Legislative Assembly

28/05/2002

Local Government Amendment (Miscellaneous) Bill Hansard Extract

Second Reading

Mr WOODS (Clarence—Minister for Local Government, Minister for Regional Development, and Minister for Rural Affairs) [7.32 p.m.]: I move:

That this bill be now read a second time.

This bill reflects the Government's continuing commitment to providing an appropriate and effective legislative framework for the administration of local government in New South Wales. The Government is committed to ensuring that improvements in local government are ongoing, and that new provisions are responsible and workable. The practical experiences of councils, residents and ratepayers also demonstrate the need for further amendments to ensure the responsiveness of the legislation. The amendments contained in this package will continue the process of improving the legislation that empowers this important level of government. The bill amends the Local Government Act 1993 in relation to council meetings, plans of management for community land, council ward boundaries, fees for councillors, water supply, sewerage and stormwater drainage works by councils, and other matters.

I will first review the amendments contained in the package that relate to the management of community land. Many people in the community are vitally interested in the management of public land. Land such as bushland, escarpment, foreshore, parks or sportsgrounds is commonly designated as community land. Another important type of community land is land that is of Aboriginal, historical or cultural significance. Community land is public land owned or controlled by the council and has been classified as community land under the Local Government Act. Once classified, community land is protected from sale or long-term lease for the benefit of the whole community. An area of community land which comprises the habitat of endangered or threatened species has special protections under the current Act. A council which is responsible for community land must take particular steps to manage the land, including developing a plan of management for the land, in consultation with the local community.

The Local Government (Community Land Management) Amendment Act 1998 made significant amendments to the community land provisions. The amendments proposed in this bill will refine those earlier amendments and improve the ways in which local councils manage community land. Local councils must categorise community land in one of the set categories, including as a natural area, sportsground, park, area of cultural significance or general community use. Land which is a natural area must be further categorised as bushland, wetland, an escarpment, a watercourse or foreshore. Categorisation of land is a key factor in determining the uses of the land.

Councils are required by the Act to hold a public hearing in respect of a proposed plan of management for community land to ensure that communities have input into the use of public land. The amendment in this package clarifies when a public hearing is required in relation to a draft plan of management. A public hearing must be held if a draft plan of management has the effect of categorising, or altering the categorisation of, community land. However, a public hearing is not required where the categorisation, or new categorisation, relates only to the further categorisation that is required for natural areas, which I have already mentioned.

Additionally, if , following a public hearing for a draft plan of management, the council decides to amend the plan by altering the categorisation of community land, another public hearing must be held in relation to the draft plan of management. These amendments will ensure that in any case where it is proposed to change the key determinant of the use of public land, the local community has a chance to have its say on the management of the land. Public land is a vital environmental, social and cultural resource and it is critical that local councils listen to the views of their communities when categorising community land.

A number of local councils work closely with Aboriginal communities in relation to the management of sites of significance to Aboriginal people on community land. Those councils have listened to the Aboriginal communities and have taken account of their concerns. Significant sites, such as rock paintings and middens, should be adequately protected from accidental or intentional misuse or destruction, for the benefit of us all. At the same time it is important to retain public access to community land. A council may resolve to keep confidential, within the plan of management for community land, the nature and location of a place or an item of Aboriginal significance. A council may also close part of its meeting to discuss information concerning the nature and location of a place or an item of Aboriginal significance on community land.

The plan of management will contain a note stating that the plan is affected by the resolution of confidentiality, so that people may know that a place is being protected under the provision. Any Aboriginal person associated with the public land concerned may apply to the local council for protection of the confidentiality of the nature and location of the place or item, or a council may resolve to do so of its own volition. However, in either case the council must consult with the appropriate Aboriginal community regarding public access to and use of

information concerning sites of Aboriginal significance on community land. Therefore, while councils must deal with important Aboriginal sites within a plan of management for community land, public access to the land is maintained and the nature and location of a place or site of significance to Aboriginal people can be kept confidential in order to protect Aboriginal history and culture.

A final amendment relating to the management of community land concerns the granting of an easement over community land to a landowner. A private landowner may require the installation of a wholly underground pipe for drainage purposes from private land, under community land to a drainage facility, or other appropriate facility. Currently, the Act requires a council to expressly authorise the grant of an easement over community land in a plan of management for community land because the easement may affect the public land.

