Speech by

Hon. NITA CUNNINGHAM

MEMBER FOR BUNDABERG

Hansard 12 December 2001

INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL

Mrs NITA CUNNINGHAM (Minister for Local Government and Planning) (Bundaberg—ALP) (2.57 p.m.), in reply: I thank all members on both sides of the House for their support of this bill. The Integrated Planning and Other Legislation Amendment Bill 2001 is an important milestone in the implementation of the Integrated Planning Act reform.

This bill results from the operational review of the Integrated Planning Act, initiated by the previous Minister for Local Government and Planning. The operational review involved wide consultation with stakeholders and the bill includes an extensive range of technical changes that have been refined through consultation. With any major legislative reform of this type, it is always possible to make improvements to its operation. That is what these amendments aim to achieve.

The changes are designed to improve the day-to-day operation of the act. I will outline some of the key reforms in the bill. It will no longer be mandatory for planning schemes to include performance indicators. That helps to clarify that, although planning schemes are key contributors to environmental outcomes, they cannot be looked at in isolation from broader state and local government programs for which performance measurement is more meaningful. This measure also relieves a potentially costly burden on small local governments whose planning schemes have a regulatory rather than a strategic focus.

The bill introduces comprehensive improvements to local government infrastructure planning and charging arrangements. In particular, less onerous processes are introduced for smaller local governments. The changes also introduce greater flexibility to impose infrastructure conditions on development approvals to recoup the infrastructure costs associated with new development proposals.

The act already contains a strong environmental assessment emphasis. That is further reinforced for major infrastructure projects. New EIS provisions are also introduced. These will apply to major proposals that also require approval under the Commonwealth's environmental legislation. The provisions are designed to satisfy both state and Commonwealth requirements and will avoid duplication of the EIS processes.

Numerous improvements are made to the integrated development assessment system. Since introduction, over a quarter of a million development applications have been processed under this system. Improvements include removing acknowledgment notices from the system to save time and resources, and providing more scope for applicants to change applications in progress to avoid costly and unnecessary duplication of process. More flexible public notification requirements are also introduced. A new, more streamlined assessment process is introduced for building and simple works type proposals.

I will now respond to the matters raised by the Scrutiny of Legislation Committee. These issues were also raised in the debate by the member for Nicklin. That committee has raised three principal issues regarding the bill. Firstly, the committee is concerned that the commencement provisions exclude automatic commencement of the act as provided for under section 15DA of the Acts Interpretation Act. Subject to Cabinet's approval, I propose to introduce a further bill next year to deal with the important and complex transitional arrangements for the bill. Related provisions of the two pieces of legislation will need to commence simultaneously and councils will need time to adjust to

those changes. The Office of Parliamentary Counsel advised that exclusion from section 15DA was the best course of action to ensure automatic commencement provisions do not apply.

Secondly, the committee raised the question of delegation of legislative power in the bill as it concerns the making of regulations. The operation of IDAS relies on the detail provided in regulations. The regulation making power is extended in this bill to provide the machinery for the operation of the new compliance stage of IDAS to accommodate changes to the infrastructure provisions and for the application of the new EIS process. I am satisfied that this level of delegation is appropriate to provide for the level of detail necessary to make these provisions workable.

Finally, the committee notes that the ministerial call-in power exercised without appeal rights is extended to applications to change or cancel development approvals. Those provisions complete the range of ministerial reserve powers necessary to protect the interests of the state with respect to development applications and approvals. I will provide a formal response in writing to the committee about these issues by the due date of 30 January 2002.

I will now address the specific issues raised by members during the debate. The member for Warrego asked a number of questions. He spoke of the time it has taken to undertake the review, the time it will take for stakeholders to absorb these changes and the way that state agencies are improving their response times. I agree with all three comments. After enactment of this bill, there will be a period of intensive training before the bill takes effect. With regard to the length of time this has taken, I say that the review has been a huge undertaking, involving extensive consultation and detailed analysis and review. Some 120 detailed submissions were received and these contained over 2000 individual comments and suggestions which had to be compiled, sorted and analysed for their workability. This huge task involved over 12 months work and resulted in a detailed report which was then circulated to all stakeholders. This started the formal consultation process that has resulted in the current bill.

The first consultation phase started in October 2000, with the release of a review report in August, followed by a two-day workshop in September and the translation of the outcomes into drafting instructions and cabinet authority to draft in October 2000. Drafting commenced in November but was suspended in December due to the state election. Following the election, authority to proceed with drafting was reconfirmed and drafting recommenced in March 2001. The second consultation phase commenced in July with the pre-release of a working draft of the bill to state agencies, followed by the preliminary release of the draft bill to key stakeholders in August, followed by a two-day workshop in September, and final amendments and negotiations were carried out during October and November.

The member for Warrego referred to ecological sustainability and the precautionary principle and he queried whether this might hold up decisions. There is no reason why this should happen, as the member rightly said. The revised wording brings the definition into line with the definition in the intergovernmental agreement on the environment. Queensland is a signatory to that agreement. It also brings the act into line with the Commonwealth's key environmental legislation. I believe this not only will reinforce public confidence in the government's commitment to the concepts of ecological sustainability but will help to achieve better coordination between Commonwealth and state legislation.

The member asked for an example where a local government may wish to use a performance indicator to measure performance of its scheme. Possible examples for using non-mandatory performance indicators could include checking availability of infrastructure of residential land, capacity and response to population growth which may be greater than expected, assessing whether open space provision is adequate and appropriately used by the community, whether incentives to encourage certain forms of development are working, or how the scheme's provisions contribute to achieving certain environmental expectations.

