PLANNING LEGISLATION AMENDMENT BILL 2000

Introduction and First Reading

Bill introduced, on motion by Mr Kierath (Minister for Planning), and read a first time.

Second Reading

MR KIERATH (Riverton - Minister for Planning) [2.41 pm]: I move -

That the Bill be now read a second time.

The need to introduce this legislation arises from the findings of the full court contained in a judgment handed down in the Supreme Court in the case of City of Bayswater v Minister for Family and Children's Services and others, delivered on 1 June 2000. The purpose of the Bill is to amend the planning legislation to ensure that state agencies are not required to obtain development approval under the metropolitan region scheme in respect of public works.

Section 32 of the Town Planning and Development Act relieves state agencies and local governments, when undertaking, constructing or providing any public work, from the specific requirements of approval under a local government town planning scheme. Instead, state agencies are required to consult the local government prior to such development taking place. In the case of the metropolitan region scheme, it was previously understood that a similar exemption applied to land zoned under the MRS, and approval was not required for public works carried out by or on behalf of the State Government.

The decision of the Full Bench of the Supreme Court arises from proposals by the Department of Contract and Management Services, on behalf of the Department of Family and Children's Services, to undertake extensions to the Bedford hostel in the City of Bayswater. The hostel provides accommodation for youth in care. The City of Bayswater, through powers delegated by the commission to administer the MRS on zoned land in the district, required an application for development approval. The government departments refused this request on the basis that section 32 relieved them from any obligation to obtain development approval. The City of Bayswater commenced an action in the Supreme Court.

The argument of the government departments was successful in the first instance before Hon Justice Murray. The provisions of the Metropolitan Region Town Planning Scheme Act, which is the Act authorising the making of the MRS, are incorporated in the Town Planning and Development Act except to the extent of any inconsistency, in which case the provisions of the first mentioned Act prevail. Justice Murray held that section 32 of the Town Planning and Development Act is consistent with the provisions of the MRS, and that the provisions of the MRS and section 32 can thus be read together and applied on the basis that section 32 provides an exemption to the general approval requirements of the MRS. This exemption applies to both zoned land and reserved land in the MRS.

The City of Bayswater appealed against the decision to the full court. The full court, by a majority of 2:1, reversed that decision holding that there was an inconsistency between the requirements of the MRS and section 32. The full court accordingly held that the provisions of the MRS will prevail, and will require an application for development approval for the works concerned. In his dissenting judgment, Justice Anderson followed a line of reasoning similar to that of Justice Murray in the first instance. The effect of the full court decision is that any public works by the Crown, whether for reserved land or zoned land, except certain minor works, will require approval under the MRS.

There are sound arguments for the Crown to be exempt from the approval procedures of the MRS when undertaking public works. State agencies are undertaking public works for the benefit of the general community, and it is important that these community services be provided without impediments that may arise from the development approval process. It is also important to achieve consistency between the MRS and local government schemes in processes and procedures for public works. Common procedures will reduce the complexity and provide certainty in the process for public works by the State Government and local government.

The Bill modifies the provisions of the Metropolitan Region Town Planning Scheme Act to exempt the Crown from the approval requirements of the MRS for public works on both zoned and reserved land. This is consistent with the earlier findings of Justice Murray. It will achieve consistency between region schemes and local government schemes, and place the State Government on the same footing as local government so that formal planning approvals are not required to undertake, construct or provide any public work. State agencies will still be obliged to consult the commission and relevant local government prior to undertaking any public work. Such consultation is to be undertaken at a time when proposals for public works are at the formative stage so that account can be taken of any town planning considerations.

The decision of the full court also brings into question the validity of state projects that are under way or have been completed without planning approval being obtained under the MRS. The Bill provides for the retrospective validation of all public works that were commenced or completed prior to the legislation and did not have approval under the MRS. This is essential to provide stability and certainty for state agencies for public works that have been undertaken in the past.

The Bill also amends section 37M of the Western Australian Planning Commission Act. Section 37M will be inserted by section 14 of the Planning Legislation Amendment Act that was assented to on 10 January 2000, but is yet to be proclaimed. The effect of the amendment will be to provide similar exemption for public works in respect of region schemes outside the metropolitan region. At present there are no completed region schemes outside the metropolitan region, but schemes are currently being prepared for the Peel and Bunbury regions. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.