

Legislative Council
HANSARD
Wednesday, 16 August 2023

STATE POLICIES AND PROJECTS AMENDMENT BILL 2023 (No. 14)

Second Reading

[...]

[11.40 a.m.]

Ms WEBB (Nelson) - Mr President, we have before us such a slight bill - barely four pages - consisting of five clauses, two of which provide the substantive matter at hand. A slight bill, but one with such a telling, and fought, back story. At face value, the bill is a straightforward planning amendment. That is the bill we are dealing with today. It is not about beginning a POSS process for any particular project; it is a straightforward planning amendment to a process.

It seeks to address one of the long-held criticisms of the State Policies and Projects Act 1993, which is the sidelining of parliament at the conclusion of the integrated planning assessment process - except for the situation where the minister of the day recommends to the Governor that the Project of State Significance, otherwise known as a POSS, should proceed, contrary to the Planning Commission's recommended conditions. That is the current process, where there is one limited way that parliament comes into play at the end of the process. This bill seeks to deal with that, to some extent. Other long-standing criticisms of the act include the lack of public appeal rights or judicial review, which I will discuss later in my contribution.

To return to the role of parliament - currently, section 26(9) of the act provides for any order diverging from the commission's recommendations to require both Houses of parliament to pass a resolution before that particular project can proceed.

As we have heard from the Government, this bill seeks to extend that requirement of parliamentary approval to those POSS assessments where the minister recommends an order in accordance with the Planning Commission's recommendations and conditions, under some circumstances. Basically, we have a process for those projects which qualify for the status of having statewide significance, bookended by parliamentary approval in the initial order instigating the assessment considerations and now also, via this amendment bill, to the final order.

However, not all projects are born equal under this amendment bill. The only 'must', as stipulated under clause 4 of the bill, is in relation to potential projects, of which the Government is the proponent, being required to come back for that second parliamentary vote. The equivalent, automatic parliamentary oversight will not apply - or will not necessarily apply - to those proposals put forward by the private sector. Instead, private sector instigated projects may be required to come back for a second parliamentary vote. The bill and the Government's Supportive Information Package that we were provided with is silent on what those triggers to call in a private proposal for a second parliamentary vote would be.

You would think that vagueness would inject the element of uncertainty, which tends to instigate an allergic reaction amongst some in the business sector. Surely, if certainty and clarity of process is the order of the day, it would be simpler to provide a transparent and

equitable process upfront by requiring all proposed projects of state significance, no matter the proponent, to be subject to the bookended parliamentary approvals process, as this bill seeks to impose on state-instigated projects.

Mr President, that brings me back to the contextual motivation behind the appearance of this bill in the parliament. It is useful to place the current debate on this amendment bill within the context of its origins, as that contextual lens can be quite instructive about why the bill contains certain elements but remains silent on others.

We also need to acknowledge there is legitimate public interest in this bill and its passage due to the associated political context that it sits in. Hence, we risk committing a disservice to those interested community members who may be watching, or reading *Hansard* now or in the future, if we gloss over the catalyst for this bill's appearance and prioritisation through the parliament.

As others have already noted, the key motivation for this bill and its prioritised timing has been political expediency. On 12 May this year, as members will recall, we saw the announcement by members for Bass and Lyons, Ms Alexander and Mr Tucker, respectively, of their intention to resign from the Liberal Party and instead sit in the other place as Independents. Prior to that date of 12 May, it was touted the proposed AFL stadium at Macquarie Point would be dealt with under the Major Projects process as established under the Land Use Planning Approvals Act 1993. In contrast, the new independents wanted the stadium subject to the Projects of State Significance process under the State Policies and Projects Act 1993. As has been widely reported, this sudden and fairly brutal defection to the crossbenches left the Government teetering in a minority. Just over a week later on 20 May, and prior to the delivery of the state budget, the Premier publicly announced he had secured a commitment from those two new Independents in the form of a memorandum of understanding. This MOU details, amongst other undertakings, the following at the top of the list, and I quote;

The Macquarie Point stadium be progressed through the Projects of State Significance and removed from Major Projects.

