

PLANNING APPEALS AMENDMENT BILL 2001

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 1: Short title -

Hon DERRICK TOMLINSON: The Opposition had decided to assist the Government by expediting consideration of this Bill and anticipated it would have taken about an hour; I do not know whether the Government received that information. However, at the stage we decided to expedite the Bill, we had the report of the Standing Committee on Public Administration and Finance, which was published in March, and a single page of five or six proposed amendments. We anticipated that the whole matter would be dealt with very quickly, given the nature of the Bill, the long period of consideration enabled by referring it to the committee and the long period since the report of the committee was presented to the Chamber. However, we received only half an hour ago nine pages of considerable amendments on supplementary notice paper No 23, issue No 4 and a sheet of explanatory memoranda only 20 minutes ago. The Government had plenty of time to prepare its amendments. Some require detailed consideration and I would like to seek legal advice on some amendments. One amendment seeks to replace part of a clause, which refers to the application of the Supreme Court rules, with a clause detailing those rules as provisions of the proposed Town Planning Appeal Tribunal. The best course of action is to defer consideration of this Bill to another stage. I therefore move -

That the Chairman do now report progress and ask leave to sit again.

Hon GRAHAM GIFFARD: I understand the point made by Hon Derrick Tomlinson. The only amendment in that category -

Hon Derrick Tomlinson: It is amendment No 22/11 on page 4 of the supplementary notice paper relating to page 20 of the Bill.

The CHAIRMAN: Order! I have checked the standing orders. This is a procedural motion and is not debatable. I must, therefore, put the question.

Question put and negatived.

Hon DERRICK TOMLINSON: I said that the Government has treated the Opposition unfairly. I hesitate to say shabbily because it was not a shabby exercise, but it was unfair to produce amendments at the last moment. I heard what Hon Graham Giffard attempted to say, but one substantial amendment fits into the category to which I referred. I did not call for a division when the motion was put because it is a substantial amendment and because we want to cooperate with the Government to get this legislation through the Parliament as quickly as possible. However, I withdraw the undertaking that consideration of the Bill would have taken an hour; it will now take as long as is necessary to get the satisfactory answers to the legal questions contained in that amendment.

Hon GRAHAM GIFFARD: I am loathe to hold up passage of the Bill any longer than need be. I appreciate the point made by Hon Derrick Tomlinson about the amendment commencing on page 4 of the supplementary notice paper. Subject to the standing orders, I am sure we can defer consideration of that amendment to another day.

Hon Derrick Tomlinson: Or we can go through it very tediously.

Hon GRAHAM GIFFARD: We can.

Hon Norman Moore: Why were we given such late notice?

Hon GRAHAM GIFFARD: It is not a controversial amendment. It is a more detailed amendment to the amendment recommended in the report. The report identified the issue of contempt and how the committee at the time of its report sought to deal with that issue. The parliamentary drafter said that a number of issues had not been taken into consideration, for example, false and misleading evidence, and suggested how that matter should be dealt with. The amendment does not deal with an extension of any power.

Hon Derrick Tomlinson: Will you agree that they are not simple matters of law?

Hon GRAHAM GIFFARD: I agree that the amendment is much broader than the recommendation of the committee. I would therefore be comfortable with deferring that amendment today so that members can get proper advice on it. There are a number of other incidental amendments that delete a couple of words and are not of any great consequence. However, I am sure -

Hon Derrick Tomlinson; Hon Graham Giffard; Chairman; Hon Jim Scott; Hon Murray Criddle; Hon Barry House

The CHAIRMAN: When we get to the amendment, the parliamentary secretary can postpone it to a later date.

Hon GRAHAM GIFFARD: Yes, we can put a fence around that amendment and deal with it at a later stage. Otherwise, I ask members to look at the committee's report, which indicates the basis for most of the amendments standing in my name on the supplementary notice paper.

Hon J.A. SCOTT: I am concerned about the amendment proposed by the parliamentary secretary to clause 11, which will allow the tribunal to determine whether a hearing should be conducted wholly or partly in private. I would like to have more information about such a change. Will the parliamentary secretary hold this amendment in abeyance until it can be looked at further?