The Act also requires that the easement be consistent with the core objectives of the relevant category of community land. Meeting these legislative standards can be very difficult indeed. However, there is no public interest in effectively neutralising the value of a property, or substantially impeding its use, by refusing to grant an easement for necessary utility pipes. Further, the grant of an easement for underground pipes would not hinder the use of the community land by the public. Accordingly, an amendment is proposed that will enable councils to grant an easement for wholly underground pipes for the purpose of connecting a premises adjoining community land to a facility of the council or other public utility provider. This amendment eases the administrative restrictions on the granting of easements by local councils so that they may allow landowners to fully enjoy the use of their property, without interruption to the enjoyment of community land by the public.

This bill also provides for council employees, or other persons authorised by council, to enter any premises other than national parks and wildlife reserves to carry out such water supply work, sewerage work or stormwater drainage work that the council is otherwise authorised to carry out. The bill also clarifies that ownership of such works rests with the local council that installed them. In New South Wales all local councils are responsible for the provision of stormwater control works in their local areas. About 120 councils outside the Sydney, Wollongong, Central Coast and Newcastle areas are also responsible for water and sewerage under the Local Government Act.

Unlike its predecessor, the current Local Government Act only empowers councils to enter premises to inspect such works. It does not allow them to enter premises to construct, repair or replace such works. To do so, councils have had to purchase easements by agreement or by compulsory acquisition. The cost of obtaining easements to enable councils to fulfil their community obligations is far beyond the financial resources available to them. The total cost to councils to acquire easements for water and sewerage works is estimated at $1.275 billion. This estimate does not include the costs of acquiring easements for stormwater drainage or flood mitigation works. This expense is a major disincentive to councils to carry out maintenance and repair works. Any delay caused by landowner objection would also lead to further disadvantage of the wider community.

This bill also addresses practical anomalies illustrated by the powers exercised by Gosford and Wyong councils, which are both designated as water supply authorities under the Water Management Act 2000. As councils operating under that Act, they have the benefit of the powers of entry provided to them under that Act, whereas if they were to provide the same services under the Local Government Act they would not have those powers. The provision to councils of the powers that are the subject of this bill is equitable. It addresses the anomaly that similar powers are now enjoyed by other authorities, such as private irrigation boards, private drainage boards, Sydney Water, Hunter Water, and State authorities operating under the Public Works Act 1912. Where the powers of entry are utilised by a council to undertake water supply work, sewerage work or stormwater drainage work that the council is authorised to carry out, private property owners would receive adequate compensation for any damage caused by the work.

I have spoken before in this place about increasing the accountability of councillors to their local communities. At the local government elections every four years some 1,700 councillors are elected to the 172 councils throughout the State. In holding civic office, those people have certain duties and responsibilities they must perform satisfactorily. For the most part, the councillors who volunteer their abilities, time and efforts for the good of their communities undertake their work admirably and with significant benefits for their areas. Councillors must represent the views and the aspirations of residents and ratepayers, and a critical part of this is attendance and contribution at council meetings. Councillors are paid an annual fee, determined each year by the Local Government Remuneration Tribunal, in recognition of, and as compensation for, the voluntary nature of the office of councillor.

However, local communities are legitimately concerned when elected councillors do not attend council meetings, particularly when this becomes a regular occurrence or habit. Councils are able to grant a leave of absence to a councillor, and there are many cases in which this will be entirely appropriate. For example, a councillor may suffer from an illness, may need to care for a family member, or may be required to travel for employment or business reasons. In all these cases, the local community would be likely to regard the grant of a leave of absence as necessary and satisfactory. An amendment in this bill will clarify the meaning of the leave provisions under the Act to make it clear that a councillor may seek leave either prior to the meeting from which the councillor is seeking leave, or at that meeting.

There are legitimate circumstances that may prevent a councillor from attending a meeting and it may not always be possible to seek that leave at an earlier meeting of council, given that there will often be a period of up to one month before the leave is required. Procedures relating to the attendance of councillors at council meetings enhance public confidence in local government as well as increase accountability to the community. For those reasons this clarifying amendment is considered to be necessary. Another issue that is addressed in this bill is the case of a councillor taking a period of leave and receiving fees for that period.

