LEGISLATIVE COUNCIL.

Wednesday, September 23, 1964.

The PRESIDENT (Hon. L. H. Densley) took the Chair at 2.15 p.m. and read prayers.

MITCHAM BY-LAW: ZONING.

The Hon. F. J. POTTER (Central No. 2): In the absence of the Hon. Mrs. Cooper and at her request I move:

That By-Law No. 13 of the Corporation of the City of Mitcham in respect of zoning, made on November 4, 1963, and laid on the table of this Council on February 25, 1964, be disallowed.

In doing this I would like to inform the Council that consideration of the by-law originally came before the Subordinate Legislation Committee on July 29 of this year, when it took evidence objecting to the by-law from Mr. Colin Branson, the General Secretary of the Chamber of Manufactures, who was really representing interested parties in the area; Robert Norman Edwards, a cabinet-maker, of Panorama, and Robert George Bridgman, an engineer, of Panorama. These people were called and examined and at that stage, after considering the evidence that had been given objecting to disallowance, the committee decided that it would take no action. Subsequently, following consideration of zoning by-laws in respect of the city of West Torrens and the city of Henley and Grange, it was felt by certain members of the committee that a similar procedure should have been followed in connection with this earlier by-law from the Micham council.

I can say briefly that the procedure that was followed in the consideration of the other two by-laws was this: not only did we take evidence from those people who wished to object to the by-law but also we sought evidence from the town clerk in each case, and we considered the effect that such re-zoning would or might have upon the town plan. To this extent we sought help and evidence from the Town Planner's Department. Also, the committee decided that in all these circumstances they should have a personal inspection of the site.

At my instigation this question involving Mitcham was restored to the agenda paper of the committee and we did in fact do all those things. That is why I can now come before this Council, although this is on the notice of motion given by my colleague, and say that it is the considered and unanimous opinion now of the Joint Committee on Subordinate Legislation that this by-law should be disallowed.

To deal briefly with the facts of the situation, I think all honourable members are aware that the city of Mitcham is one of those cities within the metropolitan area that do not have a very large industrially zoned area. The area concerned in this zoning by-law is an area bounded, roughly, on the west by Goodwood Road, on the north by Springbank Road, on the east by Eliza Place and on the south, as near as one can gather, by a well-known drive-in theatre. This area stretches up the side of the foothills. It incorporates the low-lying land almost opposite the Centennial Park cemetery. We are not concerned with the whole of that area but at the moment it is zoned by the council as an industrial area. Of recent years we have had the old problem of houses being built in that area, and in Ontario Avenue, which runs parallel to Eliza Place, some very good residences have been built on some allotments.

The effect of the by-law is to re-zone these allotments in Ontario Avenue for residential purposes. If one can try in words to describe what is so easily shown on a map, I think one can say that this takes a number of allotments in Ontario Avenue and zones them as residential, and in effect they become a kind of a square inside a square—a little square inside an industrial area, rather like an island surrounded by water. This area is surrounded on all sides except the south by an industrial area, and an inspection shows that there is a sort of patchwork, because nearly all these allotments that are being re-zoned as residential are occupied, and where they are not they are adjacent to industrial allotments. When we look at the town plan, which has been before this Parliament, we find that this particular area is also zoned as an industrial area there.

For some time now the committee has been searching for some sort of formula to help it in reaching a decision about what is to be done where there is in existence a by-law to change industrial land into residential land, or *vice versa*. Rightly or wrongly, it seems that the committee has at last found some sort of working formula that it can apply. This can be summed up briefly by my saying that, where a council and the Town Planner have zoned an area as industrial land, some fairly heavy onus is cast upon a council that seeks for one reason or another to alter the basic and original zoning. That may not sound very much of a principle, but I am sure that all honourable members will realize that these zoning by-laws are very difficult things to decide because unfortunately we have in South

Australia the situation that, an area having been zoned as industrial, there is no prohibition on houses being built in it. This, of course, is what has happened in Mitcham and to a much more alarming degree in other areas.

I emphasize this is a very small area. The committee, having inspected it, considered that no real harm would result if the area remained an industrial area; indeed, it is only fair to the people who have set up small factories and industrial establishments in the area, and, indeed, the two vacant allotments in Ontario Avenue are adjacent to these industrial sites and it would not materially affect the residential dwellings if those sites were themselves used for industrial purposes.

It seems to me personally that only time can substantially solve this problem, because it is a peculiar problem and unlike others that the committee has struck in different circumstances. I think time will tell whether or not the people owning the residences will attempt to buy the allotments being used by industry or whether industry will want to buy the houses. My personal opinion is that, as these allotments are so small by comparison with what industry usually requires, what will eventually happen is that these small industries, when seeking to expand, will look around for areas outside the city of Mitcham or will look around for much larger areas. However, it is only in the long term that this will happen.

