Leave granted.

IDAS is the regulatory heart of the IPA. It is conservatively estimated that over a quarter of a million development applications have been processed through IDAS by local governments and state agencies since the act commenced in March 1998. It is not surprising that the experience gained from dealing with this vast number of proposals has resulted in many suggestions for refinements to IDAS.

In addition to the many substantive changes to the IDAS process, the operational review also presented an opportunity to simplify and clarify many other IDAS provisions.

As these changes affected almost every section in the IDAS chapter of IPA, the bill includes an entirely new chapter 3. This will help those evaluating the bill to more easily read and understand the effect of the changes.

The bill removes the requirement for assessment managers to give applicants acknowledgment notices, and transfers the "up front" responsibility for getting applications right, to the applicant. The role of the assessment manager in checking and responding to improperly made applications has also been clarified.

These changes respond to the strong view of industry that acknowledgment notices were consuming valuable time and resources, and adding little value to the outcome.

By making the responsibilities of applicants and assessment managers much clearer, and incorporating incentives for good performance, the new arrangements also address concerns about the number of invalid applications that are being processed under the existing arrangements, in particular applications that do not accurately identify all referral agencies.

The bill includes numerous changes to clarify and support the role of preliminary approvals, in particular their use for giving a conceptual approval for development proposals. The scope of conceptual preliminary approvals has also been expanded to include development other than a material change of use.

The public notification requirements for applications for this type of preliminary approval, have been changed to ensure adequate public notification of the concept for which approval is sought, while also allowing for refinement of codes and assessment standards through subsequent applications without the need for further notification. This is designed to facilitate the staged approval of large scale proposals such as master planned communities, while also protecting the opportunities of the public to comment at appropriate times.

The bill also includes specific criteria for assessment managers to consider, about the effect of a preliminary approval on the structure and integrity of its planning scheme, and on rights of further public involvement in subsequent development applications.

The bill makes specific reference to the suspension of IDAS time frames when notification under the commonwealth native title act 1993 is carried out. This addresses current inconsistencies between time frames under the two acts.

The arrangements for changing applications before they are decided have been expanded and clarified. The relationship between changing an application, renotifying the application, and returning to an earlier stage of IDAS, has also been changed to introduce more flexibility in response to individual cases, while retaining public accountability.

In addition to the current arrangements for nominating advice agencies under a regulation, the bill also allows the chief executive administering the IPA, to nominate additional advice agencies for a particular application, if the chief executive is coordinating information requests for that application.

The bill also allows advice agencies to make information requests.

The information and referral stage has been refined and simplified into a stage with two discrete steps, rather than the more complex overlapping steps under the current arrangements.

The notification stage may now start any time after the application is properly made. This replaces the current more rigid arrangements which only permit the stage to start after all information requests have been responded to, and is complementary to the new arrangements applying to changed applications. It will assist in reducing delays for the more routine and less complex development proposals.

While an applicant may now choose to start public notification earlier, the new arrangements for changing applications ensure that if the application is subsequently changed in a significant way, notification will have to start again, thereby protecting the rights of the public to comment on a complete proposal.

These changes to public notification are also consistent with the reforms to the application stage I outlined earlier, which place more responsibility on applicants to get their applications right in the first place.

The bill explains more clearly the responsibilities of the assessment manager in the decision stage, clarifying that local government assessment managers can only exercise their decision making powers for the part of an integrated application which their planning schemes identify as requiring assessment, while concurrence agencies may be solely responsible for other parts of the application.

The negotiated decision notice arrangements in the IPA have enjoyed strong support from applicants and assessment managers, as they allow for applicants to negotiate over aspects of a development approval without the need to resort to costly legal action.

However the relationship between an applicant seeking a negotiated decision notice, and the suspension of the applicant's appeal period under the current arrangements has caused confusion.

The bill includes new arrangements which automatically suspend the applicant's appeal period if a negotiated decision notice is sought, but also allow an applicant to suspend the period for up to 20 days before seeking a negotiated decision notice, if more time is required to prepare a request.

These arrangements do not prejudice submitters' appeal rights, as the submitters' appeal period will continue to apply after any requests for negotiated decision notices are resolved.

Under the current arrangements, there are several alternative processes in the IPA for applicants to change or cancel a development approval, depending on the aspect of the approval being sought to be changed.

The bill consolidates and simplifies these processes.

The arrangements for assessment managers and concurrence agencies to change certain conditions of approval have also been moved from the savings and transitional provisions into this new division of the bill, and updated so they no longer rely on superseded legislation for their interpretation.

Some of the most significant difficulties in implementing IDAS have arisen in the area of works approvals, and the relationship between approvals for building work given by private certifiers and other approvals which must first be obtained from local governments. These difficulties have manifested themselves in a number of ways including:

- the unnecessary over-regulation of minor works under planning schemes
- complex and difficult rules for determining when private certifiers can give building approvals
- inappropriate use of preliminary approvals by assessment managers and concurrence agencies, to secure the assessment of minor works.

After careful analysis of public submissions on the operational review, and substantial practical experience of these difficulties, it is proposed in the bill to introduce a new, simpler form of assessment for certain development, which is complimentary to existing IDAS categories of assessment.

This new form of assessment, called compliance assessment, has several features which distinguish it from existing types of assessment under IDAS, and which will address the difficulties I have outlined above.

