BUILDING BILL 2010

Second Reading

Resumed from 10 November 2010.

MR C.J. TALLENTIRE (Gosnells) [7.51 pm]: I am very pleased to continue my remarks on the Building Bill 2010. I must say that since I made my previous remarks, we have come a long way. On Tuesday of last week—Tuesday, 29 March—the manager of opposition business, the member for Rockingham, gave a speech to the Housing Industry Association of Western Australia, in which he expressed the Labor Party's support for the introduction of the six-star energy efficiency rating system. I also issued a media release on that day, calling on the government to quickly move to introduce the six-star energy efficiency rating system. I was very pleased that on Friday I received a media release from Hon Simon O'Brien, the Minister for Commerce, saying that the government would be bringing in the six-star energy efficiency rating system. That is good news. That means that at last we will be able to solve the problem whereby the wrong house is built on the wrong block, and people are encumbered with expensive energy bills in trying to cool a house that has a vast amount of glass facing the sun, and trying to heat a house that lacks insulation and other such things.

Therefore, this bill will be a positive step forward. It will mean that Western Australia will have a better quality of housing. Some 20 000 new dwellings are built every year in Western Australia. We need to start now to make those houses more energy efficient. This change has faced strong opposition from many people in the building industry. I note that in the December 2010 issue of *Building News*, which is put out by the Housing Industry Association of Western Australia, the president urged members to fight like hell and to ask Santa to give them a "get out of six-star pass". The HIA argued that the introduction of the six-star energy efficiency rating system would definitely increase the cost of building a new home, and that was a cost that consumers would not be able to wear. However, what they never, ever pointed out was that with rising energy costs, any increases in building costs—if they exist at all—would evaporate immediately.

I also need to acknowledge that many members of the housing industry are positive about this measure. I do not hear them very loudly, but they are there. They are keen to ensure that there is better quality housing in Western Australia. I note, for example, that Griff Morris, who owns the company Solar Dwellings, makes the point that good design does not cost any extra, but poor design incurs massive costs over the life of the building. That sums up very well why we need to bring in this six-star system in Western Australia. Thankfully, we are moving forwards. There will be a phase-in period before this system becomes mandatory. However, the government should tell people that they can go to a builder today and ask for a six-star rated home. I am not seeing that at the moment. There is no advertising to tell people that they can insist today that they get a six-star rated home. I get the impression that many builders want to flog off any of their houses that do not meet the six-star rating system. They want to do that before the system becomes compulsory on 1 May 2012. The 12-month phase-in period will officially start on 1 May 2011. We need to let consumers know that they can request a six-star home today, and they will then not be encumbered with massive energy bills in the future.

We need to deal with the sensationalism that is contained in some of the reporting about the additional costs that will be incurred in building better quality dwellings. I realise that some of the profit margins of builders come down to the fact that they buy in bulk and have components that may not meet the six-star rating, and that they may want to get those components through the system before they start talking about six star. I noticed in the weekend press that Summit Homes is advertising that it is producing a six-star rated home. It is excellent news that consumers can now choose that higher energy efficiency rating.

Of course, one argument that the housing industry has put is that we should not put all the focus on new homes; we should look also at the existing housing stock. That is a legitimate argument. How can we bring in a system that will improve the quality of the existing housing stock—all those homes that we go back to each night, many of which were built many years ago? There are many ways in which we can do that. One method is the mandatory disclosure system. This is clearly identified in the Council of Australian Governments' "National Partnership Agreement on Energy Efficiency". The COAG agreement presented the case for the six-star rating system. It also presented the case for mandatory disclosure. Mandatory disclosure means that in the future, every home that is put on the market for sale or for rent must be given an energy efficiency rating. That makes perfect sense, because it means that the consumers—the buyers or renters of the property—will be able to buy or rent with better knowledge. When people buy a car, they can see the fuel efficiency rating sticker on the car windscreen. They can look at the website www.greenvehicleguide.gov.au and see how much fuel the vehicle consumes. That level of information should also be presented for existing homes. A mandatory disclosure system is absolutely essential if we are to deliver that. The question that then arises is: what legislation will we use to bring in mandatory disclosure? The COAG agreement does not dictate that, because each state has different legislative arrangements that may allow for mandatory disclosure to be brought in.