It seemed to the Town Planner, when giving evidence before the committee, that what the council was doing was not in any way solving the problem. I think the Town Planner was sympathetic with the idea that the whole of this particular area, including the surrounding industrial allotments, could possibly be declared as a residential area, but, as I understand it, when we took evidence on this matter no formal consultation had taken place between the council and the Town Planner in this respect. I gather that the Town Planner considers that in the light of existing circumstances some very serious consideration might have to be given by his department to re-drawing the boundary on the town plan to make this a residential area. However, that does not get over the fact that small industries are there now and that they were established there and were given an undertaking by the council that they could be set up and be free to expand. Indeed, we were instructed by the council that it would close its eyes to the expansion by one manufacturer on one of these allotments into the new housing area. That seems to me not a good thing in principle.

I think I have set out the reasons fairly fully. I emphasize that it is the considered opinion of members of the committee that in the circumstances the *status quo* should be maintained and that these allotments in Ontario Avenue should not, by means of this by-law, be re-zoned as residential. I think this will leave the position that the council can in the future further consider the matter, perhaps go into conference fully with the Town Planner's Department and, if it sees fit, come up with a new idea. I hope all members will agree that the proper thing is that the by-law should be disallowed, and I move accordingly.

The Hon. G. J. GILFILLAN (Northern): I support the Hon. Mr. Potter, and, as he has outlined the situation very fully, I shall have very little to add to what he has already said except to indicate that I support him and that the members of the committee thoroughly investigated the position. I could add that Ontario Avenue is a short street, and that there are only three vacant blocks of land in it. Two are at the northern end adjacent to existing factories and the other is the one mentioned by the Hon. Mr. Potter as backing on to a factory. The council has agreed that it will not object to that factory expanding if the area is re-zoned. Of course, the council is elected from year to year and any subsequent council could alter the decision.

The Hon. S. C. Bevan: How would the council get on if there were an objection?

The Hon. G. J. GILFILLAN: The main principle we have to watch in this and similar instances is that people have bought land in this zone with the full knowledge that it is an industrial zone. In some instances, factories have been built and in others houses have been built. We should have given to us far better reasons than have been given for altering the zone and affecting the security of tenure of the people concerned. I feel sure that in this instance the house owners or the factory owners will suffer no injustice by leaving things as they are, whereas if the area were re-zoned and became a residential area it could prejudice the expansion of factories that have bought land in good faith, and also the future of their enterprises because the council could receive complaints from people in the residential portion. Because of the principles involved and the thorough investigation that has been made, I support the motion for the disallowance of the by-law.

The Hon. N. L. JUDE (Minister of Local Government): Following a very strong and sincere deputation to me concerning this matter I can say that I took immediate steps to secure some delay regarding the by-law, which has been tabled in this place for some time. I commend the members of this Council for taking immediate practical steps to have the matter reviewed. I was under the impression that the Chairman of the Subordinate Legislation Committee, as the matter concerned his district, would have been conversant with the problem. Generally speaking, I do my best to support members in local government, and when I examined this matter and saw that a mistake was being made I hoped that the Subordinate Legislation Committee would reconsider the matter. I am glad that practical steps have been taken and I have no hesitation in asking the Council to support the motion.

Motion carried.

HARBORS REGULATIONS: MECHANICAL HANDLING EQUIPMENT.

Order of the Day, Private Business, No. 3:

The Hon. F. J. Potter to move:

That the Mechanical Handling Equipment Regulations, 1964, made under the Harbors Act on April 2, 1964, and laid on the table of this Council on June 10, 1964, be disallowed.

The Hon. F. J. POTTER (Central No. 2) moved:

That this Order of the Day be discharged.

Order of the Day discharged.

UNLEY BY-LAW: TRAFFIC.

Order of the Day, Private Business, No. 4:

The Hon. F. J. Potter to move:

That by-law No. 28 of the Corporation of the City of Unley in respect of traffic, made on May 18, 1964, and laid on the table of this Council on July 28, 1964, be disallowed.

The Hon. F. J. POTTER (Central No. 2) moved:

That this Order of the Day be discharged.

Order of the Day discharged.

WEST TORRENS BY-LAW: ZONING.

Order of the Day, Private Business, No. 5:

The Hon. F. J. Potter to move:

That by-law No. 19 of the Corporation of the City of West Torrens in respect of zoning, made on November 26, 1963, and laid on the table of this Council on June 10, 1964, be disallowed.

The Hon. F. J. POTTER (Central No. 2) moved:

That this Order of the Day be discharged.

Order of the Day discharged.

LOCAL GOVERNMENT ACT AMENDMENT BILL.

The Hon. N. L. JUDE (Minister of Local Government) obtained leave to introduce a Bill for an Act to amend the Local Government Act, 1933-1963.

CITY OF WHYALLA COMMISSION ACT AMENDMENT BILL.

The Hon. N. L. JUDE (Minister of Local Government) obtained leave and introduced a Bill for an Act to amend the City of Whyalla Commission Act, 1944-1963. Read a first time.

The Hon. N. L. JUDE: I move:

That this Bill be now read a second time.

The object of this Bill, which is introduced at the request of the City of Whyalla Commission, is two-fold. It is designed to enable the commission to take appropriate steps to increase the number of wards from three to four and to empower the commission to introduce the system of assessment based upon annual value.

Clauses 3 and 4 deal with the first matter and clauses 5 and 6 with the second. Clause 3 will amend section 3 of the principal Act which provides that the city is to be divided into three wards. Clause 3 will, by subclause (*b*), insert a new subclause (3) into section 3 making applicable to the city of Whyalla the provisions of the Local Government Act relating to the increase in the number of wards with the provision that the number cannot be increased beyond four. Subclause (*a*) makes a necessary consequential amendment to subsection (2) of section 3.