However, it quickly became apparent from the news reporting of the time there was a misapprehension of exactly what the State Policies and Projects Act provided, namely that the parliament considered any proposed POSS twice. For example, an ABC news report of 20 May stated this, and I quote:

He (the Premier) said the stadium would be subject to extensive scrutiny. 'The parliament will have two opportunities, one to set up the Project of State Significance and then finalise the arrangements moving forward should all the planning criteria be met,' Mr Rockliff said.

'There are two opportunities for the parliament and the people of Tasmania to get to have a say on the stadium.'

However, as we know, that assertion was incorrect. It was pointed out by a range of commentators at the time as the act then and still currently stands, that a POSS would only come back to the parliament for a second vote in any instance when the minister decides to recommend a POSS process with different conditions to those recommended by the Tasmanian Planning Commission.

Not as the two Independents understood the case to be or, as I gather the Government understood the case to be, and not what they understood their MOU with the Premier to deliver. Then a month later on 22 June, the bill before us was tabled by the Premier and responsible minister in the other place.

While an improvement on the current POSS provisions in the act and while also filling a gap on the TPC Project of State Significance flow chart, which has now been correctly presented on the website, this amendment bill reinforces by omission the fact its origins are based in political expediency rather than a commitment to any democratic accountable and inclusive planning law reforms. When it became evident back in May that an amendment to the act would be necessary, many people - myself included - raised a range of other aspects that should be included in these reforms.

On 21 May, I issued a media release in which I raised not only the fact the current act denies Tasmanians the right to judicial review, but also called for the following matters to be addressed to strengthen the transparency and integrity of the POSS process as a matter of urgency, and I will list them:

First, to amend the act to provide for public appeals in the form of judicial review at the end of the process.

This is not addressed in the bill before us. The legislation, as I said, must also be strengthened to ensure the independence and impartiality of the Tasmanian Planning Commission and any established assessment panel to protect against actual or perceived political interference. This is a concern that has yet to be addressed. It has been a concern in times past, when projects have been put through a POSS process, and there has been controversy about the politicisation or influence on the panels.

The second thing in the statement I put out publicly was that the Premier must clarify whether gazetted guidelines detailing the cost development process currently exist, as specified in section 17 of the act and, if so, ensure they are publicly accessible. If current guidelines do not exist, the Premier must detail when they will be developed and released.

In response to questions I then subsequently put on notice or put to the Government here in this place, the Government confirmed on 31 May this year that currently the required guidelines stated in the act in section 17 do not exist. Further, I quote from the Government's answer to my questions, which was tabled in this place. The Government said:

The Government is of the view that the provisions of the act, which was amended in December 1998 to include more detail in relation to process, provide the commission with sufficient guidance in relation to undertaking an integrated assessment of the Projects of State Significance. Should further guidance be required in relation to the assessment of a specific project, then this will be provided in the direction given by the minister to the commission under section 21.

If that is the case, section 17, as it currently exists in the act, is no longer regarded as necessary and guidelines do not need to be sitting there waiting, why would we not have used this opportunity as we amend the act to tidy that up? If the Government's explanation - I accept

the explanation - is that there can be more detail put into a direction, why wouldn't we have tidied the act up and removed that slightly odd extraneous bit apparently there, about guidelines? A 'watch this space' situation seems to be there regarding any future POSS guidelines which may be issued or gazetted regarding them. It seems they no longer intend to use that mechanism there in the current bill.

A third thing I called for at that time publicly was that the Premier must guarantee funding is provided to ensure key community stakeholders opposing the project can participate in the POSS process on a level playing field with the stadium proponents. While I recognise that last point is not necessarily a matter for the amendments bill before us, it is an important outstanding matter of community concern still waiting to be addressed, which we must not lose sight of. I raise these few examples of identified areas requiring attention and improvement associated with the current POSS process, as they remain pertinent when considering both the design and the intent of the bill we are currently debating.

