

Local Government Amendment Bill 2007

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LOCAL GOVERNMENT AMENDMENT BILL 2007

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Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [8.00 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave not granted.

The bill reflects the Government's commitment to keep the Local Government Act continually under review to provide a transparent and effective legislative framework for the administration of local Government in New South Wales. The proposed amendments address issues highlighted by the Department of Local Government that arise out of the operation of the Act and that require legislative amendment. First, the bill proposes to clarify matters in relation to the use of tendering and public-private partnerships in local government. The Act was originally amended in 2004 to allow a council an alternative to the tendering provisions of the Act when considering whether to enter into a contract to use a public-private partnership model to progress a council's project or works. I seek leave to have the balance of the second reading speech incorporated in *Hansard*.

Leave granted.

Previously, where a council was approached by a private developer with a proposal to provide a public facility or infrastructure on, for example, council owned land, a council was required to seek tenders.

This discouraged private developers from entering into public private projects with councils.

It also encouraged some councils to attempt to avoid the tendering requirements by arguing that "extenuating circumstances" brought the contract within the exemption for compliance with the tendering provisions.

The Local Government Amendment (Public Private Partnership) Act 2004 provided councils with an alternative method of engaging in a transparent and accountable process for selecting its partners for a particular project.

However, concerns have been raised in the local government industry that the provisions as currently drafted are ambiguous.

Some doubt has been expressed whether these provisions operate as was intended, namely, to enable councils to choose either to go to tender as required by section 55 of the Act or use the public private partnership provisions for certain projects.

The aim of this bill is to make this choice, and its corresponding procedural requirements, clearer for councils, developers and the public.

The amendments proposed in this bill enable councils to apply the most appropriate method of testing the market for a project, that is, determining whether to proceed with a development by tender or by public-private partnership.

Arrangements that may not constitute a contract but otherwise are a PPP arrangement will be required to be dealt with under the PPP provisions, commencing at section 400B of the Act.

For example, a memorandum of understanding between a council and a private developer to enter into an arrangement for the development of council owned land to provide a public facility that would be owned and operated by a third party would trigger the PPP provisions.

Central to this is a change to the definition of "public-private partnership" in the bill.

The new definition will now provide that a public-private partnership means an arrangement: (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control, but does not include any such arrangement if it is of a class that has been excluded by the regulations.

This amendment will remove any uncertainty about the types of services that fall within the "public-private partnership" framework.

Importantly, the new definition will capture services delivered to a council that are associated with the provision of infrastructure, but will exclude any ongoing maintenance or operation of that infrastructure.

For example, it is now very clear that councils do not have to follow the PPP provisions for every cleaning contract for a public toilet block.

A charity providing a bench in a public park is not entering a PPP arrangement.

A not-for-profit organisation such as Rotary providing lawn mowing or garden maintenance for a public area is not a PPP arrangement.

The proposed amendments enhance the recent changes to local government public-private partnership legislation, removing any ambiguities that have occurred in practice.

By ensuring certainty in a council's processes, all sectors of the community will benefit from increased transparency and flexibility in the models available for infrastructure development in local Government.

Secondly, the bill proposes amendments to the Act to clarify the manner of levying certain annual charges for stormwater management.

Currently, councils can levy annual charges under the Act for services such as waste management and water and sewerage management.

These charges can be applied to individual lots, strata lots or company title properties.

In accordance with government policy, councils have the ability to levy a capped annual charge for their stormwater management services.

This charge allows for the improvement of stormwater management throughout the urban areas of New South Wales.

In particular, it will facilitate the planning, construction and maintenance of drainage systems, constructed wetlands, stormwater harvesting systems and gross pollutant traps.

It also allows the continued monitoring and maintenance of general water quality and flow.

To better support the application of this charge, the Bill seeks to strengthen the existing provisions in the Act that allows a council to levy annual charges on individual strata lots and company title properties.