Clause 4 makes the necessary amendments to section 7 of the principal Act dealing with the membership of the commission. As in the case of clause 3, clause 4 inserts a new subclause (7) in section 7 to provide that, if the number of wards is increased to four, the membership of the commission will be increased to eight with the necessary consequential provision that four are to be elected by ratepayers in the respective wards in accordance with the Local Government Act. Subclauses (*a*) and (*b*) of clause 4 make consequential amendments to subclauses (1) and (3) of section 7.

I come now to the system of assessment. At present the principal Act provides that rates in the city shall be assessed on the unimproved land value as provided by Division III of Part X of the Local Government Act. However, the commission has requested that it should be empowered to introduce the alternative scheme under the ordinary provisions of the Local Government Act which, in this case, do not

apply, since section 27 of the City of Whyalla Commission Act expressly excludes the commission from the operation of Division IV of Part X of the Local Government Act, which enables councils to alter their method of assessment. The alternative scheme (provided for in Division III of Part X of the Local Government Act) would enable the commission to increase its revenue, which is necessary if it is to cope effectively with the problems associated with the rapid expansion of the city of Whyalla. The Government has agreed to the commission's request, and this Bill is introduced to give effect thereto. Clause 5 (*b*) of the Bill amends section 26 of the principal Act by adding a new subsection providing for the introduction of the annual value system.

Clause 5 (*a*) makes the necessary consequential amendment to subclause (1) of section 26. Clause 6 amends section 27 of the principal Act by removing the exclusion of the operation of Division IV of Part X of the Local Government Act. As the Bill is of a hybrid nature it should, in accordance with Joint Standing Orders, be referred to a Select Committee.

The Hon. S. C. BEVAN secured the adjournment of the debate.

PHYSIOTHERAPISTS ACT AMENDMENT BILL.

The Hon. Sir LYELL McEWIN (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Physiotherapists Act, 1945-1963. Read a first time.

MENTAL HEALTH ACT AMENDMENT BILL.

The Hon. Sir LYELL McEWIN (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Mental Health Act, 1935-1963. Read a first time.

HONEY MARKETING ACT REVIVAL AND AMENDMENT BILL.

Read a third time and passed.

COMPANIES ACT AMENDMENT BILL.

(Second reading debate adjourned on September 22. Page 931.)

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—"Qualifications of trustee for debenture holders."

The Hon. Sir ARTHUR RYMILL: I move:

In new section 74d (1) (*a*) to strike out "exercise reasonable diligence to ascertain" and insert "from time to time, as the circumstances may reasonably require, make reasonable inquiries as to".

I think I explained this amendment fairly clearly yesterday. The idea is to make the verbiage more readily understandable to the layman and more legally definable. I think the words are an improvement and I hope that my amendment will be accepted.

The Hon. C. D. ROWE (Attorney-General): I agree with this amendment, which is a paraphrase of the existing wording of the clause. It is submitted that if a trustee makes reasonable inquiries as to any matter he would be exercising reasonable diligence.

Amendment carried.

The Hon. Sir ARTHUR RYMILL moved:

In new section 74d (1) (*d*) to strike out "exercise reasonable diligence to ascertain" and insert "from time to time, as the circumstances may reasonably require, make reasonable inquiries as to".

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I move:

In new section 74d (2) after "Minister" last occurring to insert "before or after making any such order".

Again, I explained this yesterday. It is linked with the immediately succeeding amendment standing in my name. At present the clause provides that on an application to the Minister the Minister "may" in certain circumstances and "shall' in certain other circumstances direct the trustee to apply to the court. But the clause does not give the borrowing corporation a right to apply to the court, nor has the court any power to vary or rescind the Minister's orders. These amendments are couched in these terms for the purpose of giving the court these further powers, in its discretion.

The Hon. C. D. ROWE: This, if anything, strengthens the provisions of the Act and gets over the difficulty if it is felt that an order made by the Minister should, in the circumstances, not have been made. It provides for an appeal to the court in those circumstances. Therefore, I can agree to this amendment.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I now move:

In new section 74d (5) after "section" to insert ", or any order made by the Minister under subsection (2) of this section,".

I have previously explained this amendment.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I now move:

In new section 74f (2) after "by" first occurring to insert "all the directors of the

corporation or, in accordance with a resolution duly passed at a meeting of the directors, by''.

This clause spreads over a number of pages of the Bill and, although it is one clause, it puts into the Act some new sections, from section 74a to section 74i. This amendment really deals with a different topic from that with which the last amendment dealt although it is in the same clause of the amending Bill. The clause as at present drawn states that the report required to be furnished by this subsection can be signed by not less than two of the directors on behalf of all of them—those are the important words. I took the point in the second reading debate that, if two directors made a report, they might make that report without the knowledge of the other directors; indeed, the other directors might be bound by mis-statements in a report that they did not even know had been furnished. This amendment will tighten it up a little to protect the directors so that any two of the directors can still make a report, but it must be pursuant to a resolution of the board. I assume that this clause was put into the Bill for the purpose of enabling directors to make this report when some of their number were not available. This will not affect that, because companies must always have quorums of directors available, but it will ensure that the other directors know that the report is being made and then they may inquire as to its contents. Any such resolution envisaged by the amendment would have to be in the minutes of the directors' meeting. This amendment will tighten up the Act rather than loosen it. It affords some protection to directors.

