

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL 2003

Second Reading

Resumed from 30 October.

MR J.P.D. EDWARDS (Greenough) [4.17 pm]: I start by congratulating the Minister for Planning and Infrastructure for bringing this Bill into the House. I do not often congratulate the minister. She occasionally has some warm words for me, and today I have some warm words for her. Through this Bill, the Government is addressing two issues that have been a source of frustration for local government for some time. I assure the minister that we will not go into consideration in detail on this Bill, and that the Liberal Opposition supports it. I remind the House of the general thrust of the Bill, and to do that I will refer to the minister's second reading speech. This amendment Bill has been developed in response to the needs of the building industry, local government and consumers and addresses two issues: first, the regulation of local government's delegation to its employees of authority to approve plans and specifications; and, second, the provision of a framework to retrospectively authorise building work carried out without the prior approval of the local government. I am aware that for many years unauthorised building has been a grey area for local government. It normally applies in the case of sheds, patios, verandahs and the like, and even carports and minor extensions. I was once part of a council that dealt with an extension made to a large shed that was completely unauthorised. This was some years ago, minister. We had the task of deciding whether the building was to stay or the wreckers would be called with a ball and chain to knock it down. We used commonsense and allowed it to stand. Under this Bill, local government will have powers to make that decision much more easily.

With that in mind, the introduction of a performance-based building code of Australia has led to the need for greater knowledge and skills to deal with the increased complexity of building solutions. That has been recognised by the minister. A building surveyor with entry level education and professional qualifications may not be able to assess a complex building today. Better qualifications are needed.

I will go through the Bill in a smart manner and deal with some of its provisions. Section 159 of the Local Government Act is to be amended. This amendment addresses educational and professional qualifications to improve skills. A lack of clarity has been evident in the building control provisions for the management of unapproved building work. Better education and professionalism of the people involved will improve the situation. Some legal matters perhaps will be addressed a little better also.

Section 374 of the principal Act is to be amended. This relates to the person delegated by the local government under the regulation to approve or refuse plans and specifications for building work. Proposed new section 374(4) will be a good defence mechanism for a defendant who may have intentionally or unintentionally built a structure; that is, it will give the local government the power to make a decision. This provision relates to the amendment to section 401. Proposed section 401B deals with substantial compliance under the building code of Australia. Perhaps the minister in her response could explain how substantial compliance will be determined under this provision. I know an explanatory note has been provided, but I would like to hear the minister's thoughts. The amendment refers to the application being refused. I am a little in the dark on this matter. What happens if substantial compliance is refused and the local government has refused to issue a certificate? Can the minister expand on that aspect? Proposed section 401B deals with substantial compliance. The owner, under proposed new section 401B(2) and (3), can apply to local government after having built an unauthorised building. The regulations will determine how local government will work through that matter with the owner of the building on which unauthorised building work has been carried out or allowed to happen.

I do not have a lot more to say on the Bill. I have taken some advice from councils, which are all supportive of the measure. They have waited for something like this for some time, and I hope it will obviate their frustration. I checked with the Western Australian Local Government Association, which supports the Bill. This measure is timely, minister. It is not often that I say warm words in her direction, but I congratulate the minister for the Bill. I support the legislation.

MR P.D. OMODEI (Warren-Blackwood) [4.25 pm]: This Bill is fairly straightforward, and I do not want to go over the areas covered by the member for Greenough. The Bill does two things. First, it regulates local governments' delegation of authority for approving plans and specifications for building work. Second, it provides a framework to retrospectively authorise building work carried out without the prior approval of the local government. The Bill is before us today because such things have been taking place for a long time. The proposal for an integrated building Act was in place when I was minister, which is now three-plus years ago, and it was around for a long time prior to that. We went through a lot of processes, receiving submissions and releasing discussion papers and so on. Long consultation with the building surveying sector took place. I would have thought that the Bill could have been in Parliament before now. I understand that the Minister for Local Government and Regional Development introduced in Parliament yesterday an amendment Bill to the Local

Government Act, and that is not before time. The Local Government Act has been around since proclamation in 1996, so it is now nearly seven years old and requires change. Small amendments were made to the 1960 Act in every session of Parliament each year. The new Act needs refining. It probably would have been a good idea to bring in that legislation alongside the amendment Bill to the 1995 Act.

Part 15 of the old Local Government Act always related to building construction, specifications, the building code of Australia and so on. I understand that that responsibility has gone to the Department of Housing and Works, which will process such applications. Approximately 400 appeals are made every year, 50 per cent of which relate to issues of existing buildings without building approval. A mechanism is needed to approve those buildings. Those appeals usually go to the Minister for Local Government and Regional Development, and I presume they will go to the Minister for Housing and Works, who has responsibility for housing and works. There has been a further development as appeals will go to the State Administrative Tribunal, when established. I raised in debate on that tribunal that the personnel with expertise in that area reside in the Department of Local Government and Regional Development, so there will be duplication on SAT. It is a matter of some concern. As you know, Mr Acting Speaker (Mr A.J. Dean), people are perturbed when they are put through the bureaucratic process. However, the bureaucratic process seems to be ever expanding and causing increased frustration in the community.