There will be corresponding amendments to the Strata Titles legislation.

These amendments will not impose a new charge on landowners.

These amendments merely clarify existing arrangements.

In conclusion, while different in focus, each area of reform proposed in this bill is founded on the improvement of local government procedures, policy and service provision.

The tendering and public private partnership amendments provide greater public transparency, and the stormwater levy amendments provide greater public resource management.

I commend the bill to the House.

Debate adjourned on motion by the Hon. Rick Colless and set down as an order of the day for a later hour.

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Second Reading

Debate resumed from an earlier hour.

The Hon. DON HARWIN [8.53 p.m.]: I lead for the Opposition on the Local Government Amendment Bill 2007, which seeks to clarify uncertainties regarding public-private partnerships involving local government and the levying of charges by councils. I state at the outset that the Coalition will not oppose the bill. I also draw to the attention of the House comments made by my colleague the member for Terrigal in the other place about the Coalition's disappointment that this legislation is proceeding even though an inquiry being conducted by the Standing Committee on Public Works into local government private partnerships for asset redevelopment has been set up. Unfortunately, submissions were only called on Friday 12 October 2007 and the committee is unlikely to report until next year. Therefore, the Government will be unable to study a very valuable report directly on point before legislating in this important area.

That is a problem. Nevertheless, the Coalition will not oppose the bill but will seek to adjourn it until the first sitting day in 2008. I foreshadow that my colleague the Hon. John Ajaka will do that later in the debate after other members have spoken on the bill. I remind honourable members that the terms of reference of the inquiry of the Standing Committee on Public Works includes an examination of, first, the overall benefit to councils of entering into partnerships with the private sector to redevelop infrastructure assets; second, which type of council infrastructure assets are most suitable for such partnerships; third, impediments to councils of entering into such partnerships; fourth, models of managing risk to both councils and the community; fifth, the effectiveness of the current public-private partnerships legislation and guidelines for councils; and any other related matters.

The inquiry is comprehensive and would be informative for a Government that was responsibly legislating in this very important area. Sadly, that is not the case. The Opposition will give the Government an opportunity to get this legislation right by moving that the debate be adjourned. Hopefully the Government will review the report of the Standing Committee on Public Works before we have the second reading of the bill in this place.

Nearly 15 years ago, the Fahey Coalition Government introduced the Local Government Act 1993. This fundamental and comprehensive reform of local government was one of the major achievements of the Coalition's last period in government. It was the first significant review of the operating rules and of the powers and functions of councils in nearly three-quarters of a century, and it remains the basis for the operation of local government in New South Wales. Along with a wide range of other reforms, the Act gave councils the powers to enter into partnerships with non-government organisations for the purpose of providing public infrastructure and facilities that would, in whole or in part, be financed, owned or controlled by the private sector. In so doing, the Fahey Government opened an important avenue for local government.

Today public-private partnerships are increasingly being utilised by councils as a means of delivering facilities to the community more quickly and to a better standard. For many councils, such partnerships are the only practical means of providing infrastructure while retaining a balanced budget. Increasingly, councils are subject to cost-shifting by the State Government, which adds to the burden of high ongoing administrative costs with which they must already contend. Of course, local councils cannot determine the level of their rates and thus have limited scope to control their income stream. Understandably, more and more councils are seeking to take advantage of the public-private partnership opportunities that the Act provides.

It is in the context of this increased prevalence of public-private partnerships involving local government that the current Government is seeking to clarify the relationship between such partnerships and the tendering requirements. According to the original Act, when a private developer approached a local council with a proposal to provide infrastructure or a public facility on council-owned land, the council was required to seek tenders for the project. Over time this came to be regarded as a disincentive to the successful development of the public-private partnerships between local council and the non-government sector.