With regard to the omission of the review provision, I inform the House that the independent review mechanism was originally included in the IPA due to development industry concerns about the loss of the ability to make rezoning applications which enable privately initiated changes to planning schemes, and the desire to have an independent review avenue available if local governments are considered to be unduly preventing development opportunities through highly restrictive planning schemes or planning scheme policies. However, the community sector environmental groups have been critical of the independent review provisions because they were seen as unfairly benefiting those with the resources to initiate reviews. Local governments were also concerned about potential interference with their policy-making responsibilities and the additional time and resource implications for them.

Commencement of the independent review provisions was deferred originally until January 2001 and then to January 2002 to enable the new IPA legislation and IDAS to settle in and for the IPA consequential legislative program to progress. The second deferral was to allow the IPA operational review to be completed. After positive experience with the IPA and IDAS over the past three years, the development community is now much more comfortable with the operation of those schemes. The preliminary approval process in IDAS also addresses the loss of the rezoning mechanism.

Similarly, the declaratory and orders powers of the Planning and Environment Court to deal with concerns over the administration of planning schemes also provides applicants with a quick, cost-effective and efficient avenue of review by an independent court. The minister also retains a reserve power of direction in relation to matters of state interest. Two-day intensive workshops for stakeholder groups, one in late 2000 and the other in September 2001, showed little support for the retention of the independent review mechanism in light of operational experience and the other avenues of relief available. The unanimous view of stakeholders—development and building industry groups, environmental and community sector groups, professional and legal institutes and local governments—at the two workshops was for the independent review provisions to be removed from the act.

The member for Warrego also spoke about ministerial call-ins. The expansion of the call-in power to cover applications to change approvals is a logical reform aimed at preventing approvals with a state interest dimension being changed in a way which adversely affects the state's interests. As the member rightly said, governments need to have those mechanisms in place.

The member also queried the infrastructure payments and charges. I assume the question relates to section 5.1.33, which allows the minister to agree to allow a local government which would otherwise be required to prepare an infrastructure charges schedule to prepare a simpler infrastructure payment schedule for part of its area experiencing low growth. This recognises that while some local governments have high growth areas justifying a more rigorous charges schedule, there may be areas in the local government where low growth rates do not justify the expense of preparing a charges schedule. For example, this would be the case for coastal local governments where the coastal strip is experiencing growth, but hinterland towns are not. Another example would be rural local governments whose main administrative centre is experiencing growth pressures because of a specific large mining or industrial development but whose other centres are experiencing low growth.

The member for Warrego was concerned that in making regulations there would be a lack of parliamentary scrutiny and that monitoring would be essential. Key policy items will still be in the IPA legislation, and the regulations will focus on operational aspects. Regulations are still subject to disallowance by the parliament.

In response to concerns about private certifiers' fees, under the Integrated Planning Act and Building Act private certification allows applicants the choice of obtaining building approvals from either the council or accredited private certifiers. Both of these acts require councils to perform statutory functions upon which private certifiers must rely. These functions include providing information to private certifiers, making decisions on certain matters and archiving approval documents associated with a development approval.

The performance of these statutory functions is a public service that should be provided by councils at a reasonable fee. However, an argument has been put forward highlighting that there is ambiguity as to whether councils can in fact charge for performing a statutory function such as archiving building fees approved by the private certifiers. To remove any doubt, amendment of the IPA and the Building Act is necessary to reaffirm the policy intent to allow councils to charge reasonable fees for statutory functions they must perform under these acts. Amending the legislation will affect any current cases before the court by removing the ability of private certifiers to challenge whether councils can impose any fee for performing statutory functions. This will leave only a challenge on the grounds of the reasonableness of the fees to be considered by the court. Home owners will be unaffected as the amendments only clarify the legality of the charges already imposed.

Although industry groups have asked for a state-wide schedule for building fees to be introduced, I do not favour this approach. Councils are responsible for the good rule and government of their local areas, and the setting of building fees for performing statutory functions is a matter for each council to determine. However, my department closely monitors the situation and does address specific concerns as they arise.

Following calls for guidance from both council and private certifiers, in December last year my department circulated to all councils new guidelines for setting fees under the Building Act 1975. The guidelines were prepared with the support of the LGAQ, which provided feedback throughout the project. The guidelines contain a methodology and a worked example on how to calculate reasonable fees, and the guidelines show how councillors should take into account community service obligations and demonstrate a nexus between income from the fee and the cost of administering the function. I am advised that councils are now reviewing their building fees using the methodology provided in the guidelines published by my department. The department is currently doing a review of local government revenue raising powers, and I am expecting that report in the near future.

The member for Surfers Paradise has offered his support for the bill but has voiced concerns about private certification, and I am sure that concern is shared by many of us. I would like to clarify that a review is being undertaken on private certification, and I would hope to have that report early in the New Year. The member for Surfers Paradise spoke also about the application of compliance

assessment to private certification, but the possible application of compliance assessment to private certification of building work will better regulate what other approvals need to be in place before a private certifier issues a building approval. This will leave the likelihood of building approvals being issued without necessary planning assessment being undertaken.

The member spoke also of changes to infrastructure charges plans halfway through. Great care has been taken in preparing the bill to ensure that any work already undertaken on infrastructure charges plans is not wasted and that those plans can be implemented even after the changes in the bill are made. Proposed section 6.2.1 of the bill is a provision that saves the effect of infrastructure charges plans already in existence but also allows plans currently being made to be finalised and implemented.

Finally, the member for Logan had concerns about electricity company impacts on communities regarding corridor impacts from powerlines. Changes to designation provisions for powerline corridors as well as other community structure provisions now require a greater level of environmental assessment and public accountability. Other changes are designed to encourage the use of designations by corridor infrastructure providers. The outcome is a greater proportion of infrastructure corridors being designated well in advance of future years developments and clearly shows on planning scheme maps.

Once again, I thank everyone on both sides of the House for their support and their contribution to this debate.