Mandatory disclosure has existed in the Australian Capital Territory for at least 12 years and exists in many other countries. Therefore, there is nothing really new here; it is just how we go about doing it in Western Australia. That is why I have on the notice paper an amendment to clause 93 of the Building Bill that would bring into effect a potential opportunity to develop mandatory disclosure of energy ratings, whether or not an occupancy permit is required for the building. Details can be described later through regulations, but at least we will have the head powers in the Building Bill—soon to be Building Act—that will allow for mandatory disclosure regulations to be drawn up in the future. We do not want a situation in which we have to wait for legislation to be prepared and go through the Parliament before we get mandatory disclosure. There is great enthusiasm in the community for mandatory disclosure. People have been working as home sustainability assessment professionals for many years and have the skills to help undertake these sustainability assessments. There is also enthusiasm in the real estate industry; real estate professionals would like to be involved. Given suitable training, they would like to provide that sustainability assessment for homes. There are some great opportunities there. I know that the minister has concerns about a regulatory impact statement and the position of such a document on the issue of mandatory disclosure. I have received information from the federal government, from the Department of Climate Change and Energy Efficiency, that the Western Australian government has submitted to it the regulatory impact statement for Western Australia. There is no way that the minister should be allowed to say in this place that there has been a delay in getting the regulatory impact statement. The case for Western Australia is solid and has been presented to the commonwealth. Indeed, the commonwealth has a plan, and I cite a document from the office of the Minister for Climate Change and Energy Efficiency that states that the department intends to have the consultation regulatory impact statement in the public domain by May 2011. Therefore, all this is imminent and I think that it is imperative that we ensure that the legislation before us can provide the legislative mechanism for mandatory disclosure so that we can get on and do not lose any further time. It will make a big difference to the fairness of the marketplace; if we have better information in the market, people can make better decisions. It will be totally consistent with the "National Strategy on Energy Efficiency", which, after all, the Premier has signed off on. Measure 3.3.2 states that mandatory disclosure of building energy efficiency will come into Western Australia. The Premier committed to that back in July 2009. This will be the other part of the equation. We have done the six-star rating; that is great. Let us now make sure that existing properties are covered by this mandatory disclosure system. That way we can ensure that the quality of our housing continues to improve so that people do not face ridiculously large fees, charges and energy bills on their properties.

MR P. PAPALIA (Warnbro) [8.03 pm]: I rise this evening to speak about the Building Bill 2010 on behalf of the member for Bassendean, who is unable to be here. He has asked me to raise a specific issue that has been brought to his attention by a number of local governments in his electorate. They would like the Minister for Housing to listen to their concerns and consider whether it might be possible to amend the legislation to take into account their specific concern. They say that under part XV of the Local Government (Miscellaneous Provisions) Act 1960, local governments have fairly broad-ranging powers to issue notices regarding health and safety at building sites and that councils, despite these powers, are reluctant to do this until they have first explored possible negotiations with the landowner. If that negotiation is unsuccessful, the council is entitled to enter the property and carry out the terms of the specific notice. The local governments are specifically concerned about the recovery of costs associated with that enforcement. At present, the council can claim the money, and if there is no voluntary payment made by the people involved in the building, the council has cause for action in civil jurisdiction. The councils in the member for Bassendean's electorate are proposing that a more workable solution to this problem would be for the council to be entitled to place a charge over the land to preclude its sale until the amount outstanding from the order is paid.

The member for Bassendean has given me a practical example of a situation in which builders at a construction site in Bassendean spread dust and debris throughout the neighbourhood. This caused considerable distress to the residents and the builders received the maximum $5 000 fine. Although the Town of Bassendean has recently adopted a local dust law proposal to give rangers powers to issue infringement notices to builders, the issue of liability for costs associated with enforcement under the Local Government (Miscellaneous Provisions) Act still remains. Therefore, the local governments are proposing that an amendment to this act would allow them greater certainty when acting in such instances and would ensure that costs could be recovered without them having to pursue the individuals concerned through the courts. I propose this amendment on behalf of the councils in the member for Bassendean's electorate. I am also told that a similar provision exists in section 372 of Health Act 1911. The understanding of the local governments is that the provision is not used very often, but is reasonably effective in securing money owed. This concern has come from the member for Bassendean on behalf of local councils he represents, including the City of Swan, Town of Bassendean and the City of Bayswater. I leave it with the Minister for Housing.

DR A.D. BUTI (Armadale) [8.06 pm]: The opposition sees many aspects of the Building Bill improving the industry. We will have a chance in consideration in detail to look at those various provisions. I have also

received correspondence from a number of councils, including my own, the City of Armadale, and also the Shire of Goomalling. I am sure that my National Party friends in this place will be interested in what I have received.

Ms M.M. Quirk: Regular correspondence, member!