The Hon. C. D. ROWE: This is probably a desirable amendment. Its effect is to ensure that all directors do in fact know what is included in the report required under section 74f (1) and it avoids the possibility of two of the directors signing a report that may not have been brought to their notice or for which the approval of all the directors may not have been obtained. In the circumstances, this amendment strengthens this provision and I accept it.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I now move:

In new section 74f (2) (*c*) after ''which'' to insert ''is or should be known to the directors or the corporation and''.

This amendment and the next one are related to this same report but to a different facet of it. Paragraph (*c*) of new section 74f (2) as drafted states:

Whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event.

There is a similar provision in paragraph (*d*). The point I make is that these deeds relating to debentures have very many obligations in them, including what are sometimes referred to as dragnet clauses, in which literally hundreds of events can happen whereby the debenture becomes enforceable, but many of those events can be caused by entirely extraneous matters which cannot reasonably be expected to be known by directors in every instance. All sorts of things quite remote from the debenture itself could happen whereby the debenture could become enforceable. This, again, is intended to offer some protection to directors by showing that there are events which are or which should be known to the directors.

Amendment carried.

The Hon. Sir ARTHUR RYMILL moved:

In new section 74f (2) (*d*) after ''circumstances'' first occurring to insert ''which are or should be known to the directors or the corporation''.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I move:

In new section 74f (4) before ''The'' to insert ''Subject to paragraph (*aa*) of this subsection 7,''.

This is a very important amendment, in fact the most important of my amendments, and I hope that the Committee will see fit to accept it and the others standing in my name relating to the same matter. Under the Act as originally drawn in Victoria, half-yearly statements and audited accounts, complete stocktaking and so on are required in every case where a company borrows money that comes under the provisions of these sections. There is no way out of it. It means that, instead of accounting at yearly periods, a borrowing company has to go to all the expense and trouble of making half-yearly accounting, irrespective of its status or standing. I am informed that in Queensland, when a similar Bill was before Parliament, the requirement of a half-yearly accounting was omitted. Thus in that State, companies are required only to furnish the simple quarterly reports provided for in this section and the annual report, which, of course, can be based on their annual balance sheet and profit and loss account. I felt that perhaps Queensland had gone too far.

I have tried to take a detached view of these things, although, as honourable members know, I am myself linked with these matters

fairly closely. Therefore, I feel I should have some knowledge of how these companies work in practice. I thought that removing altogether the obligation, in some circumstances at least, to provide the trustee with a half-yearly balance sheet might be going too far. In the case of the Victorian company to which I referred yesterday, it could have been very valuable if the trustee had had the right to call for accounts half-way between the ordinary annual accounting periods. On the other hand, in many instances it would be completely unnecessary and very expensive. Not only would the audit be expensive and not only would the making out of the accounts be very expensive in terms of employee and administrative time but the physical stocktaking in particular would be tremendously expensive. With many companies, it could run into thousands of pounds extra per annum. Thus, I thought there could be a half-way mark in this, and I think I have reached it with the help of Mr. Ludovici by the amendments I have submitted, which dovetail also with the amendment the Attorney-General has very properly submitted to this clause.

The clause at present requires half-yearly accounts from all borrowing companies covered by it. The Attorney-General's amendment aims at saying that the trustee can, if he thinks fit, dispense with the audit of these accounts. That is obviously aimed to save proper companies the expense of an audit. I think the amendment is well aimed, but I think in practice, in the way it is drawn whereby the trustee can dispense with it, most trustees will not consider themselves capable of acting on this, as a trustee has very onerous duties and would consider that if he dispensed with the audit he was taking the responsibility on his own shoulders for saying that everything was all right. I think he would consider he should not have to accept that responsibility.

My amendment tries to alter the whole thing so that half-yearly accounts are not required unless the trustee requires them—unless for some reason that he considers substantial (I emphasize the word "he") he asks for them. I think this would enable a trustee in effect to dispense with these accounts without taking too much on his own shoulders, and it would not weaken the clause because leaving it in the trustee's own discretion would mean that the trustee, if he thought anything was wrong or was likely to go wrong, would have the absolute right to call for the half-yearly accounting. In other words, I have tried to have the clause drawn so that there are no loopholes and no one can escape the half-yearly audit if the trustee considers it is in the interests of debenture holders.

My amendment would qualify the Attorney-General's amendment; thus, the Attorney-General's amendment would not need turning around in the way I have mentioned. I have a further amendment to the Attorney-General's amendment relieving the company in certain circumstances of the necessity for a physical stocktaking as well as an audit, as in most cases the stocktaking is considerably more expensive than the audit.

