**ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT BILL1993**

**Legislative Council, 1 April 1993, pages 1859-62**

Second reading

Received from the House of Assembly and read a first time.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

This Bill complements the Development Bill.

A major cause of concern with the current range of development legislation in this State is the multiplicity of Court procedures for disputes and enforcement. Disputes can be dealt with by the Planning Appeal Tribunal, City of Adelaide Appeal Tribunal, Building Referees, District Court, Magistrates Court, Supreme Court, or a range of special purpose Courts. In relation to environmental protection matters, disputes are dealt with by various bodies such as the Water Resources and Clean Air Appeal Tribunals, the Planning Appeal Tribunal and the District Court. This fragmentation has resulted in duplication, confusion and unnecessary cost.

The Planning Review, in its final report on a new planning system presented to the Government in June of last year, proposed the establishment of a single development Court to handle all disputes and enforcements relating to the development and management of land.

The June and November 1992 drafts of the Development Bill, which were released for public comment, proposed that this new court be established as a division of the District Court. Submissions on the November draft of the Development Bill from a wide range of organisations supported the proposed single court but were opposed to it being made a division of the District Court. Concern was expressed about the potential cost of court proceedings, the role of commissioners and a perceived loss of informality.

For these reasons, this Bill establishes a separate Environment, Resources and Development Court. The Court will comprise the District Court Judges, magistrates and commissioners specifically appointed to the Court. The commissioners will include planning and environmental experts and people with building expertise to handle disputes in relation to the Building Code.

It will hear disputes against decisions under the proposed controls and will have a full range of enforcement powers.

One of the major aims of the Court is to retain informality, with hearings based on the merits of the case, not legal technicalities. The Bill contains a number of provisions to reinforce this objective.

The new Court is envisaged as the primary forum for all matters involving the development and management of land. Its jurisdiction is expected to be extended by complementary legislation, particularly, the proposed Environment Protection and Heritage Bills. Appeals from the Court will be to the Supreme Court.

The provisions of the Bill are as follows:

PART 1 PRELIMINARY

Clause 1: Short title

This clause sets out the short title of the measure.

Clause 2: Commencement

This clause provides for the commencement of the measure.

Clause 3: Interpretation

This clause sets out various definitions required for the purposes of the measure. In particular, a "relevant Act" is defined as an Act which confers jurisdiction on the new Court, or which creates an offence in respect of which jurisdiction is conferred.

PART 2 THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

DIVISION 1- ESTABLISHMENT OF COURT

Clause 4: Establishment of Court

This clause provides for a new Court, to be called the Environment, Resources and Development Court.

Clause 5: Court is Court of record

The Court is to be a Court of record.

Clause 6: Seal

This clause provides for the seal of the Court.

DIVISION 2— JURISDICTION OF THE COURT

Clause 7: Jurisdiction

This clause relates to the jurisdiction of the Court. The Court will, basically, obtain jurisdiction in two ways, being either by an Act (a "relevant Act") conferring jurisdiction on the Court, or by the Governor declaring that certain offences will be within the jurisdiction of the Court (just as "industrial offences" are heard before the Industrial Court). The Court will deal with offences in a summary way and, accordingly, a provision will ensure that the Court cannot impose a penalty for an indictable offence beyond the limits set for summary offences under the Summary Procedure Act 1921.

PART 3 COMPOSITION OF THE COURT

DIVISION 1— MEMBERS OF THE COURT

Clause 8: Judges of the Court

A Judge of the District Court is to be specifically appointed to the new Court as its presiding member. Other Judges of the District Court may be appointed as judges of the new Court.

Clause 9: Magistrates

Any magistrate holding office under the Magistrates Act 1985 may be appointed as a member of the Court.

Clause 10: Commissioners

This clause provides for the appointment of commissioners of the Court, A person will need to have knowledge of, and experience in, a presented field of expertise to be eligible for appointment to the Court.

Clause 11: Masters

Any Master holding office under the District Court Act 1991 may be appointed as a Master of the Court.