Dr A.D. BUTI: I actually do get regular correspondence from the Shire of Goomalling!

Mr D.T. Redman interjected.

Dr A.D. BUTI: Well, there we go. The shire has produced very fine people by the sounds of it!

One issue about the bill that has been raised by a council, and I had even thought of it before receiving the correspondence, is that the bill seeks, in some respects, to delineate between planning and building. Let us face it, there is a major frustration when people want to build, because councils are often very slow in giving building approvals. The purpose of this legislation is to try to lessen the time it takes for building approvals to be granted by councils. The delineation between planning and building will be an issue for some councils, especially those that are stretched for resources. Some departments in various councils will have trouble with this delineation, because if building and planning are not closely related or connected, there may be issues with each department contravening the other's policies. Therefore, it will be interesting to hear from the Minister for Housing about how this bill may be able to alleviate that problem, because building approval may be given, but it may result in noncompliance of a planning requirement. I am not sure if there is any easy way around that, but it is a possibility and I am told that some planning departments in councils are concerned about it.

It is unclear from my reading of the bill what legal liability local governments will have if they give certification based on deficient information. If the information provided to them is incorrect, and they certify a building approval, what legal liability is attached to the council? I am also unsure about how the bill deals with complaints about encroachment issues and the obligations of local governments to check the compliance of proposals with all the written laws of the land, particularly the obligations that result from their need to apply written laws on behalf of public authorities in this state.

The Shire of Goomalling wrote to me and presented some interesting issues that are of particular concern for people who live in the country. One of the shire's major concerns is the cost factor that may result from the need for inspections. In reference to clause 36 of the Building Bill, the shire's letter states —

> This section deals with the aspect that a Building Surveyor can list the inspections and tests as he or she considers necessary for the proposed construction.
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> In principle, this is excellent but in practicality it could be difficult and onerous on the owner in as much as a city based or private Building Surveyor could stipulate numerous conditions of inspection and tests which could be unnecessary and terribly expensive for country housing owners.
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> This is because the expertise has to travel from the metro area and we know that even in Goomalling—132km from Perth, you cannot get an expert to do an inspection for less than $800 because of travelling costs and time. Imagine the cost that the owner would have to bear if the Building Surveyor has listed 10 or more inspections.

The shire also raises the issue of self-inspections. If self-inspections are allowed to take place, it raises the question of whether the quality of the self-inspection would be up to the standard that the government would want to achieve through the Building Bill. There is no doubt that this bill is necessary; I am just raising some of the concerns of the shires and cities. I look forward to further examination of this bill in the consideration in detail stage.

MS J.M. FREEMAN (Nollamara) [8.12 pm]: I rise to contribute to the Building Bill 2010. The Minister for Housing will have to indulge me because it was some time ago when we discussed the three other building bills. I hope that I do not repeat myself —

Mr T.R. Buswell: I have never known you to repeat yourself, although you put very similar arguments!

Ms J.M. FREEMAN: The minister just cannot resist, can he? I was being charitable. Next time I will just repeat myself and give the minister no consideration.

Mr T.R. Buswell: Then I might say that you are just repeating yourself.

Ms J.M. FREEMAN: The minister probably would.

Ms M.M. Quirk: If he got it right the first time, you would not need to repeat yourself.

Ms J.M. FREEMAN: That is probably right but I am too polite to say such a thing. I think that it is worthy of putting into *Hansard* that if the minister got it right the first time, I would not need to repeat myself. If he answered my questions in a way that dealt with the issues, I would not have to repeat myself either.

In any event, I will raise a number of issues relating to Nollamara and I would like the minister to clarify whether some of those issues will be dealt with by the Building Bill. I understand that the Building Commissioner will be able to deal with a number of issues. A builder built a property in Hancock Street in Nollamara after making an agreement with the original owner of the property. Many properties have been subdivided in the area. In that agreement, the builder built a property for a woman at the back of the lot. The land was split and the woman kept the land at the back and three units were built at the front. Unfortunately, the original owner of the property came to an untimely end. He was killed because he had links with organised crime. The house then became the subject for some time of an investigation into whether it could be confiscated under the Criminal Property Confiscation Act. That investigation has now finished. For the past three years the property has sat uncompleted, as a shell of a building, in front of a house that has been completed. The investigation discovered that the property was not in the dead gentleman's name but was in the name of his wife. On that basis, the property could not be held under the proceeds of crime legislation. In the meantime the uncompleted building sat there deteriorating and decaying and was a cause of concern for the residents. I have pursued this issue with the City of Stirling. Obviously rates are not being paid on the property. However, it is the city's view that it will not take any legal action because there is not a significant amount of debt owing to it. The builder had put a caveat on the building but nothing has come from that. I want to know about the building code that the bill adopts and what effect the bill will have on buildings in our cities and urban development and on how urban design has an impact on our communities and neighbourhoods. How can this bill assist to bring a matter like that to completion for the benefit of the neighbourhood, given some of the complexities of that case? The solution to that may be a planning responsibility, which I accept. Can the City of Stirling or another local government put time lines on that type of process through the Building Bill?

