



NSW Legislative Assembly Hansard

Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 28 March 2006.

Second Reading

Mr FRANK SARTOR (Rockdale—Minister for Planning, Minister for Redfern Waterloo, Minister for Science and Medical Research, and Minister Assisting the Minister for Health (Cancer)) [7.32 p.m.]: I move:

That this bill be now read a second time.

This bill aligns provisions for owner-initiated acquisition requests under the Environmental Planning and Assessment Act 1979 with the owner-initiated acquisition provisions of the Land Acquisition (Just Terms Compensation) Act 1991. Currently, where land has been reserved for use exclusively for a public purpose, there are two conflicting procedures which landowners can use to require the relevant authority to acquire the land. The acquisition provisions in an environmental planning instrument made under the Environmental Planning and Assessment Act 1979 provide for acquisition on demand. In contrast, the Land Acquisition (Just Terms Compensation) Act 1991 requires a landowner to demonstrate hardship as a result of a delay in acquisition of the land reserved to require an acquisition.

The Land Acquisition (Just Terms Compensation) Act 1991 also provides that the relevant acquiring authority may use its best endeavours to remove the planning reservation, rather than acquiring the land. The bill ensures that all future owner-initiated acquisition requests will be dealt with under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991. It also provides an opportunity for agencies and councils to review reservations prior to acquisition, and rezone lands reserved for public purposes where the land is no longer needed. This will ensure prudent expenditure of government funds to acquire land in priority programs for development for public purposes.

I will now address the elements of the bill. Schedule 1 amends the Environmental Planning and Assessment Act 1979 to provide that the procedure for the acquisition of land reserved for use exclusively for a public purpose under that Act is the owner-initiated acquisition request procedure in the Land Acquisition (Just Terms Compensation) Act 1991. This means that when an owner of land reserved for public purposes under an environmental planning instrument requests the acquiring authority to purchase the land, the landowner must be able to demonstrate hardship in order to force the acquisition to occur.

Where the authority determines on review that the land is no longer required, the authority will be able to initiate the rezoning process. This will prevent landowners from requiring authorities to acquire land, still identified in environmental planning instruments, that is no longer required for public purposes. An example of this is the 1998 case of the Roads and Traffic Authority [RTA] and Greenfield Mountains Pty Ltd on the Pacific Highway at Yelgun. The land was originally required for a road, and reserved under a local environmental plan [LEP]. A decision was taken to change the alignment of the road reserve, and the original reservation was no longer required. Despite this, the landowner applied to the RTA to compel the acquisition of the original reservation under the Environmental Planning and Assessment Act 1979.

The owner insisted on the compulsory process and the matter went to hearing. As a result, the RTA was forced to spend public moneys acquiring land it no longer required, as well as paying court costs for the hearing. Under the bill, an acquisition clause in an environmental planning instrument will not impose an obligation on an authority of the State to acquire land that is no longer required. An obligation will only be imposed as required by division 3 of part 2 of the Land Acquisition (Just Terms Compensation) Act 1991.

The bill also includes a consequential amendment to the Land Acquisition (Just Terms Compensation) Act 1991 to omit section 28. This section currently provides that the Land Acquisition (Just Terms Compensation) Act 1991 does not affect any obligation of an authority of the State to acquire land as referred to in section 27 of the Environmental Planning and Assessment Act 1979, but gives a choice for such an acquisition to be effected by compulsory process under the Land Acquisition (Just Terms Compensation) Act 1991. To prevent opportunistic acquisition demands, the commencement date of the proposed Act will be the date on which notice was given in Parliament for leave to introduce a bill for an Act.

Allied to this bill is a proposal for a new State environment planning policy [SEPP] for public reserved lands, to be enacted where sites are identified as no longer required for a public purpose. The purpose of the public reserved lands SEPP is to provide a way to give landowners certainty over the land use ability of their property if it is no longer required for public acquisition. The SEPP would also incorporate a provision for scheduling additional sites as needed.

The recent changes to the Environmental Planning and Assessment Act 1979 require all local councils to review their local environmental plans within a two-year to five-year period. As part of this process all public authorities with reserved land in a local environmental plan will be required to also review their need to retain land reserved for a public purpose. The new LEPs will include an acquisition clause reflecting the provisions of the bill. When reviewing the zoning of land currently zoned for a public purpose and identified as no longer required for a public purpose, consideration will be given to rezoning the land having regard to the adjoining zones and reflecting the objectives of the LEP. In the period before changes are made to LEPs that currently reserve land for a public purpose, these legislative amendments would prevail over any contrary acquisition clause provision in existing planning instruments.

The bill will also require an amendment to the acquisition clauses of the draft standard local environmental plan template. The Department of Planning will issue planning circulars as directives to councils to make the public aware of the changes to the legislation. I am advised that the bill has the support of the Local Government and Shires Associations, as local governments are often forced into needless land acquisitions as a result of the existing parallel systems. I commend the bill to the House.