Clause 12: Saving provision

This clause protects acts and proceedings of the Court in the event of a defect in the appointment of a member of the Court.

Clause 13: Personal or pecuniary interest to disqualify member of Court

A member of the Court who has an interest in a matter before the Court will be disqualified from participating in the hearing of the matter.

DIVISION 2— COURTS ADMINISTRATIVE AND ANCILLARY STAFF

Clause 14: Courts administrative and ancillary staff

The Court will have various administrative and ancillary staff, including a Registrar and an Assistant Registrar. A person will be able to hold office as a member of the Court's staff and perform other duties in the Public Service of the State.

PART 4 CONSTITUTION OF THE COURT

Clause 15: Arrangement of business of the Court

This clause sets out the manner in which the business of the Court will be arranged. A Full Bench will be constituted, if appropriate, in cases of special or significant importance. Otherwise, the Court will be constituted of a Judge, magistrate or commissioner, or of two or more commissioners. Masters and registrars will be able to act in certain limited circumstances. The operation of the provision will be subject to any relevant Act, the rules of the Court, and, as appropriate, the determinations of the Presiding Member. Subclause (14) requires that the Court be constituted of a Judge or magistrate where the Court is to try a charge for an offence.

Clause 16: Conferences

This clause is "modelled" on section 27 of the Planning Act 1982. It is envisaged that a relevant Act, or the rules, will provide that certain proceedings before the Court must at first instance be referred to a conference presided over by a member of the Court appointed to assist the parties to explore any possible means to settle the proceedings by agreement. A conference will normally be held in private. Anything said or done in the course of the conference is inadmissible in subsequent proceedings before the Court (except by the consent of all parties).

PART 5

PARTIES AND SITTINGS

Clause 17: Parties

The Court will be able to join other persons as parties to proceedings. The Court will be able to dismiss frivolous or vexatious proceedings or proceedings instituted for the purpose of delay or obstruction. A Minister may intervene in proceedings that involve a question of public importance. A party will be able to appear personally or by representative.

Clause 18: Time and place of sittings

The Court will be able to sit at any time and at any place. Registries will be established at places determined by the Governor.

Clause 19: Adjournment from time to time and place to place

The Court will be able to adjourn or transfer proceedings at its discretion.

Clause 20: Hearing in public

This clause provides that, as a general rule, proceedings before the Court must be heard in public. Certain exceptions will apply.

PART 6 EXERCISE OF JURISDICTION

DIVISION 1— PRINCIPLES GOVERNING HEARINGS

 Clause 21: Principles governing hearings

 The Court is to conduct its procedures with the minimum of formality and will not be bound by the rules of evidence. The Court will be able to require a decision-maker under a relevant Act to produce documents and other materials to the Court for the purposes of any proceedings.

DIVISION 2— EVIDENTIARY POWERS

Clause 22: Power to require attendance of witnesses and production of evidentiary material

This clause relates to the power of the Court to summons persons to appear before the Court, or to produce evidentiary material. (The provision is similar to section 25 of the District Court Act 1991.)

Clause 23: Power of Court to compel the giving of evidence

It will be a contempt of the Court to refuse to make an appropriate oath or affirmation before the Court, or to give or produce evidence. (The provision is similar to section 26 of the District Court Act 1991.)

Clause 24: Entry and inspection of property

A member of the Court will be empowered to inspect, or to authorise an officer of the Court, to inspect, any land or building. (The provision is similar to section 27 of the District Court Act 1991.)

Clause 25: Production of persons held in custody

This will empower the Court to require the production of a person held in custody. (The provision is similar to section 28 of the District Court Act 1991.)

Clause 26: Issue of evidentiary summonses

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This clause will enable a member of the Court, a registrar, or any other authorised officer to issue a summons or notice. (The provision is similar to section 29 of the District Court Act 1991.) Clause 27: Expert reports

This clause empowers the Court to obtain an expert report on any question of a technical nature. (The provision is similar to section 34 of the District Court Act 1991.)