Hon GRAHAM GIFFARD: If Hon Jim Scott has serious concerns, I am willing to put a fence around the amendment.

Clause put and passed.

Clause 2: Commencement -

Hon DERRICK TOMLINSON: I move -

Page 2, lines 8 and 9 - To delete the lines.

I have objected to this type of provision in every Bill that we have debated this year. Such a provision is necessary only when an enactment requires the preparation of infrastructure, resources and regulations, and, given that infrastructure, resources and regulations can be provided at different times, differing commencement times can be justified in certain Bills. However, there is no justification for such a provision in the Planning Appeals Amendment Bill 2001. The Act should come into operation on a day to be fixed by proclamation; therefore, clause 2(2) is redundant, and should be deleted.

Hon GRAHAM GIFFARD: The Government does not support the amendment. Subclause (2) allows for different provisions to be proclaimed and to come into effect at different times. Proposed section 10 will allow local governments to establish relevant procedures once they are aware of the procedures. The Government anticipates that the provisions will come into operation at the same time; however, subclause (2) will allow local governments the opportunity to put in place the necessary procedures for dealing with matters that arise under proposed section 10.

Hon DERRICK TOMLINSON: Therefore, will clause 2(2) apply only to clause 8, which deals with proposed section 10?

Hon GRAHAM GIFFARD: Yes. Clause 2(2) applies only to proposed section 10.

Amendment put and negatived.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 7B amended -

Hon DERRICK TOMLINSON: I move -

Page 4, line 17 - To insert after "may" -

within 60 days after the refusal is communicated, or the permit is granted

As clause 5 stands, there is no provision for a time frame in which an appeal can be lodged. Section 7B(6)(a) of the Town Planning Development Act 1928 nominates a period of 60 days, and that is an important flag for a person contemplating an appeal against a decision of an authority. The 60-day period should be reinstated.

Hon GRAHAM GIFFARD: Proposed section 7B(6)(a) states that the applicant may appeal under part V. New part V is the most significant provision of the Bill and it constitutes the new basis on which people will lodge appeals. The regulations for appeals under part V will provide time limits for the lodging of appeals. We do not believe this amendment is necessary, because there is no reason that these types of appeals should be treated differently from other appeals. Other appeals will be dealt with under the regulations. These appeals can also be dealt with under the regulations. There is no reason to distinguish, and there is every reason to be consistent. The consistency will come about by not allowing this amendment and by allowing all appeals to be dealt with under the regulations that will provide the time limits for the lodging of appeals. We do not support the amendment.

Amendment put and negatived.

Hon DERRICK TOMLINSON: I move -

Page 5, line 5 - To insert after “may” -

within the period specified in the notice, such period not being less than 30 days

The justification for this amendment is the same as the justification for the previous amendment. It will reinstate in the Bill the provision in the current law.

Hon GRAHAM GIFFARD: Hon Derrick Tomlinson said that he supports the amendment for the reasons he gave for the previous amendment. I do not support the amendment for the reasons I gave for the previous amendment. The proposed 30-day period for appealing a notice will also be covered by the regulations.

Hon DERRICK TOMLINSON: We can now make the Parliament redundant and have government by regulation. The direction in which this Government is taking us is to do away with any reference to the requirements under law and simply proceed by means of delegated legislation. This rationalisation of the Government is to be commended, and I look forward to having a high salary and being on a long holiday.

Amendment put and negatived.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Section 18 amended -

Hon GRAHAM GIFFARD: I move -

Page 10, lines 6 and 7 - To delete “responsible authority” and insert instead -
local government

Page 22 of the report of the Standing Committee on Public Administration and Finance states -

Alternatively, the following amendments would be supported.

The report then sets out the same amendment as I have moved and as is set out in the supplementary notice paper. The explanation states -

This amendment to the proposed section 18(2) corrects an inconsistency in the clause which was identified in the other place.

I think an undertaking was given to the other place to correct that inconsistency when the Bill came to this place. That is the reason for the amendment.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 10, line 14 - To delete “If” and insert instead -

The Minister may determine not to take any action in response to the representations or, if

The explanation for this amendment is also found at page 22 of the committee report and states -

While it is not conceded that the matter is in doubt, this amendment to the proposed Section 18(2a) is intended to put it beyond any doubt that the Minister is under no obligation to act on a representation under the provision by referring it to the Tribunal or otherwise.