Particularly in light of some of the commentaries surrounding this bill, that it 'improves transparency and accountability' and that it will enhance the role and involvement of the elected representatives of the people - us - as referencing the various second reading contributions, the amendment bill before us consists of the bare minimum by which to meet the two new Independents' requirements for more transparency, accountability and involvement in decision-making processes surrounding the proposed AFL stadium - even, perhaps in the future, the Marinus Project. These limitations make it quite clear that without the political impetus the Government found itself grappling with, this bill, limited as it may be, would not have seen the light of day. As such, it does not necessarily reflect a new-found commitment to strengthening the rigour or oversight of our planning laws, nor enhance the community's role in the planning process. I would like to be wrong and potentially the Government's consideration of the amendments during the later stages of this debate - if we get there - may be an opportunity to be proven wrong on this point, and happily so, should that eventuate.

Recognition of Visitors

Mr PRESIDENT - Members, I welcome a group to our Chamber from TasTAFE. Currently, we are debating a bill on projects of state significance and all members get to contribute their thoughts on the second reading speech. Once we go through this process, then, if it passes, it goes into a Committee stage, then sometimes through the processes of amendment. Sometimes the bills are passed without amendment. That is what we are doing at the moment. It is a fairly topical discussion; you may have heard about the proposed stadium, and this is a bill to facilitate parts of that through a parliamentary process. I am sure all members will join me in welcoming you to the Chamber today and thank you for coming to the parliament.

Members - Hear, hear.

Ms WEBB - It is my view this is not a bill to facilitate a stadium or the consideration of the stadium that is proposed for Macquarie Point. That can occur under the current act we

have. What we are grappling with today puts a greater threshold into that act, potentially making it more difficult to facilitate the stadium, if it passes as an amendment bill here in this place. Passing this bill does not give a green light to the stadium, just to put that on the record very clearly.

Mr PRESIDENT - I do not think that I meant that at all, no.

Ms WEBB - I am just responding to your comments, Mr President. It is a matter of confusion, because it is being reported in current media on the passage of this bill through the other place and as it comes to this place, that this is somehow the first green light for a particular process - the stadium. It is not. It is changing the Project of State Significance process, inserting a requirement for a second parliamentary vote which, arguably, puts a higher barrier for the eventual, potential consideration of the stadium or other projects of state significance proposed by the government.

Back to my remarks as prepared. I will briefly mention the amendments to this amendment bill which I intend to move, presuming the Chamber votes to pass the bill into the Committee stage. I will not be reflecting on them in detail, but I want to mention them in my comment here. I circulated those amendments to members earlier this week on Monday. I will not go too far into it, but I offer a brief overview because it might be useful to members' consideration as we hear other contributions at this second reading stage.

One amendment seeks to insert a new clause C to provide an automatic repeal of this eventual amendment act, should it be passed. This automatic repeal of act provision has become a standard feature of amendment bills debated in this parliament. Yet, we have not had an explanation through the Leader's second reading speech, nor the supportive information, about why it is absent in this amendment bill. Most other amendment bills that come through have this as a standard clause. I will not read through a list. I do have a list here of recent ones and ones currently before us that do have this as a standard clause.

It seemed unusual for this provision to be absent from the amendment bill before us. It is my understanding that without an automatic repeal provision, should this bill pass and become an act, we would then just have a bit of a double up on our statute books, the principal act, the State Policies and Projects Act, which would be changed by this amendment bill. Although that would not be a problem, they would not hinder each other in implementation or prevent any operation of those acts, it is not considered best legislative practice. In the absence of an amendment or an explanation for why it is absent in the bill presented by the Government, I will seek to put forward an amendment to add this clause to the bill that we are considering. The Leader may wish to reflect on that in terms of the Government's view, or if there is further explanation to be provided by the Government.

The other amendments I intend to move relate to the matter of projects of state significance being subject to judicial review. They are new clause A and new clause B in the package I circulated to members on Monday.

As I mentioned earlier, there is a further longstanding criticism that the State Policies and Projects Act 1993 is absent of any of that form of right of appeal, either a public right of appeal on merit or a judicial review of process. My proposed amendment seeks to provide a mechanism for some judicial review element.

Without going into detail of the proposed amendments now, I wish to flag with members and on the record that for these judicial review-related amendments, I have been advised I will need to seek leave to move a permissive instruction motion. Again, I refer members to an email I circulated on Monday this week which outlined the need for that permissive instruction and the process that will entail. That is all I will say about that at the moment and we may come to the point we deal with that in the process here in this place.