DIVISION 3- POWER OF COURT ON DETERMINATION OF MATTER

Clause 28: Powers of Court on determination of the matter

This clause sets out the powers of the Court on hearing any proceedings (not being criminal proceedings) under a relevant Act.

 Clause 29: Costs

The Court will be able to order costs in certain circumstances (in a manner similar to section 31 of the Planning Act 1982). Various orders will be available to the Court in cases involving delays caused by the neglect or incompetence of a representative (in a manner similar to section 42 of the District Court Act 1991).

PART 7 APPEALS AND RESERVATION OF QUESTIONS OF LAW

Clause 30: Right of appeal

A right of appeal will lie to the Supreme Court. An appeal will lie as of right on a question of law and by leave on a question of fact (unless otherwise provided by a relevant Act).

Clause 31: Reservation of questions of law

A Judge will be able to reserve questions of law for determination by the Full Court of the Supreme Court.

Clause 32: Operation of decision or order may be suspended

The Court will be able to suspend the operation of a decision or order to which an appeal relates.

PART 8 MISCELLANEOUS

Clause 33: General powers of the Court and the Supreme Court to cure irregularities

The Court, and the Supreme Court or an appeal from a decision of the Court, will be able to excuse a failure to comply with a requirement under an Act or law if it is not unjust or inequitable to do so. (The provision is similar to section 35 of the Planning Act 1982.)

Clause 34: Interim injunctions, etc.

The Court will be entitled to grant an interim injunction to preserve the subject matter of proceedings before the Court until their final determination. (The provision is similar to section 30 of the District Court Act 1991.)

Clause 35: Interlocutory orders

The Court will be empowered to make interlocutory orders. Clause 36: Immunities

Various immunities are granted to members and officers of the Court under this clause. (The provision is similar to section 46 of the District Courts Act 1991.)

Clause 37: Contempt in face of Court

It will be a contempt of the Court to interrupt proceedings, to insult a member or officer of the Court, or to refuse to obey a lawful direction of the Court.

Clause 38: Punishment of contempts

The Court will be able to impose a fine, or order imprisonment, in a case of contempt.

Clause 39: Power to require security for costs, etc.

The Court will be empowered to require that a party commencing proceedings in the Court give security for the payment of costs or other monetary amounts that may be awarded.

Clause 40: Interest payable on money order to be paid

Interest will be payable in relation to an order for the payment of money.

Clause 41: Miscellaneous provisions relating to legal process

Any process of the Court may be issued or executed on any day.

Clause 42: Proof of decisions and orders of the Court

A document purporting to be a copy of a decision or order of the Court and to be certified by a registrar will be accepted as a true copy of the decision or order, unless proved to the contrary.

Clause 43: Enforcement of judgments and orders

A judgement or order of the Court will be registrable in the District Court and enforceable as a judgement or order of the District Court.

Clause 44: Legal costs

The Governor will, by regulation, be able to prescribe scales of costs which legal practitioners, will not be able to exceed when charging for representation.

Clause 45: Court fees

The Governor will, by regulation, be able to set court fees.

Clause 46: Entitlement of witness to be assisted by an interpreter

This clause is similar to section 14 of the Evidence Act 1929 by providing that a person whose native language is not English is entitled to give evidence with the assistance of an interpreter.

Clause 47: Accessibility of evidence

This clause relates to the availability of evidence.

Clause 48: Rules

The Court will be able to make rules to regulate the practice and procedure of the court (subject to the provisions of the regulations and any relevant Act).

Clause 49: Regulations

The Governor will be able to make regulations for the purposes of the Act.

SCHEDULE

Commissioners

The schedule provides for the appointment of commissioners. A commissioner will be appointed on a full-time or part-time basis. The Governor will be able, if appropriate, to appoint a part-time commissioner for a term not exceeding five years. Other commissioners will be appointed on a permanent basis.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.