The Government took the view that the minister was not necessarily under an obligation. However, the question was raised. The purpose of this amendment is to make it explicit so that there will be no misunderstanding about that matter.

Hon DERRICK TOMLINSON: The words that are proposed to be inserted make it clear that the minister may decline to respond. However, they do not make clear another uncertainty. Proposed subsection (2a) states “If the minister considers it appropriate to do so”. In this amendment exactly the same meaning has been repeated in different words, to make it more precise, I suppose. However, proposed subsection (2a) should be read with proposed subsection (2c). With the words the parliamentary secretary wishes to insert, proposed subsection (2a) would begin -

The Minister may determine not to take any action in response to the representation or, if the Minister considers it appropriate to do so . . .

So the minister may take no action, or he may refer the matter to the tribunal, if he considers it appropriate to do so. However, a third option is intimated by proposed subsection (2c), which begins -

If, after holding an inquiry or receiving a report and recommendations from the Tribunal . . .

The “if” then becomes two options - holding an inquiry or referring the matter to the tribunal and receiving a report and recommendations. It follows then that if the tribunal does not hold an inquiry and make recommendations, who else will conduct the inquiry indicated by proposed subsection (2c)? Do the words mean that the minister may decline to act, refer the matter to the tribunal for inquiry and report or undertake his own inquiry? When proposed subsections (2a) and (2c) are read together, those three options emerge, and I do not know whether that was the intention of the draftsman of the Bill. If that was not the intention, I would like the parliamentary secretary to make clear what the intention was.

Hon GRAHAM GIFFARD: Hon Derrick Tomlinson is correct. That was something the Government did not take away from the existing Act through the drafting of this Bill. The current section 18(2) of the Act does allow for the minister, satisfied on any representation after holding an inquiry that a local government has failed to effectively enforce certain things, to order the local government to do so. That is how the Act is constructed now, and Hon Derrick Tomlinson is correct in identifying this. The Government did not intend to remove that power.

Hon DERRICK TOMLINSON: I thank the parliamentary secretary for making that clear. It is interesting, however, that a Bill which has the intention of taking the responsibility of appeal away from the political status of minister and giving it to an impartial, disinterested tribunal continues to contain the option for the minister to make an inquiry. I assume the minister will be able to do that under proposed subsection (2c). I commend this provision, but there is an apparent inconsistency with the spirit of the Bill.

Hon GRAHAM GIFFARD: The report on this Bill by the Standing Committee on Public Administration and Finance refers to a letter from the minister, received by the committee on 5 December 2001, which talks about the purpose of the Bill and the otherwise minimalist approach to the Act. The new part 5 is substantial, and is the central part of the Bill. There are other amendments and consequential amendments, but the Government did not seek to do much more than change part 5.

Hon Derrick Tomlinson: So this is a minor amendment, as opposed to a major one?

Hon GRAHAM GIFFARD: The discretion to hold an inquiry was already in the Act, so the Government is maintaining that discretion. I refer the honourable member to the part of the report that refers to that letter from the minister, which discussed the Government’s generally minimalist approach to this Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10 put and passed.

Clause 11: Part V replaced -

Hon GRAHAM GIFFARD: This matter is referred to on page 18 of the report of the Standing Committee on Public Administration and Finance. The alternative to the amendment I propose to move is to delete the lines completely, as proposed by Hon Derrick Tomlinson. The purpose of this amendment is to delete the words “or rules” at page 14, line 23 of the Bill. The effect of that will be to remove the ability of the tribunal to use rules to categorise appeals as classes 1 or 2. The tribunal should be able to use only the guidelines in the regulations. The effect of the amendment is essentially to prohibit such a decision being made according to “the regulations or rules” and to allow it to be made according to only regulations. I move -

Page 14, line 23 - To delete “or rules”.