Summarizing, I am not aiming to alter what a trustee can require under this clause; what I am asking to be done is that instead of borrowing companies having to furnish half-yearly returns, whatever their status or standing, the half-yearly returns will still be required to be furnished in all cases when the trustee considers it necessary to have them. The amendment alters the position so that if the trustee knows that a company is going well and is of good standing he need not require this. This will save companies money, and I point out that costs must automatically work their way back into the cost of living. It is not that these expenses ultimately are met by the company, as in the normal course of events they will be passed on to the public dealing with it. This will save money not only for the companies but I imagine for the public. I think it is a most desirable alteration. The only alternative I can see is what Queensland has done; dispense with the clause altogether. I prefer the method I have suggested, as it gives more protection, and we want to protect people wherever we can. I think if the amendment is passed it may well creep into all other similar legislation in the Commonwealth.

The Hon. C. D. ROWE: As the honourable member has said, this is the first of several amendments that will have to be made if this amendment is carried. Consequently, the matters he set forth should be considered at this stage. The facts relating to the matter as stated by the honourable member are correct. Briefly, they are that in the first instance, when Victoria passed its Bill, there was an absolute necessity for companies to supply information such as balance sheets and audited statements to the trustee. When the matter was considered by Queensland, it was considered that that was too onerous and was inconveniencing many responsible companies, about whose financial circumstances there was no doubt, purely to catch some companies that were not so reputable or financially strong. I looked at the

position and endeavoured to reach a halfway point. We devised the amendment on honourable members' files, which I shall move in due course. The effect of my amendment is to provide that a borrowing corporation or its guarantor will be required to file audited statements with the trustee unless the trustee exempts them from doing so. The Hon. Sir Arthur Rymill said that this would fall heavily on the trustee and that as a matter of protection for himself the trustee would be certain to call for these documents on each occasion. He said it would be only on rare occasions when he would grant an exemption. Consequently, he proposes to alter it round the other way and provide that there will not be the necessity to file these accounts unless for a good and sufficient reason the trustee asks for this to be done.

I think the honourable member and I are of the same opinion. We want to make sure that we do not cause undue hardship or inconvenience to people but at the same time we must have regard to the protection of the public. In the last few years in Australia (and particularly in other States, although there have been instances of it here) the general public has lost considerable sums of money. In some instances it may be traced to the fact that there was not an up-to-date report regarding the affairs of the company. Under the circumstances, and having regard to the general interests, I insist that Sir Arthur Rymill's amendment be not agreed to. Members should agree to the amendment I shall move in due course.

Under proposed new section 74f the directors of a borrowing corporation and the directors in each of its guarantor corporations are required to lodge half-yearly audited accounts with the Registrar and with the trustee for the holders of the debentures in the borrowing corporation. This requirement was decided upon by the standing committee of the Attorneys-General after careful consideration of the factors involved. One was the expense that would be incurred by a company if it had to furnish audited accounts. The amendment provides that a system of half-yearly audited accounts will operate, but that will have effect only if and when and so long as the trustee for the debenture holders requires the directors to comply with the provision. After careful thought and consideration I think we have gone as far as we can in this matter, and I ask members to vote against the amendment.

The Hon. C. R. STORY: I support the amendment. The Attorney-General said that the matter had been agreed to by the Attorneys-General in conference, but it appears that Queensland has not accepted it. I think that in the amendment we have reached a good and happy compromise. It seems wrong that every company should have to incur considerable expense in this matter. By the amendment we are safeguarding investors where a trustee feels that there is a need for the information to be supplied.

The CHAIRMAN: I point out to honourable members that the voting on this amendment will be a test vote, as a further paragraph is to be moved by the Hon. Sir Arthur Rymill.

The Hon. Sir ARTHUR RYMILL: I consider this to be the most important of my amendments. My business colleagues have tried to urge me to go the whole hog and follow Queensland, but I feel that that might be going too far. The amendment is a reasonable compromise because it does not draw the teeth from the section. It merely says that the provision need not be applied unless the trustee regards it as necessary. I feel it is an ideal arrangement and will be of benefit to companies and the public concerned.

The Committee divided on the amendment:

Ayes (10).—The Hons. Jessie Cooper, R. C. DeGaris, G. J. Gilfillan, H. K. Kemp, Sir Frank Perry, F. J. Potter, W. W. Robinson, Sir Arthur Rymill (teller), C. R. Story and R. R. Wilson.

Noes (6).—The Hons. S. C. Bevan, N. L. Jude, A. F. Kneebone, Sir Lyell McEwin, C. D. Rowe (teller) and A. J. Shard.

Majority of 4 for the Ayes.

Amendment thus carried.

The Hon. Sir ARTHUR RYMILL: I move:

After paragraph (*a*) of subsection (4) of proposed new section 74f to insert the following paragraph:

> (*aa*) paragraph (*a*) of this subsection shall operate and have effect in relation to a borrowing corporation or a guarantor corporation only if and when and so long as the trustee for the holders of the debentures of the borrowing corporation, by notice in writing given to the borrowing corporation or the guarantor corporation, as the case may be, for any reason which the trustee considers substantial requires the directors of the corporation to comply with the provisions of that paragraph.

I do not think it is necessary for me to explain it.

Amendment carried.

The Hon. Sir ARTHUR RYMILL moved:

After "this paragraph" in paragraph (*b*) to insert "and the provisions of paragraph (*aa*) of this subsection".