Another aspect of the amendment bill which has raised some concern is the distinction between projects of state significance proposed by the Government or the Crown and those by private sector developers or proponents. Apparently, this distinction is required to address - so I have heard an argument run - potential sovereign risk concerns. To be frank, I find that sovereign risk argument somewhat less than convincing.

The emphasis on the dangers of uncertainty for investors appears somewhat disingenuous within the context of good, robust and transparent planning processes. The key underlying principle of such good, robust planning processes is the provision of a level playing field, as level a playing field as possible between the goals of the proponents and the cultural, ecological and economic values and aspirations of local communities. It must be acknowledged that there is a degree of uncertainty faced by the community throughout the planning processes, too. It is not just a consideration that may affect proponents, investors or developers; it equally can affect communities, that level of uncertainty.

In the context of this POSS process, there is uncertainty for all involved no matter their position on any particular proposal of the day when the initial declaration order is placed before each House and then there is that initial parliamentary vote.

Presuming that it is passed, as required in the legislation, then it is a lengthy process where the merit of the proposal is then examined, debated and argued through that integrated assessment process.

There is uncertainty about the findings of the final report that would come from the panel conducting that integrated assessment, uncertainty whether the minister of the day would then accept the commission's and the panel's final report or recommend that the Governor provides a differing order detailing alternative conditions. Then there is further uncertainty as to whether both Houses will then support that final order if that is part of what is required for that particular project. That is the process as it currently stands, but the one area where there is absolute certainty and consistency is that the current process applies no matter whether the proponent is government or private.

I note that while clause 4 of the amendment bill before us provides discretion for the declaration order of any POSS whether proposed by government or the private sector, a private sector proposed project may specify that the final approval order has no effect until it has been approved by both Houses of parliament. It is unclear upon what basis the minister of the day would utilise such discretionary powers and include that as a requirement. I did seek to find some information in our briefing to understand what would guide that. What would be the criteria on which that might be assessed? How would we understand that to be brought to bear? Is it something that will be then publicly available to have to be explained as to why it is there or not there in a private proposal?

It is not clear to me that there will be any further clarity provided on that, although if the Government in the summing up would like to provide comments, that would be useful. One thing we can be reassured of is that if a private proposal was to be brought forward under the POSS process, if amended according to the bill before us, it would still have at least that first parliamentary vote. If there was a good argument to be made that it should be mandated that there be a second parliamentary vote, and the reason for that might be that it involves significant areas of public land or public funding, it might be that it has significant public consequence. They might all be good reasons and rationales for mandating a second parliamentary vote for that private project.

At the time of the first vote, the parliament of the day could take that into consideration in terms of whether it supported that first vote or not. There is still some parliamentary control over the initial part of that, regardless of whether it is a privately proposed project, but it does give me disquiet that what we are setting up here with this amendment is potentially a varied process when it could be a consistent process.

I note that there appears to be some justification attempted about this distinction between projects proposed by the state and those by the private sector on the basis that there is a clear correlation between government projects with significant economic, social and community impacts and benefits, with a clear public interest. That is to paraphrase the Leader's second reading speech. Seriously, if we are bringing any project, government proposed or private proposed, through this particular process, we have already acknowledged that the proposal is of a scale or a magnitude that it qualifies to be considered of state significance. If it has a significant economic, social and community impact and benefit, it has, by default, a clear public interest. To my mind, there is no need to make a distinction here in the level of rigour applied by parliamentary scrutiny, based on who the proponent is.

It is interesting to consider public interest is not defined solely by the source of funding for a project or whether the proponents are elected by the public or not. The public interest can be determined by things like access to public resources, whether that is land, water, air or infrastructure. It can be determined by the potential impact upon a place, impact on amenities, impact on lifestyle.

If we were to consider for example the most recent times the projects were assessed under the POSS process, the Gunn's pulp mill, which was withdrawn by the proponents in favour of its own enabling legislation, the Walker Corporation's Ralphs Bay marina proposal, both of which were extremely contentious and in which the community determined they had a considerable public interest, it would be no guarantee under the amendments made by this bill before us that either of those would be subject to a second vote of parliament because they were privately proposed projects. That is an inequitable formalised distribution, I think, of uncertainty here in what is being put forward in this bill.