Section 401 of the Local Government Act relates to knocking down a building that did not have building approval. An inquiry was held in the city of Wanneroo concerning a building on Manakoora Rise. The owner put in plans for a building, and received a negative response from the local council. He proceeded to build in the way he wanted in the first instance. The same happened in Mosman Park with BGC. Councils need the wherewithal to combat such behaviour. Section 401 goes to the nth degree as far as knocking down the building is concerned, and it is very legalistic about appeals and so on. This is a commonsense Bill. I am just asking the Government - I suppose it is a criticism of the Government - why it did not just bring in the integrated building legislation, which has been around for a long time, and sort it out once and for all, and this would have been part of that legislation.

I certainly support this legislation, as does local government generally. There is no doubt that a large number of buildings, be they carports, patios or chook pens, have been built by people in good faith, without any deliberate attempt to breach any legislation. If those facilities are proved to be sound and to comply with the various building codes, I see no reason that they should not be approved. However, there needs to be an education program so that people do not inadvertently break the law. They will go through the same process as everybody else; that is, if they want to construct a house, a shed or a building that requires council approval, that approval must be obtained. People should know that to construct a building without prior approval is in breach of the legislation and that there are penalties associated with that, and there is the possibility that section 401 will be applied. As to those people who inadvertently overlooked that in the past, I repeat that it was probably because there was not enough public education on this matter, and they were therefore not aware of their legal responsibilities.

I will not repeat what the member for Greenough mentioned. This legislation allows local government some flexibility. I would like new, integrated building legislation to be introduced to the Parliament. There is no reason that it should not come into this Parliament soon. It has been around for a long time and been done to death. It is an important piece of legislation that needs to be passed by the Parliament of Western Australia. With those few words, I support the legislation.

MS A.J. MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [4.31 pm]: I thank members for their contributions and their support for the legislation. I am, of course, devastated that the member for Greenough's memory is so short that he cannot remember that he has congratulated me very often in the past; first, for the \$1.3 million courageous enhancement of the Geraldton port and, secondly, for the \$88 million southern transport corridor. I seem to remember words of support for the East Perth power station, not to mention the Talbot Hobbs precinct and the Queen Anne cottages in Northbridge.

Mr P.D. Omodei: He probably could have gone on and congratulated the former coalition Government for the work done on the Oakajee site.

Ms A.J. MacTIERNAN: Yes, but that would have been pretty ironic, would it not - \$20 million and a big fat zero for achievement.

Mr P.D. Omodei: You are putting an industrial site south of Geraldton, which will do exactly the same thing as the industrial site at Kwinana, which is pushing pollution all over metropolitan Perth.

The ACTING SPEAKER (Mr A.J. Dean): Order, member for Warren-Blackwood!

Extract from Hansard

[ASSEMBLY - Thursday, 4 December 2003]

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Mr Jeremy Edwards; Mr Paul Omodei; Ms Alannah MacTiernan; Acting Speaker

Ms A.J. MacTIERNAN: I would love to have the debate on Oakajee another day, and I would welcome the member for Warren-Blackwood bringing it on as a matter of private business. We would certainly be prepared to debate it at length to demonstrate who has brought home the bacon for the mid west.

I remarked that the member for Greenough said that he does not often congratulate me. As I said, it was probably a little senior's moment, because on many occasions he has supported what we have done. However, I take no credit for this legislation. I am speaking in a representative capacity for the Minister for Housing and Works. However, I will pass on those comments of support.

I was not sure of the member's query about the way in which the substantial compliance provisions will work. However, as I understand the way they will work, if a person has an unapproved and unauthorised structure, it will be possible to retrospectively seek a certificate of substantial compliance. The conditions and the mechanism for obtaining such a certificate are set out in the legislation. They refer, via regulations, to the Building Code of Australia. Obviously, to be eligible to obtain a certificate of substantial compliance, the building work will need to be in compliance with acceptable standards. I understand this does not obviate the need for planning approval, but it deals with the issue of not having building approvals. Once a certificate of substantial compliance has been issued, the local government will not be able to serve a notice in relation to unapproved building work. Effectively, it enables retrospective approvals to be given.

Obviously, this will not be without its difficulties. It will not be without problems created by people who wilfully choose to not obtain prior approvals. We will have to be vigilant about whether this causes a change in the conduct of people who think they can simply, after the fact, get a certificate of substantial compliance. However, as the member for Greenough pointed out from his local government experience, there have been situations in which unapproved structures have been in place, often for a long time, and there has been little or no capacity, within the framework of the law, to allow those buildings to continue to stand. This legislation adjusts that. However, as I said, it will not be without its complexities.

The other matter dealt with in this legislation seeks to ensure that those building surveyors who are given the authority to approve or to refuse building licence applications have the appropriate qualifications. It is about ensuring the proper skills base in the local government officers who have considerable executive powers. We all know the problems that arise in local government when people are not exactly open and honest about their qualifications - not that I am mentioning the war. I again thank members for their support. The member for Warren-Blackwood -

Mr P.D. Omodei: Do you want me to interject?

Ms A.J. MacTIERNAN: We could have a chat about Oakajee.

Mr P.D. Omodei: Minister, could you comment on the integrated building legislation?

Ms A.J. MacTIERNAN: No. As the member is well aware, I am simply the representative minister, and I really do not have any information or advice on that. However, I will certainly ask Hon Nick Griffiths to provide the member with a briefing on that.

Mr P.D. Omodei: I would appreciate that.

Ms A.J. MacTIERNAN: Okay. I commend the Bill to the House.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.