Hon DERRICK TOMLINSON: The parliamentary secretary was quite right to refer to pages 18 to 20 of the report of the Standing Committee on Public Administration and Finance. Recommendation 5 of that report reads -

That the Legislative Council decide whether proposed section 40(3)(a)(iv) and (c) in clause 11 of the bill should either be deleted or amended.

In his explanation of the Government’s decision to delete the words “or rules” rather than also remove the ability of the tribunal to make decisions according to regulations, the parliamentary secretary dealt with the argument contained in paragraphs 10.2 to 10.4 of the report, which in effect argue whether the rules would be subject to disallowance under section 42 of the Interpretation Act. That has been dealt with. However, at paragraphs 10.5 and 10.6, the committee identifies what it calls a matter of much greater concern. I strongly recommend that members consider paragraph 10.6, which contains a very eloquent argument about delegated legislation. I commend the chairman, who is obviously the author of this very elegant paragraph, for his penmanship. The concern expressed in the committee’s report is that proposed section 40(3)(a)(iv) would allow the tribunal or

whoever is responsible for the regulations - one assumes it would be the tribunal - to determine the extent of matters to be appealed. That provision is included in a proposed subsection that quite precisely defines not only the matters that may be determined but also the nature of those matters, such as the value and number of lots to be subdivided. It is quite precise. Proposed section 40(3)(a)(iv) states -

a determination or direction of a kind described in the regulations . . .

The request is that Parliament should make the rules and that Parliament should make a decision. The request of recommendation 5 is that the Legislative Council decide whether the proposed section should be deleted or amended. The Government has opted to amend it. The very persuasive argument contained in paragraph 10.6 convinces me that the whole proposed subsection should be deleted. Therefore, the Opposition will not support the Government's amendment. Further, I have foreshadowed the deletion of proposed subsection (3)(a)(iv).

Hon GRAHAM GIFFARD: The ability contained in proposed section 40(3)(a)(iv) was included to allow the tribunal to deal with appeals that might not necessarily fall under proposed paragraphs (i), (ii) or (iii). The president of the tribunal might want or need to deal with a number of types of appeals under proposed section 40.

Sitting suspended from 3.45 to 4.00 pm

Hon GRAHAM GIFFARD: Just before the break I said that these provisions would be subject to review. This provision allows the president to deal with an application, or, as we anticipate, a number of similar applications, to be classified under proposed section 40(3), which in part states that it "is to be determined by the Tribunal constituted by a single ordinary member".

That will allow the president, by regulation, to determine types of appeals that would not otherwise fall under proposed subparagraphs (i), (ii) or (iii). In addition, it will be subject to review. The Government supports the amendment.

Hon DERRICK TOMLINSON: Unfortunately, the parliamentary secretary has not answered the argument presented in paragraph 10.6 of the report of the Standing Committee on Public Administration and Finance. We understand what the Government's position is, which is the position that the committee argued against. As such, I would have anticipated that the Government, if it were to persist with its amendment, would have answered the committee's argument. It has failed to do so. I believe it cannot, and because it cannot, it is up to this House to make the decision. Either the Parliament should specify those matters which will be subject to appeal, decision or direction, or it should allow reasonable discretion to the tribunal to determine matters which are peculiar and do not fit easily into the categories contained in proposed subsection 3(a)(i), (ii) and (iii), or the whole of the provision in proposed subsection 3(a)(iv), which allows an unreasonable discretion, should be deleted. If it is an unreasonable discretion, it should not be given to the president of the tribunal, who will make the rules and regulations. It confers a power upon him which the Parliament by its actions, if it were to enact this legislation, would be abrogating. I oppose the amendment and foreshadow my own amendment.

Hon J.A. SCOTT: I am also concerned about the sweep or extent of powers given in some sections of this Bill to the tribunal or the president of the tribunal. That will be witnessed by amendments I will move at a later stage of the Bill. I also believe that the Parliament should be giving some sort of guidance to the tribunal on areas in which its powers should and should not be extended. Hon Derrick Tomlinson was correct in his rejection of the proposed section as the Government wants it applied. The amendment would give too much discretion. It would be wise for the Parliament to give some guidance.

Hon DERRICK TOMLINSON: If the Chamber, by majority, accepts the amendment, am I correct in assuming that I may then proceed with my amendment?