Mr President, to get back to the issue of sovereign risk, which some are alleging is heightened should there be any further addition of uncertainty in the revised POSS process, this could be mitigated by removing this new proposed discretionary power, and instead maintaining and extending the current certainty that all parliamentary checks and balances apply consistently, across Government and non-government proposed projects of state significance. That would immediately remove the uncertainty of whether there will be a second and final parliamentary vote. It would also be consistent with the sentiment contained in the leader's second reading speech, which stated:

It is important to be mindful of the risks of damaging Tasmania's reputation for private investment based on predictable, transparent assessment processes.

'Predictable, transparent ... processes', Mr President. I could not agree more; but, ironically, that is not what this amendment bill delivers. Of course, we cannot guarantee the outcome of those future parliamentary votes should they come to pass, any more than we can guarantee the outcome of a final TPC report and recommendations on any POSS process that is undertaken. That is the uncertainty inherent within any merit-based assessment, and one which applies equally to all proponents and opponents - as it should. Surely, that is preferable for all involved, rather than the proposed element of uncertainty contained in the amendment bill, where neither the proponents nor the community know whether a particular private sector proposal may be required by the minister of the day to be subject to a second parliamentary vote and, if so, upon what criteria.

Clearly, some project proposals might be treated quite differently should the current Premier be the minister making that decision; or should Mr Tucker or Ms Alexander, for example, be the minister making that decision. I consider that is an element of unnecessary uncertainty injected by this amendment bill, both for the community and potential proponents. I remain unconvinced that the distinction made between potential projects based upon whether they have state proponents or private sector proponents is neither desirable nor necessary.

I will now touch on the sudden commitment by the Government to hold a review of the State Policies and Projects Act. I describe this as 'sudden', as the first I was aware of this intention was when the revised second reading speech was circulated on behalf of the Leader on 8 August. I thank the Leader for the timely circulation of that speech. The commitment in question, and I quote from the second reading speech, is this:

The Premier also commits to progressing a more comprehensive review of the State Policies and Projects Act within the next 12 months. The act has been in effect for nearly 30 years with minimal amendment. With the unprecedented growth being experienced in Tasmania, it is important this review be undertaken now to ensure we have a suite of appropriately calibrated assessment pathways. [OK]

I am amongst the first to acknowledge that it is good practice to maintain a rolling review of our statutes to ensure they reflect, and meet, contemporary standards and expectations. Again, we would like to take this commitment at face value as being an example of that good practice. However, I wonder about the commitment to review the SPP act suddenly appearing in the Leader's revised second reading speech, when it was not included in the initial version we were provided.

A quick chronology - this bill received its first reading in the other place on 22 June this year, which was the date the Premier's second reading speech and supportive information pack was distributed to us. The initial second reading speech was two pages long. It had no mention of a comprehensive review of the act. A week or so later we started to hear about concerns such as sovereign risk, as I flagged earlier.

On 8 August, when the debate began in the other place, we received a revised second reading speech, which now consisted of four pages containing further detail regarding the POSS process and this new commitment to review the State Policies and Projects Act, on the basis that after 30 years, the act has had minimal amendment. As an aside, it is also the case that in those 30 years the POSS process provided for by that act has had minimal use. Hence my query, upon which I am hoping the Leader will be able to shed some light. When was it decided that a comprehensive State Policies and Projects Act review was required, and on what basis was it decided that that was required? Who, if anyone, was consulted in forming that assessment?

Further, can the Leader clarify the proposed time frame for this review? Is it the Government's intention that the review will commence within 12 months; or is it the intent the review will be conducted and completed within 12 months? That would be ambitious, I suspect.

Lastly, is it the intent of the Government that any changes to the act, as identified by this review, would be applied retrospectively to any POSS project assessment by the TPC which may commence between now and the review's completion? Or would any such project be playing out under the act as it is now, or as it may be after this amendment bill, and not be affected by the review that is undertaken?