The Government considers that if a councillor, for whatever reason, does not attend a council meeting for a long time, that councillor should not receive the proportion of the annual fee that relates to the time the councillor was absent. Councils may presently withhold councillors' annual fees by resolution of the council for any period for which the councillor is absent from council meetings, whether leave has been granted or not. This provides the discretion for a council to continue to pay councillor fees to a councillor who is on an extended period of leave.

Under the Act, there is also a limit to the number of council meetings a councillor may miss without obtaining the prior leave of the council before the civic office is declared vacant and a by-election is called. After missing three consecutive ordinary meetings of the council without prior leave, the position is automatically declared vacant and a by-election must be held. This was the case at Queanbeyan City Council, where, following the grant of leave for almost eight months for which the councillor fees were paid, former Councillor Carol Atkins missed three meetings, and a by-election was held to replace her.

Accountability to ratepayers in spending public moneys, and the voluntary nature of a councillor's service to the local community, have led the Government to determine that the payment of fees should cease if a councillor remains on leave after three months absence from council meetings, with or without the permission of the council. There may well be circumstances in which it is appropriate to grant leave to councillors, but councillors on extended leave should not receive fees for that period, as they are not able to fulfil the duties of civic office that are required of them in their capacity as councillors.

The amendment contained in this package will help to ensure that ratepayers are effectively and diligently represented on council, and that fees for councillors should depend upon participation in the meetings of council. The theme of increasing accountability to residents and ratepayers is continued in a further amendment in this bill relating to meeting procedures of councils. The Act allows councils to close part of a meeting to the public in very limited circumstances, including discussion of commercial information of a confidential nature, advice concerning litigation, the personal hardship of any resident or ratepayer, and personnel matters concerning particular individuals.

The time spent in closed session must be minimised and the grounds for closure of the meeting must be specified in the minutes of the meeting. These provisions recognise that councils need to consider some matters confidentially but give paramount importance to the principle of open meetings and transparency in the exercise of council's functions. This is a principle that is found throughout the Act and should guide the transaction of council business. In relation to the closure of council meetings to discuss personnel matters concerning particular individuals, there is knowledge of instances in which the provision has been relied upon to close meetings to discuss matters concerning councillors, such as the payment of travel claims or the council's fees and expenses policy.

This was not the intention of the Act. It is an entirely inappropriate practice and the Government is proposing action to prevent it from occurring. Councillors are not employees of the council. They are publicly-elected officials whose behaviour and decisions should properly be the subject of the scrutiny of the local community through the open meeting process. To ensure the transparency of council decisions, the Government has proposes an amendment in this bill to make it clear that councillors are not personnel of the council for the purposes of closing a council meeting. Therefore, personnel matters concerning particular councillors must be discussed in an open meeting.

Another matter the Government is addressing in this bill relates to the broader accountability of councils as the governing body to function effectively in the day-to-day administration of local government in its area. Under the Act an administrator may be appointed when the Governor declares that the council is non-functioning, without the need for a public inquiry. A council may be non-functioning because an ordinary rate has not been made or levied, the council has not exercised its functions for six months or more, or there are not enough councillors for a quorum to be reached at council meetings. As an alternative to the appointment of an administrator in circumstances relating to the failure to obtain a quorum, the Governor may appoint a number of councillors so that a quorum may be reached and maintained.

The Act also provides that the Governor may declare vacant all civic offices in a council if a public inquiry concerning the council has been held and, after considering the results of the inquiry, the Minister has recommended that the Governor dismiss the council. The Governor is required to appoint an administrator to exercise all the functions of the council for a specified term, or to order the holding of a fresh election, and may make such further orders as the Minister recommends are necessary in the circumstances.

The circumstances that may result, and have in the past resulted, in a declaration being made that the civic offices of a council are vacant include serious councillor misbehaviour, maladministration, or loss of public confidence in the council. I remind honourable members that the Maitland and Bega Valley councils were such serious cases in which recommendations to remove the councillors had to be made. In the usual course of local government, councillors who have been democratically elected by their communities should be allowed to fulfil their terms of office. However, when the interests of the residents and ratepayers in the good administration of a council are so deeply and detrimentally affected by misbehaviour, maladministration, a loss of community confidence or some other circumstance as may arise, interference with the primacy of the elected body is warranted.