In 2004 Professor Maurice Daly reported into the mismanagement of the joint Oasis development by incompetent Labor councillors on Liverpool City Council. In the wake of his report the Government amended the Act to give councils an alternative framework for selecting its development partners without sacrificing the necessary degree of transparency. Regrettably, as has so often been the case with this Government, the Local Government Amendment Bill 2004 was rushed through the Parliament without members and stakeholders being given adequate time to consider and debate its strengths and weaknesses. Proper legislative scrutiny was compromised in order for the Government to avoid further criticism of Liverpool councillors. Three years later the Government has admitted that the provisions as currently drafted are ambiguous. But I wonder if it has learned anything.

With the inquiry of the Standing Committee on Public Works it appeared that there would be an opportunity for Parliament to have input into the review. Unfortunately, even though the committee has a majority of government members, I am concerned that this bill has been received in this House to be passed very quickly. Nevertheless, this bill seeks to give councils, developers and the public clarity on the choice between either going to tender in accordance with section 55 of the Act or making use of the partnership provisions permissible for certain projects. Central to this improved level of guidance on the matter is a new definition of public-private partnership as an arrangement, firstly, between a council and a private person to provide public infrastructure and facilities, being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement and, secondly, as an arrangement in which the public infrastructure or facilities are provided in part or through private-sector financing, ownership or control, but not including any such arrangement if it is of a class that has been excluded by the regulations.

By providing more certainty to council processes it is hoped that local communities will continue to benefit from the opportunities for infrastructure development in local government that the Greiner-Fahey Government's reforms made possible. The second aspect of this bill relates to another clarification. Currently local councils are empowered to levy annual charges under the Act for the provision of such services as waste management and water and sewerage management. While these charges are applicable to individual lots, strata lots and company title properties, some doubt has been raised recently in the Land and Environment Court as to whether councils can levy those charges against individual lots in a strata scheme or only against the owners of strata plans.

The bill seeks to strengthen the ability of local government to levy special charges by confirming that these charges can be levied on individual lots in a strata scheme and company title properties rather than simply levied against the owners of a strata plan. The Minister has said that better application of this charge will improve stormwater management in New South Wales. Of course, as I remarked in previous debates relating to water management, the decision by this Government to put the burden of funding and managing stormwater on local government was regrettable and one of the lasting consequences of the Government's poor record of financial management.

The Government had developed a worthwhile stormwater management scheme in the form of the Stormwater Trust Fund. Recommended in the report of the Waterways Advisory Panel in 1997, administered by the Environment Protection Authority and financed by the Government initially to the tune of \$60 million, the scheme assisted councils' pilot innovation in stormwater management to undertake remedial maintenance work and introduce new technologies through public-private partnerships. Crucially, the scheme enabled projects to be originated and driven at local level while subject to coordination and oversight regionally. Unfortunately, as the State's finances floundered the scheme was abandoned in the 2004 mini budget.

Deprived of financial assistance for stormwater management they once enjoyed from State Government, local councils now must fund their stormwater projects through the imposition of levies on ratepayers. This is another example of the highest taxing State Government in the country shifting costs and taxes on to local government, and failing to follow up its water management rhetoric with pragmatic and effective funding for innovative and well-coordinated local projects. While it is unfortunate that the Government's management of water and stormwater in our State remains inadequate, this bill provides councils with clarity with regard to the imposition of levies that provide vital funds.

The bill provides more clarity also on public-private partnerships involving local council. It may well have provided even more clarity if its introduction had waited for the public works committee report. Of course, the House will have a chance to deliberate on that report later. Any step forward in providing clarity on public-private partnerships strengthens the legacy of the previous Coalition Government. Ultimately, after the House has considered

the issue of the public works committee report, and subject to examining any amendments that may arise from that report, at least as far as it currently stands, the Opposition is not opposing the bill.

Ms SYLVIA HALE [9.05 p.m.]: The objects of the Local Government Amendment Bill 2007 are to amend the Local Government Act 1993 as follows:

(a) to clarify the relationship between public-private partnerships and the tendering requirements under the Act, and

(b) to clarify that certain annual charges, such as for domestic waste management and stormwater management services, may be levied on individual lots in a strata scheme and on company title properties.