I also asked in our briefing for confirmation the review would, if it indicated the need for legislative reform, then give rise to an exposure draft of a bill to be put forward for public comment; and that would also be part of the review process before legislative reform would come to this place for consideration. I put that on the record so it can be confirmed in this place.

I also flag that, given some of the advice received when consulting upon my amendment to provide for some judicial review provision in the POSS process, it is my understanding that the state's Judicial Review Act 2000 potentially contains some fundamental flaws and, as such, would also warrant a comprehensive review. However, I am not going to dwell on that detail. Hopefully, we will have a chance during the Committee stage to further discuss aspects of judicial review.

I also seek some clarity from the Government on the matter of recovery of costs by the Tasmanian Planning Commission. Although it is not provided for in the amendment bill, it is mentioned in the Leader's second reading speech. The Government has indicated its intention to table regulations 'that will provide for the full cost recovery of the assessment'. Can the Leader please clarify whether that would apply to government-proposed projects? Or will the TPC be able to invoice the government for costs associated with undertaking a POSS assessment? Is that what is meant when the Government states it will move to ensure the commission will be funded to carry out the assessment? At what stage is that funding intended to be provided at the beginning - to ensure that the TPC has the means to undertake this assessment - or at the end, as a recoupment?

Given that the TPC is a statutory, independent, publicly funded authority, it does seem a little strange for it to additionally recoup publicly funded costs from the government. Or is the intent that the costs are only recovered from private sector proponents? As the Government has raised this consideration - which is welcome, and sensible in the context of the debate of

this amendment bill - I hope we can get some further clarity; although I note it is not material to the bill that we are debating.

Mrs Hiscutt - Through you Mr President, could I ask members, if they have multiple questions like that, to give me a little advance notice so that we can have something ready for you? It may take through the lunch break to get everything required.

Ms WEBB - I imagine we have a number of second reading contributions yet to come and the Leader's summing up is quite some way off today. I am on my feet and putting in my questions at the time that we make our second reading contributions.

Before I conclude, I feel the sad necessity to warn the Government - and the Premier, who tabled the bill in the other place - to avoid verballing this parliament and its elected members, by inferring that a vote for or against this amendment bill is also indicative of support or otherwise for the proposed AFL stadium. To attempt to do so is more than a long bow to draw; it would be divisive, combative, insulting and just plain wrong for any such assertions to be made. This amendment bill does not contain the word 'stadium', nor does the Government's second reading speech and nor does the bill's supportive package of material.

Yes, the contextual background about the catalyst for this amendment bill notes that, sadly, the bill's origins lie with the Government seeking to shore up confidence that was shaken by its handling of the AFL stadium issue. However, if it is passed, this bill stands on its merits whether or not the AFL stadium ever progresses to the assessment stage. That matter would be considered and dealt with quite separately in this place. Anyone who has paid a modicum of attention to the waves of planning debate in the state since - and possibly even prior to - the introduction of the 1993 resource management planning system, the RMPS, would be well aware that the State Policies and Projects Act has been considered fraught in a range ways. It has been considered fraught for, amongst other reasons, the sidelining of parliament and the lack of public and judicial review rights. Hence, anyone seeking to opportunistically misinterpret support or otherwise for the belated improvement of transparency and accountability in an established planning law, an attempt to extrapolate that as an indication of support or otherwise for any potential future proposal may be subject to this particular planning law is both a desperate and wrong assertion. To sum it up, it is gaslighting. It is beneath the parliament and the community whom we are elected here to represent and I hope we do not hear any such assertions made.

To conclude, I will be supporting this amendment bill into the Committee stage where I have already flagged I will be seeking to move amendments. In doing so, I wish to reiterate my motivation is to seek to improve a current planning law, the State Policies and Projects Act 1993, by strengthening its democratic elements. These improvements should apply to any potential specific projects of state significance, whether current or future, government or private sector.

This apparent political lifeline for the Government may have had its origins in securing confidence and supply in the other place. However, that is immaterial when this Chamber considers the merits or otherwise of the bill before us. As always, we need to assess it against its stated intent and whether and how it seeks to deliver that intent.