A state of affairs may eventuate whereby a council has been dismissed following a public inquiry, an administrator has been appointed and his or her term has been completed, and fresh elections held for new councillors, yet the general issues that resulted in the initial dismissal of the council continue despite the earlier process. Entrenched divisions between groups of councillors, between the councillors and staff, or between the council and the community, may persist after fresh elections. This may occur regardless of whether some or all of

the previously dismissed councillors are re-elected at the fresh elections.

While some particular issues may have been resolved by the administrator during his or her term, for example, in relation to a contentious development application, other more general issues may persist and seriously hinder the effective day-to-day administration of local government in the area. It is also possible that an additional range of issues may arise shortly following fresh elections for the council. These issues may be substantially the same as the grounds for making the initial declaration of vacancy of the civic offices of the council, or may be substantially of the same nature as those grounds. In either case, the difficulties experienced by residents and ratepayers in the area, as well as council's other clients and stakeholders, will be of such a magnitude as to demand a satisfactory and comprehensive resolution.

Under the Act currently, a second dismissal of the governing body of the council in these serious circumstances would require the holding of a further public inquiry. This would be a negative step for the local community, which would suffer continuing disruption to the functioning of the local council while the inquiry took place. Moreover, the further public inquiry is likely to consider substantially the same issues as those that resulted in the initial dismissal of the council. It is unlikely that the heightened atmosphere of another public inquiry would assist in the resolution of problems for the benefit of the community. A second public inquiry and report process also represents a significant cost to the public, both in terms of money expended on the inquiry and the time for that process to be completed.

It is not appropriate for the Government to ignore serious failings of a council and to leave the residents and ratepayers of the area without effective day-to-day administration. The State Government therefore considers that legislative amendment is necessary to provide for a satisfactory measure in cases in which a previous council has been dismissed and the problems blighting the council persist. It is not proposed to amend the current provisions with regard to the dismissal of a council for the first time, either after a public inquiry or when the council is declared to be non-functioning. The amendment is in addition to the current provisions and operates only subsequent to their application.

The Government's intention in relation to this amendment is to ensure that residents and ratepayers can enjoy the proper and effective administration of local government in their area. The Government is also mindful of the need to give fulfillment to the voters' wishes in electing councillors for a full term, and by providing checks and balances on the dismissal powers we will ensure that a declaration for the vacancy of civic offices of a council is made only in serious and appropriate circumstances.

The amendment provides that the Governor may, by proclamation, declare that all civic offices in relation to the council are vacant, without the necessity of a public inquiry. The provision allows an administrator to be appointed when a council has previously been dismissed on the basis of a public inquiry, an administrator appointed and that term completed, and fresh elections held for a new council. The power to dismiss a council without a public inquiry will be limited to the first 12 months following the election of a new council. After this period, another public inquiry would be required. This check on the power will ensure that the option of dismissing a council is utilised only in appropriate cases.

Because the dismissal of a council is so serious, the Minister may recommend that a council be dismissed only if a departmental investigation has been conducted into the matters of concern at the council, and the departmental representative recommends in the report of that investigation that such a declaration be made. Additionally, the Minister must be satisfied that there are reasonable grounds for making a declaration in relation to the dismissal of the council. The Minister must also be satisfied that those grounds include grounds that are substantially the same, or are substantially of the same nature, as all or some of the grounds for making the previous declaration of vacancy of the civic offices of the council.

The Government's proposal ensures that natural justice is afforded to the councillors and other affected persons. In the course of the departmental investigation, the departmental representative will be required to give each of the councillors, as well as any employee of council and any other person whose actions the investigator intends to refer to adversely in the investigation report, an opportunity to comment on the parts of the report that refer to them, before the final report is submitted to the director-general of the department and the Minister. The Minister and the Governor are required to consider the report and any submissions by those affected persons before taking any action to dismiss the council.

A council's annual management plan is one of the key ways that a council can consult with its community and establish a strategic plan for the council's work, activities and revenue policy. A council must give public notice of its management plan and must exhibit the plan for not fewer than 28 days. The council is required to consider submissions made to it by members of the public, and the council must adopt the plan after submissions from the public have been considered. Once adopted, these plans are available to the community for inspection, which of itself assists in providing accountability of the council to its stakeholders. A number of matters are required by legislation to be included in the management plan, including a statement of the principal activities that the council proposes to conduct, and performance targets for each of those principal activities.