The CHAIRMAN: If it is agreed that the words be deleted, Hon Derrick Tomlinson will be able to move that lines 22 and 23, as amended, be deleted.

Hon DERRICK TOMLINSON: What if it is agreed that the words be left in place?

The CHAIRMAN: If it is agreed that the words not be deleted, the words "or rules" will stand; however, Hon Derrick Tomlinson will still be entitled to move the deletion of the lines, including the words "all rules". Otherwise, we would create a nonsense.

Amendment put and negatived.

Hon DERRICK TOMLINSON: I move -

Page 14, lines 22 and 23 - To delete the lines.

Hon Derrick Tomlinson; Hon Graham Giffard; Chairman; Hon Jim Scott; Hon Murray Criddle; Hon Barry House

The amendment has been circulated. I apologise to members that earlier notice was not given. The amendment is in response to recommendation 5 of the committee's report that the Legislative Council make a decision and give some direction.

Hon GRAHAM GIFFARD: The Government is opposed to this amendment. This provision exists in the Bill to allow the president to deal with appeals in the new system. It will allow an appeal to be heard by a single ordinary member. As has already been discussed, peculiar classes of appeal may occur on a regular basis. If this provision is deleted, it will mean that each time an appellant wants an appeal heard by a single ordinary member, an individual application will have to be made. Appellants will have to attend with lawyers and go to extra expense to get the president to refer a matter to the tribunal sitting as an ordinary single member when the basis of the appeal may be peculiar or curious. The new system of appeal will regard peculiar or curious appeals as commonplace. In moving to the new system of appeal, it is prudent to allow the president to exercise discretion. Notwithstanding that, a review of the Act will occur later; in particular, a review of how this provision is operating when the nature of the workload is better understood. The Government does not want this provision removed and opposes the amendment.

Hon DERRICK TOMLINSON: The parliamentary secretary appears to not understand this legislation. Proposed section 40 will allow appeals to be heard by a single member ordinary tribunal when the conditions of proposed subsections (3)(a)(i), (ii) and (iii) are met. The proposed subsections clearly state in legislation the parameters of matters that can be appealed before a single member tribunal. Proposed subsection (3)(a)(iv) allows a new set of appeals, which may be described as peculiar. Peculiar to what? Every peculiar matter that the tribunal has before it may be referred, at the decision of the president, to a single member tribunal. We will have a rash of peculiar appeals on peculiar matters. Proposed subsection (3)(a)(iv) requires the peculiarities to be described by regulation. Not every peculiar matter will be considered. Only those peculiar matters that meet the guidelines - peculiarly determined by the president - will be considered. If we are to have guidelines, this is the place to have them established. It is reasonable that the president have reasonable discretion. The discretion, and that which is reasonable, should be subject to direction by this Parliament. This provision allows the president to establish regulations that decide what is peculiar. The president is allowed to decide whether a peculiar appeal fits the peculiar regulations. He then decides whether he will allow the appeal to be heard by a single member tribunal. If there is to be reasonable discretion, the guidelines should be in the legislation. Proposed subsections (3)(a)(i), (ii) and (iii) are precise in their description and delineation. If reasonable discretion is required, guidelines should be in the legislation. The Chamber should decide - not some yet-to-be appointed president.

Amendment put and a division taken with the following result -

Ayes (21)

Hon Alan Cadby	Hon Peter Foss	Hon Norman Moore	Hon Derrick Tomlinson
Hon George Cash	Hon Ray Halligan	Hon Simon O'Brien	Hon Giz Watson
Hon Robin Chapple	Hon Frank Hough	Hon Barbara Scott	Hon Bruce Donaldson (<i>Teller</i>)
Hon Murray Criddle	Hon Barry House	Hon J.A. Scott	
Hon Paddy Embry	Hon Robyn McSweeney	Hon Christine Sharp	
Hon John Fischer	Hon Dee Margetts	Hon Bill Stretch	

Noes (12)

Hon Kim Chance	Hon Adele Farina	Hon N.D. Griffiths	Hon Tom Stephens
Hon Kate Doust	Hon Jon Ford	Hon Louise Pratt	Hon Ken Travers
Hon Sue Ellery	Hon Graham Giffard	Hon Ljiljana Ravlich	Hon E.R.J. Dermer (<i>Teller</i>)

Amendment thus passed.

