Legislative Assembly

28/05/2002

Land And Environment Court Amendment Bill Hansard Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [8.42 p.m.]: I move:

That this bill be now read a second time.

The Land and Environment Court Amendment Bill seeks to amend the Land and Environment Court Act 1979 and the Environmental Planning and Assessment Act 1979, to implement reforms arising out of the report of the Land and Environment Court working party, released in September last year. The report was prepared by an independent working party that was chaired by the Hon J. S. Cripps, QC. It was asked to examine the legislative basis upon which decisions in relation to development applications are currently reviewed by the Land and Environment Court, including the most appropriate manner in which to review the decisions of local councils in relation to development applications; the constitution of the Land and Environment Court in reviewing the decisions of local councils, including whether the court should be constituted by more than one judge or commissioner or by commissioners possessing specified qualifications or expertise; whether the court should have regard to any additional matters in reviewing a council decision in relation to a development application; ways in which to streamline the manner in which development applications are processed by councils and the Department of Planning, so as to reduce the incidence of appeals; and whether greater reliance could be placed upon alternative dispute resolution mechanisms in resolving disputes in relation to development applications.

In conducting its review, the working party received more than 300 submissions from interested parties, as well as comments and advice from a range of relevant experts and stakeholders. The report of the Land and Environment Court working party noted that less than 1 per cent of development applications are determined by the Land and Environment Court, and that these are generally dealt with in a timely way. However, litigating a matter in the court is still expensive, and may cost parties tens of thousands of dollars. For this reason, the report recommended there be a new, streamlined, less-formal process for matters that involve relatively inexpensive developments that do not raise wider issues of public interest. The Land and Environment Court Amendment Bill will amend the Land and Environment Court Act to provide two new procedures for dealing with appeals relating to development applications brought under section 97 of the Environmental Planning and Assessment Act.

The first of these will see certain appeals—termed "on-site hearing matters"—being heard and disposed of by way of a conference held on the site of the proposed development and presided over by a commissioner of the court. Appeals to be dealt with by this procedure will be those involving developments that are valued at less than half the median sale price for dwellings in the local government area, where the developments would have little or no impact beyond neighbouring properties and which do not involve any significant issue of public interest. The new on-site conference procedure is expected to take in a large proportion of the court's work. Of all appeals against council decisions, 63 per cent involve projects valued between $50,000 and $500,000—in other words, mostly minor extensions and new homes. The new procedure is designed to help minimise formality and the role of lawyers, and to bring the court closer to the communities affected by its decisions. It also has the potential to make the court process more accessible by reducing costs and disposal times.

The second new procedure to be introduced by this bill will apply to appeals brought under section 97 of the Environmental Planning and Assessment Act which are not on-site hearing matters. These are termed "court hearing matters" in the bill. Court hearing matters may be determined by a judge, a commissioner or a multimember panel, at the direction of the chief judge. Panels will be convened if the chief judge considers that the hearing of a matter is likely to be lengthy, that there are a substantial number of issues in dispute, or that the site of the proposed development, or the development itself, is publicly controversial; or if the chief judge otherwise considers that a panel should be convened. Panels will comprise two or more commissioners, or a judge and one or more than one commissioner. In choosing panel members, the chief judge will be required to have regard to the relevance of individuals' expertise in and experience with the subject matter of the appeal. In dealing with court hearing matters, the court will be required to inspect the site of the proposed development, unless the parties to the appeal agree otherwise. The new court hearing procedure will cater for appeals involving important public interests and/or developments of substantial monetary value. It will allow the court to focus appropriate expertise on these appeals and ensure its decisions are, and are seen to be, of the highest possible quality.

In a nutshell, these reforms are designed to make the court less legalistic and less daunting for the average family or small business wanting to appeal against a council decision rejecting a minor extension—for example, to a home, a shopfront or a carport—while improving the checks and balances for major and publicly controversial developments. The bill will also amend the Land and Environment Court Act to add "urban design" and "heritage" to the list of fields of expertise that may qualify a person for appointment as a commissioner, and provide for

commissioners to be appointed on a part-time basis, in the same way as part-time magistrates are appointed. The purpose of these amendments is to widen the pool of available candidates for appointment, enhance the opportunities for suitably qualified men and women who wish to work part time, and ultimately to broaden the expertise available to the court.

The bill will also give the court the power to impose easements over land in certain circumstances, similar to the power vested in the Supreme Court by section 88K of the Conveyancing Act. It is anticipated that the Land and Environment Court will adopt much the same approach to applications for easements as that adopted by the Supreme Court. However, a person will only be able to apply to the Land and Environment Court for an order imposing an easement over land in proceedings where that person has been granted a development consent on appeal, and the court is satisfied, in addition to the types of matters set out in section 88K, that the easement is reasonably necessary for the person's development to be carried out in accordance with the consent.

The bill will also make several amendments to the Environmental Planning and Assessment Act. First, it will extend the period of time within which a local council may review its determination of a development application under section 82A of that Act from 28 days up to one year or, if the application is the subject of an appeal, up to the time when the court hands down its decision. The proposed amendments will also clarify that an applicant may make minor modifications to the application for the purposes of the review. The bill provides that, if any modifications are made, they should be publicly notified in the same way as an application for the modification of a development consent. These amendments are designed to encourage councils to take advantage of the power to review determinations, and to remove the need for appeals to the Land and Environment Court—or for consent orders—where a negotiated settlement is reached between the council and the applicant after an initial determination has been made.

The bill will also give local councils the power to modify development consents granted by the Land and Environment Court. However, the exercise of this power will be subject to important safeguards. In addition to fulfilling any other advertising or notification requirements, the council will be required to make reasonable attempts to notify any person who made a submission in respect of the original development application that an application to modify the consent has been received. If the council determines to grant the modification, any person who lodged an objection to it may seek leave to appeal to the Land and Environment Court against the determination. This amendment is intended to streamline the modification process provided by section 96 by removing the need for an applicant who obtained development consent on appeal to go back to the court to have the consent modified. It is also expected to reduce the court's workload. All in all, this bill will improve the appeals process for development applications by further adapting the procedures of the Land and Environment Court to suit the subject matter of planning appeals, and it will improve council processes by providing greater flexibility in relation to reviews of council determinations and the modification of consents granted by the court.

These reforms represent another stage in the State Government's program to improve the quality of planning decisions. In addition to the reforms set out in the Land and Environment Court Amendment Bill, the Government has commissioned a taskforce, made up of the chief executive officers of the Department of Local Government, the Department of Planning and the Attorney General's Department, to prepare a strategy for the implementation of a wide range of non-legislative reforms proposed by the Land and Environment Court working party. These reforms are of a practical and procedural nature, and relate to both the development assessment processes of local councils and the way in which appeals are dealt with by the Land and Environment Court. For example, the working party recommended training for local councillors as well as judges and commissioners of the Land and Environment Court, a change to the court's practice in awarding costs, and greater use of alternative dispute resolution at all stages of the development assessment process. I commend this important bill to the House.