Amendment carried.

The Hon. C. D. ROWE: I move:

After subsection (6) of new section 74f, to insert the following new subsection:

(7) (*a*) Notwithstanding anything contained in subsection (5) of this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (4) of this section need not be audited or the audit thereof may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing corporation has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(*b*) Where the trustee has, by notice in writing, so consented, the directors of the corporation in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Registrar a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Registrar.

I do not think that it is necessary for me to explain in detail the import of this amendment as it was covered in the discussions that we have had. It is self-explanatory, and I do not wish to delay the debate as I believe honourable members will support it. Unless anyone desires further information I do not propose to argue the matter further.

The Hon. Sir ARTHUR RYMILL: I am in accordance with this amendment that is designed to help companies avoid expenses where it is unnecessary. I have a further subclause to add after this amendment has been dealt with. This present amendment relates to dispensing with audits, while my further amendment relates to a less expensive method of estimating stock in trade than a physical stocktaking. I think that amendment is equally as important as that moved by the Attorney-General.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I move:

After paragraph (*b*) of proposed subsection (7) to insert the following paragraph:

(*c*) Notwithstanding anything contained in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (4) of this section may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the stock in trade of the borrowing corporation or the guarantor corporation, as the case may be, as reasonably estimated by the directors thereof on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that corporation laid before the corporation at its last preceding annual general meeting and certified in writing by them as such.

This is a method whereby with the assent of the trustee, unless the trustee otherwise disapproves of this method, a valuation of the stock in trade can be made by estimation by the directors in accordance with the provisions of this particular clause. Again, it is something that will be in the hands of the trustee, and if he wants a full stock in trade valuation he can demand it, but if he does not, and a half-yearly account is required, then the directors will be able to adopt for the purpose of valuating stock this far less expensive method.

Amendment carried.

The Hon. Sir ARTHUR RYMILL: I have a personal explanation to make. I would like to say that I have on the files an amendment to insert a new clause. You ruled yesterday, Mr. Chairman, that I needed an instruction to the Committee. Under Standing Orders, I think it is Standing Order No. 114, I need to give a day's notice to get leave for that instruction unless I move for the suspension of Standing Orders, or obtain the leave of the Council. I do not propose to ask for the series of leave required. I do not want it to be thought that I am resiling on this amendment. I think it is a very desirable one, but there will be another occasion when I can move it.

Clause as amended passed.

Clauses 7 to 9 passed.

Clause 10—"Profit and loss account, balance-sheet and directors' report."

The Hon. Sir ARTHUR RYMILL: I move:

In new paragraph (ba) of subsection (6) after "inappropriate" to insert "by reason of any over-valuation of the assets or any under-valuation of the liabilities".

I explained this amendment fairly fully yesterday, but I shall make a summary of it now. The obvious intention of this part of the clause is that companies who value their assets too high, or whose value of fixed assets in the main has by effluxion of time become higher and is shown in an inflated way in the balance sheet that may be misleading must amend the valuation to current values. Most companies make a prudent valuation that is generally below market value, and it should be below market value, but as fluctuations occur and these values would otherwise have to be altered each year if based on market values, under the Ninth Schedule of the Act they are authorized to retain their previous values.

I think most companies have done that. This clause is obviously directed against the over-valuation of assets or the under-valuation of liabilities. My amendment makes it clear that the company that has adopted the prudent course set forth in the Ninth Schedule can adhere to that authorization and abide by clause 3 (2) of that schedule.

Amendment carried.

The Hon Sir ARTHUR RYMILL: I move:

In paragraph (bb) after "liabilities" to insert "which have not been discharged".

This clarifies the section that provides that the balance sheet shall show any new contingent liabilities contracted since the previous one. However, it has been pointed out to me that in many instances contingent liabilities may have been contracted in this period but discharged before the furnishing of the next balance sheet. Clearly, this was not intended, but the precise verbiage of the section at present would require, if one applied that verbiage literally, a company to show all contingent liabilities contracted since the previous balance sheet, even though they had been discharged and no longer existed. Obviously, this should not be required, nor is it desirable. It will only clutter up balance sheets.

Amendment carried; clause as amended passed.

Clause 11—"Duties of auditors to trustee for debenture holders."

The Hon. C. D. ROWE: I move:

In new section 167a to strike out "Penalty: Fifty pounds. Default penalty."

Subsection (2) of the proposed new section imposes on the auditor of a borrowing corporation and of a guarantor corporation the duty of bringing to the notice of the borrowing corporation and the trustee for the debenture holders of that corporation any matter which, in the course of his duties, comes to the notice of the auditor relevant to the duties and powers of the trustee. The subsection provides for a penalty of £50 and a default penalty for non-compliance by the auditor. As a general penalty is provided for in section 379 of the Act, this specific penalty is considered unnecessary and inappropriate. Consequently, I do not think we shall be doing anything improper if we strike out the words.

Amendment carried; clause as amended passed.

Clauses 12 to 14 passed.

Clause 15—"Appointment of investigators."

The Hon. C. D. ROWE: It will be noted by honourable members that this clause is shown in erased type. In the circumstances, I move:

That it be a suggestion to the House of Assembly that clause 15 be inserted in the Bill.