Hon GRAHAM GIFFARD: I move -

Page 14, line 24 - To delete "an appeal".

This will correct a simple typographical error. It is referred to on page 23 of the report, which states -

This amendment to proposed section 40(3)(b) corrects an error (doubling up of words) made as a result of an amendment in the other place.

This simply picks up that which was picked up by the committee.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 14, line 30 - To delete “or rules”.

We debated the issues when we dealt with amendment 13/11. I do not propose to rehash that. I persist with this amendment because the Government prefers the amended wording.

Amendment put and negatived.

Hon DERRICK TOMLINSON: I move -

Page 14, line 30 - To delete the line.

As the parliamentary secretary indicated, the argument has been had.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 15, line 28 - To insert after “may” -

, with the written approval of the Minister,

The explanation for this amendment applies equally to amendments 17/11 and 18/11. The explanation is contained in the committee’s report at page 23, which states -

These amendments to proposed section 42(1) are intended to limit the breadth of the President’s power of delegation.

The amendment inserts the words “with the written approval of the minister”.

Hon DERRICK TOMLINSON: The Opposition supports the Government’s amendments 16/11, 17/11 and 18/11. They merely adopt the recommendations of the committee.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 15, line 29 - To insert after “any” the word “senior”.

As I indicated, this amendment is in the same context as the previous amendment.

Amendment put and passed.

Hon GRAHAM GIFFARD: For the same reason I move -

Page 15, line 29 - To delete “or class of member” and insert instead -

or to all senior members or the Deputy President

Amendment (words to be deleted) put and passed.

The CHAIRMAN: The second question is that the words proposed to be inserted be inserted.

Hon J.A. SCOTT: I want clarification. Under this amendment, will the words “or the Principal” remain in proposed section 42(1)? Prior to amendment, proposed subsection (1) stated -

Subject to subsection (2), the President may delegate to any member or class of member or the Principal
...

The words “or class of member” have been deleted, and the parliamentary secretary wants to insert the words “or to all senior members or the Deputy President”. As amended, will the proposed subsection include the words “or the Principal”?

Hon GRAHAM GIFFARD: Yes, it will. Those words will remain.

Amendment (words to be inserted) put and passed.

Hon J.A. SCOTT: I move -

Page 19, after line 2 - To insert -

(2) an objector defined in section 57(2) is a person entitled to notice under subsection (1)(b).

Although this amendment may appear innocuous, its success will ensure that further debate in this Chamber will be had on the pivotal issue of third party appeals. The amendments standing in my name on the supplementary notice paper are an opportunity for me to put forward a plea to the Chamber for third party appeal rights.

Hon Derrick Tomlinson; Hon Graham Giffard; Chairman; Hon Jim Scott; Hon Murray Criddle; Hon Barry House

The CHAIRMAN: Order members! I am happy for Hon Jim Scott to move the amendment and make his comments. However, in a moment I will suggest to the Committee that it may be convenient to hold over a decision on the motion until the substantive issue has been dealt with because this amendment is consequential on amendment 10/11. The Committee can consider the amendment in the meantime.

Hon J.A. SCOTT: Thank you, Mr Chairman, that is a good way to deal with the amendment.

The CHAIRMAN: If Hon Jim Scott wants to speak to it now, he should do so and I will hold over decision on the amendment.

Hon J.A. SCOTT: The decision on the motion should be held over until we debate the substantial part of the motion, otherwise it will limit my ability to speak properly on this very important matter. The amendment brings in the definition of a new class of person; that is, an objector. The best time to vote on this amendment would be after we have dealt with the substantive motion.

Further consideration of the clause postponed until after consideration of clause 11, on motion by Hon J.A. Scott.

Hon MURRAY CRIDDLE: I move -

Page 19, after line 22 - To insert -

- (4) A final determination of an appeal is to be made within the following timeframes after the applicant gives notice of an appeal to the Tribunal:
 - (a) Single Member Tribunal (Simple Appeal) 90 days;
 - (b) Three Member Tribunal (Complex Appeal) 180 days.

