Speech by

RONAN LEE

MEMBER FOR INDOOROOPILLY

Hansard 12 December 2001

INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL

Mr LEE (Indooroopilly—ALP) (2.41 p.m.): I am pleased to rise in support of the Integrated Planning and Other Legislation Amendment Bill 2001. I will take this opportunity to speak about the extensive consultation that was carried out as part of the preparation of the bill currently before the House. The Integrated Planning Act 1997 commenced operation with bipartisan support at the end of March 1998. In May 1999—little over 12 months after the act had commenced—there was a public call for submissions seeking comments and suggestions about the operation of the legislation. Given the highly innovative nature of the legislation and its far-reaching impact across the state, the previous Minister for Local Government and Planning decided that a review of the operation of the IPA was desirable to ensure that the effect of the systems created by the legislation could be optimised.

The purpose of the review was to give anyone with an interest in the IPA, including individual members of the public, professional organisations, state government departments and local governments, the opportunity to have their say about the operation of the IPA. The number and the quality of the responses received was encouraging. In total, 120 detailed submissions were received. A third of these came from local governments while the remainder came from industry groups, professional organisations, community groups and some individuals. During the following 12 months, an in-depth analysis of the submissions was undertaken. This analysis isolated over 2,000 individual comments and suggestions covering the full range of matters dealt with by the legislation. A detailed report was prepared by the department. This report also contained a detailed series of recommendations covering both legislative and administrative matters.

This report then formed the basis for the first round of formal consultation leading to the creation of the bill currently before the House. The report was released in August 2000 and key IPA stakeholders were then invited to a two-day intensive workshop to discuss the bill and the review recommendations. The workshop was held in September 2000. The attendees comprised representatives from relevant state agencies, local governments and development industry professional groups, as well as community and environmental groups. In essence, the purpose of the workshop was to encourage discussion and debate about the issues and recommendations in the report. Encouragingly, a significant level of consensus was achieved at the workshop. This allowed detailed drafting instructions to be prepared for an amending bill. At the same time, a commitment was given to continue the consultation process as drafting progressed.

Formal drafting commenced in November 2000, although work was interrupted for a period as a consequence of the state election being held earlier this year. Drafting was able to recommence in March of this year and a consultation draft of the bill was circulated to affected state agencies in July. This represented the commencement of the third round of formal consultation of the IPA review. In August the bill was released to external stakeholders. The bill was supported by a comprehensive range of supporting material, including explanatory notes and draft regulations. Stakeholders were then invited to a two-day workshop to discuss the bill. This workshop was held in September. The purpose was to finalise discussion about the bill so that it could be finalised and made ready for introduction into parliament.

Consultation during the review of the IPA and the preparation of the Integrated Planning and Other Legislation Amendment Bill 2001 has been both lengthy and comprehensive and, I would venture to say, amongst the most intensive ever undertaken for an amending bill. It is for reasons like

that that I have a great deal of confidence that the consultation process undertaken for the preparation of this bill was thorough and appropriate. I am confident that it will contribute to a sensible and very workable bill.

I now wish to speak briefly about the fees of private certifiers. Under the Integrated Planning Act 1997 and the Building Act 1975, 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 application. The performance of these statutory functions is a public service that should be provided by councils at a reasonable fee.

This view is reflected in the Building Act, which states that councils may charge a fee for services so long as that fee is reasonable. This matter has been raised in court and argument has been put forward highlighting that there is some ambiguity as to whether councils can in fact charge a fee for performing a statutory function, such as archiving building plans approved by private certifiers. To remove any doubt, amendment to the IPA and the Building Act was necessary to reaffirm the policy intent to allow councils to charge a fee for statutory functions which they must perform under these acts.

Some may ask why it is indeed necessary to validate fees already charged by councils. The answer is simply this: if a court found that councils could not legally charge these fees, all councils would be exposed to claims through the courts from other private certifiers for refunds of fees which have been collected to date. The total value of archiving fees for housing approvals alone lodged by private certifiers since the commencement of the IPA is estimated to be a minimum of $1.5 million. The proposed amendments will therefore validate fees already charged by councils for performing these statutory functions. However, the amendments will not exclude an individual's right to seek review of those fees on the grounds of reasonableness through the Judicial Review Act 1991 or the IPA.

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 reasonableness of the fees to be considered by the court. This could lead to the question of why the government does not prescribe a standard building fee. While industry groups have asked for a state-wide schedule for building fees to be introduced, the government has a view that it does 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 of each individual council to determine. However, the Department of Local Government and Planning closely monitors the situation and does address specific concerns as they arise.

Following calls for guidance from both councils and private certifiers, the department circulated to all councils in December last year 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 worked example on how to calculate reasonable fees. The guidelines also show how councils should take into account community service obligations and demonstrate a nexus between income from the fee and the cost of administering the function.

I understand that councils are now reviewing their building fees using the methodology provided in the guidelines published by the department. The building fees of many councils will be justifiably higher than those shown in the worked example and the guidelines. This is because each council will have different processes for providing services to those assumed in the worked example.

In addition to this, many councils cross-subsidise the pricing of related services. That is because of the administrative ease of collecting a fee once in a chain of related services. The guidelines state clearly that the example in no way represents any recommended processes or costs and that no inference should be drawn as to the appropriateness of the process and steps undertaken to provide the service. The sole purpose of the example is to illustrate the recommended methodology.

Clearly, it is important that this matter of charging private certifiers fees is cleared up. It is also very pleasing to see that the Department of Local Government and Planning is providing such assistance to councils in this matter. It is for these reasons that I am delighted to support the bill.