Firstly, compliance assessment can apply in addition to the other types of assessment under IDAS. When applied to building work for example, this can make the relationship between approvals given by local governments and those given by private certifiers much simpler.

A local government would be responsible for giving any necessary development permits for assessable development, while a certifier would be responsible for carrying out compliance assessment against the standard building regulation.

Secondly, in addition to being triggered by a regulation, an assessment manager can also trigger compliance assessment through a condition of approval. This means works such as car parking, site drainage and landscaping that are associated with development proposals can be dealt with through a much simpler process. It also means these works do not themselves have to be made assessable development under the local government's planning scheme to be able to be appropriately managed.

Finally, compliance assessment is broad enough to encompass assessment, not only of development itself, but of a range of matters related to development. This means that many assessment processes associated with development, but which do not fit clearly into existing IDAS development categories, can now be dealt with in a simpler and more consistent way.

These processes include the sealing of plans of subdivision by local governments prior to registration in the titles office. Certain building related assessments, such as building fire safety assessments, also lend themselves to being able to be dealt with simply and effectively through compliance assessment

All appeals from decisions under compliance assessment will be to the building and development tribunal, thereby providing a quicker and more cost effective dispute resolution for such detailed technical matters.

The state can currently "call in" and determine a development application when state interests are at stake. However a person with the benefit of any subsequent approval can apply to a local government to change the approval in a way that may once again prejudice state's interests, with no recourse for the state to review the outcome.

Consequently, the bill provides for the state to call in an application to change a development approval, in the same way it currently provides for development applications to be called in.

The bill includes several minor changes to enhance the clarity and efficiency of dispute resolution processes. For example, the powers of the planning and environment court to excuse minor non-compliance with procedures has been expanded to apply to all proceedings under chapter 4 of the IPA, not merely appeals.

Mr Speaker the bill also includes provisions specifically authorising local governments to charge private certifiers fees for carrying out building related functions such as the archiving of approved plans.

Including these fees under the IPA ensures any certifiers unhappy about the quantum of the fee can apply for declaratory relief to the Planning and Environment Court.

Better coordination of the planning for and supply of infrastructure with land use planning is a fundamental objective of the IPA reform. Rapid growth and a dispersed settlement pattern combine to provide challenges for infrastructure providers throughout the state.

The IPA has sought to address these challenges and to also provide a more effective and transparent infrastructure contributions regime for local governments. However while the fundamentals have been well accepted and supported, local governments and the development industry both identified issues during the review about the way the infrastructure arrangements in the act are meant to be implemented. In particular, both identified concerns about the perceived complexity and rigidity of the current arrangements. Local governments also questioned the applicability of some of these arrangements for many smaller local governments.

There has been extensive consultation with stakeholders about the arrangements and in responding to the issues raised the framework has been recast to make it clearer, simpler and much more flexible.

To better coordinate land use and infrastructure planning a priority infrastructure plan is introduced in place of the existing benchmark development sequence concept. The priority infrastructure plan forges a much closer link with the forward planning intentions outlined in local government planning schemes. The criticism of the sequencing plan was that it sat separately from the broader forward planning intentions outlined in planning schemes and was therefore not an effective coordination tool.

The current infrastructure contributions regime also has been revised and simplified. The bill makes clear that contributions schedules based on forward infrastructure planning only need to be based on trunk infrastructure plans. One of the concerns with the current framework is that the act implies detailed forward plans need to be prepared for all infrastructure to be funded by contributions.

Two types of contribution mechanism are now provided for local governments. For water and sewerage contributions in local governments that are recognised as having significant business activities under the local government act, the bill retains, albeit in a refined and simplified form, the current infrastructure charging mechanism. For other local governments, and for other development infrastructure supplied by local governments that have these significant business

activities, a new mechanism has been introduced. This is the infrastructure payments schedule. While charges under charges schedules are levied separately from development approvals, payments under payments schedules are imposed as conditions of development approval.

Both local governments and the development industry have welcomed the increased choice and flexibility offered by these two related mechanisms. Also welcomed has been the clearer and more flexible conditioning powers for local governments to deal with non-trunk infrastructure, and to deal with proposals that represent departures from the planning and infrastructure assumptions underpinning the local planning scheme.

To implement these important infrastructure refinements, regulations outlining the details of the different schedules and plans will be developed in close consultation with the affected stakeholders, including local government, the development industry and affected state agencies. Each of these stakeholders has indicated their commitment to work with the department over the next several months to prepare these important regulations.

As a result of both public submissions and the need to develop complimentary processes for environmental assessment in response to the commonwealth environmental protection and biodiversity conservation act 1999, the bill includes a specific process for preparing environmental impact statements capable of accreditation under a bilateral agreement made under the commonwealth act.

The EIS process may be triggered by a regulation under the IPA, and may apply for a development application under IDAS, or a proposed designation for community infrastructure under chapter 2 of the IPA.

The bill provides for the chief executive administering the IPA or a suitable delegate, to coordinate preparation of terms of reference for an EIS, and accept and evaluate the resulting EIS prepared by the proponent.

The bill provides for an EIS that has been completed to the chief executive's satisfaction to become a key decision making tool under the IDAS or designation processes.

Mr Speaker, the Integrated Planning and Other Legislation Amendment Bill 2001 is a key part of the government's continuing commitment to the integration of Queensland's planning and development assessment system.

It will result in clearer, simpler and more efficient decision making processes while also supporting and clarifying the rights and responsibilities of all participants in the system.

I commend the bill to the House.