Motion carried.

Clauses 16 to 23 passed.

Clause 24—"Amendment of principal Act, Second Schedule."

The Hon. C. D. ROWE: I move:

That it be a suggestion to the House of Assembly that clause 24 be inserted in the Bill.

As honourable members will notice, this clause amends the Second Schedule by altering certain fees that have to be paid. Since it is a money clause, all we can do in this place is to suggest that it be included in the Bill in another place. That is why it is in erased type.

Motion carried.

Clause 25—"Amendment of principal Act, Fifth Schedule."

The Hon. Sir ARTHUR RYMILL: I move:

In paragraph (i) after "secured" first occurring to insert "or, upon acceptance by the corporation of any such moneys, will be secured".

The clause provides that the mortgage has either to be registered or lodged for registration. It is conceived that in many circumstances this will not have been possible at the time mentioned in the clause. This amendment will facilitate the matter by providing that one can state that the money will be secured. I do not think there can be any objection to this because it is purely technical and does not take away any rights.

Amendment carried; clause as amended passed.

Clause 26 and title passed.

Bill reported with amendments; Committee's report adopted.

BUILDING ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 22. Page 927.)

The Hon. Sir FRANK PERRY (Central No. 2): The principal Act covers the metropolitan area and several district councils and corporations outside the metropolitan area that have been proclaimed by the Governor in Council. The fact that it covers the operations of all building in this State makes it a long and technical Act, and it is widely controlled by regulations that have been made from time to time. The Act is administered by the

Government through councils, and the Government is advised by an advisory board it has appointed, which keeps the Minister in touch with developments in the industry and I suppose answers questions by the Minister on matters referred to him from various sources.

The Bill is short, and there is nothing much that is new in it. Most of the matters it covers are dealt with in the original Act, but penalties have been introduced. The original Act contained power to control various building operations, but it did not have the teeth in it to control the matter by penalty. That has been rectified by this Bill. The penalties are heavy. The principal Act provides that work shall not commence until a council has approved it. Clause 4, which enacts new section 9b, provides that unless work is stopped immediately on instructions from the council, the penalty is to be £100 for each day on which the operation is not stopped. I suppose if a building is constructed without proper specifications or a person seeks to dodge the specifications, it is quite right that the surveyor or building controller should be able to stop the job immediately so that the matter can be rectified. I see nothing wrong with the provision, although the penalty is heavy. However, if anyone does this sort of thing, it is the duty of people controlling building operations to take action to stop it.

As the Hon. Mr. Bevan said yesterday, there is some disparity between a penalty of £50 a day after three days' notice and a penalty of £100 a day without the three days' notice. However, as the Minister has said that he intends to alter that position, I shall not mention it further. Clause 5 deals with the removal of stables unlawfully erected. Evidently some people wish to convert stables into places of habitation. Stables of which I have personal knowledge have been converted into two sets of flats, but it is not often done. However, some stables have been so well built that they can now be converted into reasonable premises for human habitation. One clause of this measure provides that if a building is not used for the original purpose for which it was built an offence is committed unless permission is granted by the council. That may be reasonable.

The Bill does not enforce anything; it merely gives power to other people to enforce matters that come under the various parts of the legislation. Generally, it does not break any new ground, except clause 9 which gives power to the advisory committee or the council to enforce, if it so desires, the provision in any building of space for the parking of vehicles. The Minister claimed, and I think we all know, that there will be a problem in the future regarding parking. However, I cannot say whether this is the correct method or not. I understand that something of this nature was tried in Sydney, but the ingress and egress of vehicles in certain streets made the confusion worse. I believe the provision is not now enforced. However, we are not enforcing these provisions; we are only giving power so that others in their wisdom can enforce them. These matters have to be done by regulations. They must go through the advisory board and the Minister, and therefore they come to Parliament in the form of regulations. So, the general control of the Bill is vested in Parliament, and if anything is not approved by Parliament it can be altered. Clause 9 is a wide provision. With the advance of time and the development of road traffic a provision of this sort may be necessary but I doubt whether the authorities would make use of it hurriedly now because many problems are associated with it, and they must be dealt with by traffic specialists. I approve the Bill as it may be useful in controlling future traffic.

The Hon. G. J. GILFILLAN (Northern): I support the Bill, which contains important amendments to one of our most complex statutes. The Building Act not only protects the public considerably from a health angle, and ensures that a certain standard of building will be maintained, but it protects the owner during the construction period because the builder is forced to construct in accordance with prescribed specifications. If the legislation is administered properly by a council there will be the assurance that the builder will keep to the specifications.

The amendments are designed to facilitate the administration of the principal Act and make the position easier for councils. The Act covers more than 170 printed pages and, in consequence, its contents are not familiar to everybody wanting to construct a building. Often they are not familar to those who actually do the construction work. At present some people avoid the Act; sometimes it is done through ignorance.

Clause 3 permits the making of a proclamation declaring types of buildings, and is self-explanatory. Clause 4 enables a council to serve a notice on an owner of land to cease building operations if the work does not comply with the specifications. A council will be

able to take instant action without going through the present clumsy process. The penalty of £100 for each day the construction proceeds after notice has been given seems to be a heavy penalty, but it will be the maximum. In some instances large building projects are undertaken and because of the daily expenditure involved it may be necessary to have a reasonably large penalty to ensure compliance with this part of the Act.