The bill makes consequential amendments also to other Acts and a regulation. The Greens support clarifying existing arrangements where they are ambiguous. However, this does not mean that the Greens support public-private partnerships as a suitable means for the delivery of public infrastructure. As I outlined to the House when the public-private partnership amendments were made to the Act, in the view of the Greens public-private partnerships are a way of privatising both the cost and ownership of public facilities. The fascination with debt reduction and tax cuts has seen Australian governments shy away from incurring debts, yet overseas borrowing in Australia in the late nineteenth century allowed for both phenomenal economic development and the creation of the social infrastructure that helped generate a modern and egalitarian society.

Public schools, the Commonwealth Bank, Telecom and the national rail network all provided services to Australians irrespective of their personal wealth. The overriding objective was the provision of high-quality public services, not the maximisation of profits to private shareholders. Proponents of the private public-partnership approach argue that this is the most effective way for governments to meet the costs of public infrastructure development. With both Labor and the Coalition obsessed with small government and budget surpluses, governments increasingly are reluctant to fund essential public works from private funds. As a result, we have seen a wholesale decline in public infrastructure investment by government.

The consequence has been a stampede by the private sector to projects offering the biggest profit margin, corresponding with a flight of equal proportions from projects with less profitable areas. The result has been a decline in services to the areas of greatest need. A decline in investment in the less profitable parts of the rail network has seen a steep fall in services. Privatisation of the airline, telecommunication and banking sectors has seen a corresponding decline in services, particularly in regional and rural New South Wales. Public-private partnerships have not been and will not be a panacea for the decline in services offered by cash-starved local councils.

The real answer to funding public infrastructure is increased public investment. Hopefully the newly elected Federal Labor Government will give serious consideration to the need to provide a massive reinvestment in public infrastructure, rather than to the \$30 billion worth of tax cuts that will only serve to make our tax system more regressive and will push up demand, inflation and interest rates.

I am aware that the Opposition will seek to adjourn the debate, and therefore a vote on the bill, until such time as the lower House Standing Committee on Public Works reports on councils and their involvement with public-private partnerships. I believe this is an eminently sensible move, one that all members of this House should support. It seems foolish, to say the least, to proceed when a lower House committee is examining in great detail material that is directly relevant to legislation that this House is considering tonight. The Greens will certainly support the Opposition when it seeks to adjourn debate on the bill.

Reverend the Hon. FRED NILE [9.11 p.m.]: The Christian Democratic Party supports the Local Government Amendment Bill 2007, an administrative bill which seeks to clarify the relationship between public-private partnerships and the tendering requirements under the principal Act. The bill also seeks to clarify that certain annual charges, such as for domestic waste management and stormwater management services, may be levied on individual lots in a strata scheme and on company title properties.

The bill amends the Local Government Act 1993, which sets out the requirements for participation by councils in public-private partnerships. The proposed amendments make it clear that a council may choose to either go to tender or to use the public-private partnership model for certain projects. The legislation will allow councils to enter into public-private partnerships and will provide that councils are not required to invite tenders. The legislation clarifies the nature and operation of public-private partnerships and, in particular, makes it clear that the types of services that relate to such partnerships are services that are delivered during the carrying out of any project under the partnership.

I have been involved with a number of inquiries into public-private partnerships, and the various committees I have chaired have recommended the use of public-private partnerships at a State level. I believe it is opportune that public-private partnerships be further developed at the local government level, certainly with close monitoring by the Department of Local Government to ensure that no council gets out of its depth, as has occurred in the fiasco involving Liverpool council. We do not want to see that occur again. Some councils in their enthusiasm may overreach themselves, so there must be some monitoring by the department and obviously by the Minister for Local Government. Certainly public-private partnerships can be of great benefit; indeed, we have seen them operating in a number of local government areas already.