The amendment is self-explanatory. It limits the period in which a decision can be made so that people will have an indication of when an appeal will be finalised. There is a lot of frustration in the community about when decision making on an appeal goes on and on with no conclusion drawn. The amendment provides 90 days for a simple appeal determined by a single-member tribunal and 180 days for a complex appeal determined by a three-member tribunal.

Hon DERRICK TOMLINSON: The Opposition supports the amendment. It is highly desirable that a time frame be established for decisions on appeals. There is considerable disquiet in the planning and development industry on the delay in matters that are now before the minister. Part of the delay is because of the long process that this legislation has required. The minister hoped that the legislation would have been enacted by July last year and therefore held over appeals until after July in the expectation that they would be referred to the tribunal. I accept that part of the blame for the delay rests on the Legislative Council. However, part of the delay also rests on other factors. The delays and disquiet about the length of time that appeals are before the minister and the tribunal are not peculiar to the past 12 months; they are matters that have caused concern for some considerable time. Some appeals, either to the minister or to the tribunal, have been dealt with expeditiously and people have had a decision within three to six months. Other appeals, which are no more complex, have been delayed for up to two years. It is reasonable that a single-member tribunal deal with matters that might be described as simple appeals and that 90 days be given for negotiating that decision. It is reasonable to provide 180 days for a matter before a three-member tribunal that may have legal and much more contentious issues. I strongly support the motion.

Hon GRAHAM GIFFARD: Unfortunately, I do not have the figures with me, but the minister has made substantial inroads into the pile of ministerial appeals she inherited. It is not true that it is a growing pile; it is quite the reverse.

Hon Murray Criddle interjected.

Hon GRAHAM GIFFARD: No, I will deal with them but I make the point that I do not accept that it is of some disquiet that appeals appear to take a long time.

Hon Derrick Tomlinson: Come on, you must have your head in the sand!

Hon GRAHAM GIFFARD: No, I do not accept that. If Hon Derrick Tomlinson wants to apportion blame for delays, the other side of the Chamber must accept a large part of the responsibility for those delays.

Hon Derrick Tomlinson: If you had listened carefully, you would have heard me say that part of the blame must be accepted by the Council but that part of the blame can be apportioned to the process of ministerial appeals.

Hon GRAHAM GIFFARD: The process of ministerial appeals does take time. The committee dealt with the question of time limits for the determination of appeals at paragraph 9.4 of its report. The minister indicated clearly the Government's view of putting time limits on the legislation and the report quoted her as follows -

"The proposed amendment is not supported. It is, I am advised, without precedent in Tribunal proceedings. It is intended that the Tribunal will promulgate considerably more ambitious benchmarks in its rules. The proposed amendment makes no provision as to the consequence of any failure to meet the timeline. Any consequence acting adversely on a party would give the other party an incentive to delay proceedings. If there are no consequences then the provision has no point."

The report went on to say that a majority of the committee agreed with the minister's opinion. The Government's view is that it is consistent on this question and continues to oppose the amendment.

Hon BARRY HOUSE: I support the amendment moved by Hon Murray Criddle. There was a difference of opinion during the committee's discussions and deliberations on this matter. Although the majority of committee members agreed with the finding, a few believed that the tribunal had to be disciplined, because, as previous speakers have already stated, there is great unease in the community about the open-ended time frames people face when they lodge an appeal. Open-ended time frames exist under the current regime, and the committee took the opportunity to fix that problem by recommending a new regime that would require the tribunal to make a determination within a certain period. I will not be drawn into the argument about whether the pile of appeals on the minister's desk is increasing or decreasing. Political games were played during the committee's deliberations on the Bill. False claims were made, and these were met with counterclaims. However, that is by the bye. The minister has a job to do under the current legislation. Some people might say that she was hoping to flick pass her current obligations by moving on to the new regime as quickly as possible. The new regime has taken a while to put in place; however, given that the legislation needed fine tuning, that is the way it should have been.