Another example concerns properties in St Andrews. Some of the properties are worth about $1 million, which is a bit unusual in my part of the world. Many people bought their land with the caveat that they had to build a property within three years. After one gentleman started building his house, his relationship split up. The couple have been disputing in the Family Court which party would come out with what and the building has remained unfinished for 10 years now. I followed up the matter and the told the City of Stirling that there was a caveat to the purchase of the land that meant a development had to be built within a certain time. That owner had not built a property so that he could get an advantage over his former partner in their dispute over the property. I asked the City of Stirling whether it could do something about that but was told that it could not. It said that the caveat on the land was put there by the developer but that nothing could be done about it once the developer had gone. All the other neighbours have built very expensive properties and have watched the turret extravaganza across the road lie unfinished for 10 years. The only thing that the City of Stirling can do is make the owners ensure that the site is secure, because it was dangerous. There is a quite ugly fence in front of the property. There is no doubt that the City of Stirling has been trying to pursue this matter. I understand that the other bills we have dealt with may assist the neighbours' ability to take action and might also help the city to go through a different dispute resolution mechanism. Is there anything in the code of practice or the Building Bill that can assist the neighbours? They do not want to have to engage in a formal dispute. They want reasonable parameters to take into account that when dealing with people's properties there is a responsibility on the neighbours to complete the construction of their buildings so that our communities can enjoy the physical amenity around them.

I raised another issue previously and I wonder whether it is covered in the Building Bill. Nollamara and Mirrabooka are experiencing the rapid subdivision of large blocks. I believe that we should not keep expanding our suburbs out into the urban fringes and that we need smaller blocks and redevelopments. There are obviously issues about facilities and infrastructure. Many of the areas that are being developed were developed by the Department of Housing in the 1950s. They are large blocks that may have been surveyed with precision at the time. However, on many occasions—I do not know whether other members have experienced this—people have come into my office and told me that a builder is encroaching onto that person's block and is claiming that it is part of the builder's property. Adverse possession in Western Australia, which is a common law claim, is a common law concept and has a common law basis in that a person can say, "I have had possession of this land for this period of time, I have had use of it and I have made use of it. I should continue to use this land and it should not go across to the neighbour because suddenly there has been a new survey process." However, that common law process is very complex in that people need to get lawyers and other surveyors involved. It is very intimidating for many people who have what they believe to be their property encroached on by developers who are developing land next door and who can afford the advice to say, "This land is owned". As I understand it, the impact of the Building Bill will extinguish adverse possession, which is of serious concern to me. The adverse possession process in New South Wales, as I understand, is much simpler in that people can go through a mediation process to determine how the ownership of the land is, I suppose, resolved. That issue is of serious concern, especially if someone is developing a small-lot development where 40 or 50 centimetres can make quite a bit of difference in where the fence is positioned and how the property is developed. In those instances,

neighbours suddenly have what they believe is their land encroached on and their rights undermined. I seek some understanding of how the Building Bill will give them remedy.

In terms of the skilled building surveyor signing off on developments, one of the issues that I am dealing with involves the community at the Mirrabooka Mosque, which got a pergola built outside its building. The pergola was signed off and the mosque community relied on the people who assisted them in that. The community has used the pergola as an additional place for worship when the mosque gets too full. Unfortunately, some time later—the pergola has been there for some five or six years—the City of Stirling came to the community and said that the pergola cannot be used for worship because it is not a place for worship, it is a pergola. I have to say that anyone who would give planning approval for a pergola off a mosque must have thought, "Well, they're not going to use it for a barbecue; it will be used for worship and congregations." Therefore, I ask the question: will there be some sort of assurance that the skilled building surveyor signing off on the approval has taken the proper use of the building into account? I suppose that goes to something that the member for Armadale asked about how it crosses those lines of planning and building.