The bill provides that annual charges for certain services provided by a council may be levied on individual lots in a strata scheme, or on a company title dwelling or a portion of a company title building. This is to prevent companies that own a block of units from having one charge applied to the whole building containing those strata units. The bill makes it clear that councils may levy charges on individual lots in a strata scheme, which seems to be just and proper.

It has been suggested that the passing of the bill should be deferred because a lower House committee is presently examining material that is relevant to the legislation. I understand that the committee's terms of reference were given by the Minister for Local Government, and that the Minister also introduced this legislation and believes that there is no conflict with the bill passing through the House and the committee continuing its inquiry and, in due course, perhaps sometime next year, making its report to the Legislative Assembly.

The Hon. JOHN AJAKA [9.15 p.m.]: As honourable members have noted in this debate, the Local Government Amendment Bill 2007 has in every sense been absolutely rushed through the Parliament this evening without any real opportunity for members to consider the impact of its amendments. Given that the Standing Committee on Public Works is currently finalising its inquiry and will hopefully hand down its report in the near future, one would assume that the Government would simply await the committee's report so that proper consideration could be given to its recommendations, together with the provisions set out in the bill. With due respect to the Government, it makes no sense whatsoever to pass the bill prior to the standing committee completing its inquiry and tabling its report. It is almost a case of shutting the gate after the horse has bolted.

As a former councillor on Rockdale City Council I am well aware of the impact that the provisions of the bill will have on councils. On the one hand, councils will welcome many aspects of the provisions. I can see many advantages in some of the provisions. First, the bill seeks to clarify the relationship between public-private partnerships and the tendering requirements under the principal Act. The fact that councils will not be obstructed in moving in a proper, commercial way with regard to public-private partnerships will be of huge benefit to councils. Clearly, the best interests of residents are paramount and this is something that can be achieved.

However, as we all know, councils continually come under the scrutiny of residents. The fact that councils must not only do the work but must be seen to undertake the work in a proper manner that is open to public scrutiny is of great concern. That is why I look forward to seeing the results of the standing committee's inquiry and its recommendations. It may well be that following the tabling of the committee's recommendations the bill will require only a minor amendment, which the Government may wish to move or it may allow the Opposition to move. For those reasons I move:

That this debate be now adjourned until the first sitting day in 2008.

Question—That the debate be now adjourned until the first sitting day in 2008—put.

The House divided.

Ayes, 17

Mr	Dr Kaye	Mrs Pavay
Ajaka	Mr Khan	Mr Pearce
Mr	Mr Lynn	Ms Rhiannon
Clarke	Mr Mason-Cox	<i>Tellers,</i>
Mr	Reverend Dr Moyes	Mr Colless
Cohen	Ms Parker	Mr Harwin
Ms		
Ficarra		
Miss		
Gardiner		
Ms Hale		

Noes, 18

Mr Brown	Reverend Nile	Mr West
Mr Costa	Mr Obeid	Ms Westwood
Ms Fazio	Ms Robertson	
Ms Griffin	Mr Roozendaal	
Mr	Ms Sharpe	<i>Tellers,</i>
Hatzistergos	Mr Smith	Mr Donnelly
Mr Kelly	Mr Tsang	Mr Veitch
Mr		

Macdonald		
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Pairs

Ms Cusack	Mr Catanzariti
Mr Gallacher	Mr Della Bosca
Mr Gay	Ms Voltz

Question resolved in the negative.

Motion for adjournment on debate negatived.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.26 p.m.], in reply: I thank members for their participation in the debate. I thank the Department of Lands for its input into the proposal to levy charges on strata title and company title lots. The amendments will improve the day-to-day running of the councils of the State. The Iemma Labor Government is committed to assisting councils to carry out their business in an effective manner. Efficient councils are what the ratepayers of New South Wales deserve. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.