



Speech by

Ms Grace Grace

MEMBER FOR BRISBANE CENTRAL

Hansard Tuesday, 10 February 2009

PLANNING (URBAN ENCROACHMENT—MILTON BREWERY) BILL

Ms GRACE (Brisbane Central—ALP) (4.11 pm): I rise to support the bill. As the member for Brisbane Central, which is a very dynamic part of Queensland in the inner city of Brisbane, I am only too well aware of urban encroachment on many areas of the inner city and I want to ensure that prospective owners know about the impact of this bill. Like the member for Nanango, I, too, as a child remember very fondly the XXXX sign on the many trips that my family made to Mount Coot-tha on those hot summer nights. It used to be a beacon for us as children and I still hold it fondly in my memory.

The bill only affects certain types of new developments that will intensify development in the area surrounding the Milton Brewery. This is known in the bill as the 'affected area' and is clearly shown in a map attached to the bill—the Milton Railway Station precinct plan. This is based on the map contained in the current draft of the Brisbane City Council's Milton Railway Station precinct plan. A number of measures have been included in the legislation to ensure that prospective purchasers and owners are aware of the impact of the bill. The bill includes provisions which place obligations on developers or sellers of relevant lots to provide certain notifications, including a notation on the relevant land register and advice to prospective purchasers of the operation of the legislation.

Firstly, there is a requirement that a relevant developer must give written notice to the Registrar of Titles asking the registrar to record the development of the relevant land register. This notation is called an affected area notation. Under the bill, an affected area notation is a record which states that the legislation applies to the premises or the lot which is the subject of the application. This notation means that any prospective purchaser of a relevant property or lot will be notified of the legislation when they do the standard title searches on the property. The developer must provide the notice to the Registrar of Titles within 20 business days of making the relevant development application. The consequences of failing to comply with this obligation is serious and may result in a financial penalty of up to 200 penalty units or \$15,000.

In addition to this clear notation on the title, the bill also provides for certain notifications where a seller of a property or lot in a relevant development wishes to sell the property. In these cases, before entering into any contract to sell the property, the seller must give the prospective buyer an affected area notice. Under the bill, this is a written notice which provides that the legislation applies to the premises or lot which is the subject of the application. The notice must also state the restrictions that apply in relation to legal proceedings under the legislation and note the requirement that the Registrar of Titles must keep a record of an affected area notice which will cause a search of the appropriate register to show the notation of the lot. This obligation will apply to whoever offers the property for sale, including an agent for the developer or any subsequent owner/seller of the property.

It is recognised that development applications may be made but they not reach fruition but the registrar has already notated the title. If this occurs—that is, if a relevant development application is refused, removed or has lapsed before it has been decided—then the developer may ask by a written notice that the Register of Titles remove the record. The developer will not incur any costs for the removal of the record provided the Registrar of Titles is satisfied on reasonable grounds that the application has been refused or has lapsed or has been withdrawn before it was decided.

The bill also specifies additional consequences if a developer or seller fails to comply with the obligation to give the prospective buyer an affected area notice and an affected area notation is not shown on the appropriate register and a contract for sale of the property has been entered into, and this of course protects the purchaser. If the obligation has not been complied with, the bill provides a prospective buyer the right to terminate the contract by giving written notice to the developer before the contract is completed. The developer must refund any deposit made by the buyer within 14 days of ending the contract. The bill also addresses the situation where a relevant development application has been approved prior to commencement of the legislation and the property is offered for sale to a prospective buyer. If the seller does not notify the prospective buyer in writing of the restrictions applicable under the legislation, then the prospective buyer has the right to end the contract before it is completed. In addition, if a deposit has been paid, the prospective buyer is to receive a full refund. If the seller does not refund the deposit within 14 days, a maximum penalty of \$15,000 applies. Failure to comply with this requirement is an offence and attracts a maximum penalty currently of \$15,000.

Importantly, the provisions do not preclude the application of common law remedies. This means that if a developer fails to comply with any obligation under this bill the developer will also run the risk of a claim for damages at civil law by a subsequent seller or purchaser who has suffered loss as a result. These are important provisions to ensure purchasers are aware of their rights when they enter into a contract. The consequences of a failure to comply conveys the serious nature of the obligations and will ensure developers take their responsibilities under the legislation seriously.

Further, in the interests of openness and transparency, the bill also places an obligation on the registered operator for Milton Brewery to make the conditions and licence for the brewery publicly available by publishing the registration certificate and details relevant to it on the operator's web site. This ensures that any person who may be affected by the provisions of this bill can read the licence conditions and thereby determine the scope of activities within which the brewery can lawfully operate. If the operator fails to comply with this requirement, this will not affect the application of the provision which restricts a person from commencing a suit for nuisance criminal or civil proceedings against the brewery when it is complying with the brewery registration certificate. The obligations on the brewery operator and on developers or sellers of property in the bill's very specific area of operation around Milton Brewery are a key component in ensuring the legislation operates fairly and effectively and that the rights of the buyers are sufficiently protected. For this reason, I commend the bill to the House.