Hon Murray Criddle's amendment will require tribunals to deal with matters within a reasonable period, so that the parties to an appeal can plan their lives. I refer not only to a simple subdivision but also a complex development. The economic viability of a development may be affected if there are continual time delays. The tribunal must be disciplined so that matters are determined within a reasonable period.

Hon J.A. SCOTT: This is a difficult matter. Although I acknowledge that it is good for the tribunal to be disciplined, when time frames for final determinations are outlined - such as the 90 and 180 days that are proposed in the amendment - the tribunal may believe that it can take that time before making a determination, rather than arriving at a decision as soon as possible. Moreover, as I said before, there will be significant variations in the complexity of matters that are brought before both a single-member tribunal and a three-member tribunal - I do not know why a single-member tribunal is referred to as a tribunal, I am sure we can find a better name - and even a simple appeal can be quite varied. Will the parliamentary secretary indicate how long it has taken to determine both simple and complex appeals? Will there be sufficient resources to ensure that determinations are made within the specified time frames? What will happen when specified time frames cannot be met as a result of complexities or a lack of resources?

Hon MURRAY CRIDDLE: It is my understanding that the tribunals will have the necessary resources required to deal with such matters. If that is not the case, the parliamentary secretary should make that well and truly known. Certainly, frustration arises when decisions are not made. Adequate provisions will not hinder the decision-making process.

Hon GRAHAM GIFFARD: The Government is concerned about the determination of appeals that will not take anywhere near the times set out in the amendment. Indeed, delays may be caused by virtue of setting time frames. As the minister advised in her correspondence with the committee, it is believed that time frames will set ambitious benchmarks for tribunals - more ambitious than that which Hon Murray Criddle seeks to prescribe. The time benchmarks for class 1 appeals are that the registrar should endeavour to set down a class 1 appeal for hearing within seven days; where possible, the determination of a class 1 appeal should be made orally at the conclusion of the hearing, and, in any event, the tribunal should seek to deliver and publish a determination within seven days of the conclusion of the hearing; and, unless the president otherwise allows, and then only in exceptional circumstances, an ordinary member must not reserve a decision for more than two weeks. The time benchmarks for class 2 appeals are that the registrar should endeavour to set down a class 2 appeal within 28 days, unless the parties otherwise agree; where possible, the tribunal should endeavour to deliver a determination on a class 2 appeal orally at the conclusion of a hearing, and, in any event, the tribunal should seek to deliver and publish a determination within four weeks of the conclusion of the hearing; and, unless the president otherwise allows, the tribunal should not in normal practice reserve a decision for more than eight weeks. Those are the

ambitious benchmarks to which the minister referred in her correspondence. Those are the rules under which the tribunal should operate, and we continue to oppose the rules being contained in the legislation.

Hon DERRICK TOMLINSON: I am surprised that the parliamentary secretary, on behalf of the Government, opposes the amendment, because the parliamentary secretary has given us what I think are reasonable time frames - 35 days in the case of a single-member tribunal, and whatever it was for the more complex matters - both of which fit within the 90 days and 180 days proposed in the amendment. However, the difference is that the parliamentary secretary is talking about the time frame after the process of appeal has begun; that is, once it gets into the hands of the single-member or three-member tribunal. What Hon Murray Criddle's amendment anticipates is that the time between the lodging of the appeal and the process of the appeal and the announcement of the decision should be taken into account. If we follow what the parliamentary secretary is saying, it may take a year for the matter to get before the tribunal, and a further 35 days for the decision. Hon Murray Criddle is saying that rather than specify just the time frame after the appeal process has begun, we should include in the total frame in which an appeal must be heard the period before the appeal process has begun. Therefore, I strongly support the amendment.

Hon GRAHAM GIFFARD: The tribunal will be able to control when it sits. Hon Derrick Tomlinson made the point about the tribunal being required to set matters down after the lodging of appeals. The tribunal certainly has to list matters within that time frame that I have just described. However, the tribunal will not necessarily be able to determine the length of a hearing from the outset. It is problematic to put in this legislation arbitrary time limits that may mean the tribunal cannot continue to take evidence to properly conclude a complex and involved matter. The Government believes the time benchmarks that I have described are adequate.

Progress reported and leave granted to sit again, pursuant to standing orders.