Because annual management plans are such a key resource of the council and determine its work and activities in the community for the forthcoming year, the Government has determined that the adoption of management plans should not be able to be delegated to any other person or body. The Act provides that certain council functions should not be delegated. The making of a rate or a charge, the borrowing of money, the compulsory acquisition of land, and the acceptance of tenders are examples in this category of functions that cannot be delegated by the council. Perhaps the most obvious matter that should not be delegated by the governing

body is the voting of money for expenditure on works, services or operations. These functions are considered to be critical to the operation of a council and are of such a nature that proper accountability demands that the functions and powers be exercised by the council itself.

The amendment in this bill clarifies that the adoption of the council's annual management plan is not a function that can be delegated. However, other kinds of management plans, such as privacy and equal employment opportunity plans, may continue to be delegated by council to the general manager. Further, it is also proposed to expand the range of matters which a council should include in its management plan, so as to include any activities prescribed in the regulations as principal activities. For example, councils may be required to include in management plans statements relating to social, community and cultural matters. This provision will increase flexibility in setting out additional matters which are of such importance to the operation of the council that they should be incorporated in an annual management plan. The amendment will not unnecessarily burden councils with planning, but will genuinely further the processes of open government in the community by allowing the community to have a say on important issues. Public planning is an excellent method of enhancing councils' communication with the community and responsiveness to the needs of the local area.

A local council may seek the approval of its community, by way of a constitutional referendum, to divide its area into wards. Wards then have an equal number of councillors, although the councillors continue to represent the entire area. Many local councils have divided their areas into wards, to maintain local communities of interest and geographic cohesion, and to assist in an understanding of associations that may be important when planning or implementing council's services. Wards are therefore an important feature of local government representation and provide further opportunities for direct involvement in local government processes for residents and ratepayers. The Act, by requiring a constitutional referendum to divide an area into wards or to abolish wards in an area, provides the framework for community consultation in relation to wards.

Additionally, the Act requires councils to keep their ward boundaries under review, and to consult with the Australian Statistician and the State Electoral Commissioner in relation to making changes to ward boundaries. However, the Act does not currently provide a legislative mechanism for councils to consult with the local community when considering altering the ward boundaries or changing the number of wards. There are many reasons why a council would wish to make such changes, including changes in local demographics, to take into account new communities of interest, or developments that have altered the nature of the area or the nature of council's functions in the area. The Government considers that it is appropriate to provide additional guidance to councils on the manner of altering ward boundaries or the number of wards, to provide proper accountability to the local community and transparency in council decision making. Consultation on ward boundaries gives councils the opportunity to understand associations that may be important when exercising a council's functions.

The amendment in this bill requires councils to provide 28 days public notice of a proposal to change the number of wards or to alter ward boundaries, and to allow 42 days for the lodgment of written submissions by members of the public in relation to the proposal. This scheme is consistent with the public notification and consultation provisions under the Act for other purposes. Councils will still be required to consult with the Australian Statistician and State Electoral Commissioner to ensure that the proposed boundaries of its wards correspond to the boundaries of appropriate parliamentary subdivisions and census districts. Similar to the need for community consultation concerning wards and ward boundaries, the principles of democratic representation demand that all wards contain approximately the same number of electors. The Act provides that the division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area. The integrity of the ward system depends upon an appropriate boundary being made, which maintains communities of interest and geographic associations, and provides that wards are basically equal in the number of electors that the ward contains.

While the introduction of a ward system in an area, or a change to the boundaries of the wards in an area, must not result in a variation of more than 10 per cent between the numbers of electors in the wards, there is no requirement under the Act to rectify an imbalance in the number of electors in each ward if a variation of more than 10 per cent arises. An amendment is therefore proposed to address this deficiency and to support the system of wards where they have been introduced. If, during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, and that difference remains at the end of the first year of the following term, the council must alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from each other ward in the area.

This amendment will ensure that the proper effectiveness of the ward system can be achieved and maintained by local councils throughout New South Wales. The requirements of the community consultation amendment contained in this bill will also apply to changes to ward boundaries or the number of wards that must be made by virtue of the operation of the 10 per cent variation rule. In conclusion, the reforms contained in this bill to the Local Government Act reflect the Government's broad commitment to increasing the effectiveness of the local government legislative framework, and to responding in a timely way to the concerns of local councils and the community about the operation and accountability of local government. The current proposals maintain and promote the values of open and accountable decision-making, and will assist councils in providing good and effective local administration for the benefit of communities in this State. I commend the bill to the House.