I have raised the matter of dust control previously and we determined that it could be covered by provisions in some of the previous legislation; however, I am also interested to know which provision in this legislation deals with dust control and site demolition and how it will be enforced to ensure that dust control occurs. I understand that it may come under the provisions of clause 94. Dust is one of the major concerns when there are a number of developments in an area, as people are knocking down buildings and shifting sand around, especially if they are doing small-lot development so that they can fit a few more buildings in. These are all issues that I am interested in talking about; where are they provided for and how will this bill give some relief to the people in the community I represent? How will this legislation have some practical application for those people and what is going on in their community? Massive building is occurring in their suburbs.

I noted that the member for Gosnells talked about the six-star energy efficiency rating system. As I understand, New South Wales, Victoria, Queensland and South Australia have a mandatory internal plumbing system in all new buildings called the purple pipe system. I wonder whether that will be taken into account in the six-star rating system or whether it will be a code that will fall under the Building Bill. Purple pipes, or fit-for-other-purposes pipes, are water pipes that run not potable water, but water that can be used for toilet flushing or laundry. In Western Australia we are suffering a massive water shortage, as we know, and nearly 18 per cent of internal water used is for flushing toilets. We certainly do not need precious potable water for that purpose. I understand that rainwater tanks are somewhat controversial in Western Australia. I have a rainwater tank that never fills up. It rains very rarely at this time, so it does make it very difficult. However, there are other options, such as community bores, which, with a purple pipe could actually be linked to flush toilets; recovery water, such as grey water, that can go through charcoal filters; or, when it does rain—hopefully it will on Thursday—road run-off–type storage systems in communities that could be connected to a household. I understand an example in our own context is in Brighton–Butler, which has a low-cost scheme to water all outside areas in the suburb using the community bore. To do that, people have been encouraged to have a fit-for-use third water pipe, a purple pipe, in their homes. Therefore, with that in mind, I ask how the Building Bill will be able to meet some of the environmental challenges in our community and address the immediate environmental concerns that we have, in particular the lack of water in our community and I suppose, for want of a better word, the misuse of our water. We need to use other water, recycled water and other mechanisms effectively in our community so that potable water, drinkable water, can be saved for the purpose for which it is needed.

Those are the sorts of issues that I wanted to raise about the Building Bill. I have a few questions that I will, obviously, go through in consideration in detail.

MR T.R. BUSWELL (Vasse — Minister for Transport) [8.27 pm] — in reply: I propose to briefly respond. Obviously, the Building Bill 2010 has transitioned through a couple of different ministers in the house. My understanding is that a number of issues have been raised, some of which relate to the Building Bill and some of which have absolutely nothing to do with the Building Bill. We will deal with those issues at the appropriate time during consideration in detail.

Member for Nollamara, I am not sure that the Building Bill deals with communal bores. Of course, I will seek proper advice about that matter. I think the issues that the member raised about unfinished properties are important but, again, I am unsure about the extent to which the bill deals with them. However, I understand how those issues would impact on communities that are affected by unfinished properties in their neighbourhoods.

As I said, we will go through the issues members have raised during consideration in detail, which I think is an appropriate forum. However, I will make one point about local government's response to the Building Bill. I think it is fair to say that response has been mixed; some local governments embrace the government's reform agenda and others do not. Clearly, there was an issue that revolved around, in part, the variable speeds and variable levels of complexity that local government wrapped around the building approval processes. It would be

fair to say that the performance of some Western Australian local government bodies in issuing simple building licences, for example, for single residential buildings on lots that are approved with full planning in place, was mixed and varied. The performance of some local governments was good, while the performance of others was absolutely disgusting in that people were forced into delays that were inexcusable and unexplainable and that ultimately cost them a lot of money. I will not name any local governments. Members would be able to reflect on the local governments in their own areas. Local governments should be given a word of warning because, quite clearly, this bill has been designed to reduce the role that local governments play, whilst not excluding them entirely from the building approvals process in part. If they attempt to work around this reform by capturing the building approvals processes back into their planning processes, we will have to deal with them through another round of reforms. From the government's point of view, that would be a completely unacceptable outcome. In many ways I am disappointed that I lost carriage of the development of some aspects of this bill because I am still interested in the level of control and involvement that local government has been able to maintain, in particular in the building approvals process. I do not say that that reflects on all local governments but I definitely say it reflects on some. We have to remember that for those local governments that complain about this reform, it is in part that performance that has led us to introduce this reform.

I do not wish to say too much more. We will deal with the many and varied issues that have been raised as we work through the bill in consideration in detail. In closing, I thank all members of the house for their general support and positive contributions to what is a significant bill that will reform the building sector in Western Australia.

Question put and passed.

Bill read a second time.