It has been suggested that parts of new section 9c could be combined with new section 9b, although, according to my interpretation, 9c deals with an entirely different matter. Under it an owner of land is asked to supply plans, drawings or specifications, and has three days in which to make them available. At the end of that period he is liable to a fine of £50 a day for non-compliance.

The Hon. S. C. Bevan: Is that not in relation to his being given notice to stop building?

The Hon. G. J. GILFILLAN: No. That notice may be given under new section 9b. New section 9c states:

(1) If an owner of land has commenced to erect, construct, add to, alter or underpin a building on his land—

(*a*) without the approval in writing of the council: or

(*b*) otherwise than in accordance with any plans, drawings or specifications approved by the council,

the council may by notice in writing to the owner of the land require him to submit to the council a complete set of plans and working drawings of the work as required by subsection (1) of section 8 of this Act.

I question the period of three days in new section 9c (2). The Act applies in most parts of the State and there could be, in some places, no facilities to provide the plans and drawings at short notice. It could happen that a notice was given on a Friday afternoon and, because of the period of three days, the owner would be obliged to submit the plans on the following Monday. These plans and drawings are complex, and their preparation requires the services of a drawing expert. I do not think a period of three days is sufficiently long and in Committee I shall move to make it seven days.

Clause 5 amends section 12 and deals with the removal of stables unlawfully erected. Under clause 7, which amends section 56, the owner has the choice of either pulling down the building or altering it to the satisfaction of the council. I think a similar latitude should be given to the owner under clause 5, so that he can convert the building for other use. The Hon. Mr. Bevan questioned clause 7, and that will be discussed in Committee. Clause 9 refers to the provision of parking areas in buildings. If I interpret this portion correctly, all it does is include a new paragraph in subsection (1) of section 83 that lists matters that may be defined by regulation. If that is so, there will be another opportunity to examine this matter when it is laid on the table of the Council in the form of a regulation. In those circumstances I cannot see anything wrong in the clause. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Notice to cease unlawful construction, etc."

The Hon S. C. BEVAN: I move:

In new section 9b (2) to strike out "one hundred" and insert "fifty".

It has been pointed out that £100 is the maximum fine, but every other penalty provided under this Bill is a maximum penalty also. As I mentioned earlier when dealing with stables, if an owner is given an order to pull down those stables and he disobeys that order he is liable to a penalty not exceeding £50. Why should there be any difference in the maximum penalty provided? Any breach of the Act in not complying with an order under one section should carry the same penalty as a breach of another section of that Act. I believe there is a conflict in relation to the penalties provided in the various clauses. Earlier I drew attention to sections 84 and 85 of the principal Act. Under section 84 there is a general penalty for a breach of this Act not exceeding £50. In one instance there is a penalty of £100 and in another instance the penalty is £50, and one offence is as bad as the other. There should be a clause to provide a maximum penalty for a breach of any section of the Act, and that is why I suggest that the penalty in this instance should not exceed £50.

The Hon. N. L. JUDE (Minister of Local Government): I consider the remarks of the honourable member to be quite reasonable and I accept the amendment.

Amendment carried.

The Hon. G. J. GILFILLAN: I move:

In new section 9c (2) to strike out "three days" first occurring and insert "seven days".

I have explained my reasons for this alteration previously.

The Hon. C. R. STORY: I think all honourable members will agree with what the Hon. Mr. Gilfillan is attempting to do. It seems to

me that, particularly where building is taking place in outer areas that come under the provisions of the Act, it would be difficult in some instances to conform to the requirements of the Act. I think this is a wise amendment, and I support it.

The Hon. S. C. BEVAN: I support the amendment. It could be difficult to comply with the requirements of the Act as they stand at present, especially as to the period of three days. The Hon. Mr. Gilfillan has given his reasons for the suggested change. He said that perhaps an architect could be out of town over the weekend and it would be impossible to comply with the limit of three days. If the architect were in another State it would be difficult to comply with the provisions even if seven days were allowed. In those circumstances surely an explanation by the owner to the council would justify granting an extension of one or two days.

The Hon. N. L. JUDE: I consider that the amendment improves the clause, though I do not need to point out that most councils would be reasonable in their approach to it.

Amendment carried.

The Hon. G. J. GILFILLAN moved:

In new section 9c (2) to strike out "three days" second occurring and insert "seven days".

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—"Rules as to conversion of buildings."

The Hon. N. L. JUDE: I move:

In paragraph (*a*) after "used" to insert "in each case".

At short notice it is almost impossible to supply every honourable member with copies of these amendments which, I can assure honourable members, deal purely with the verbiage of the Act. I am grateful to the Hon. Mr. Bevan for some suggestions yesterday about the verbiage. This amendment clarifies the position. It is purely drafting.

Amendment carried; clause as amended passed.

Clause 7—"Removal of dilapidated and neglected buildings."

The Hon. N. L. JUDE moved:

In paragraph (*a*) after "out" to insert "first occurring".

Amendment carried.

The Hon. N. L. JUDE moved:

In paragraph (*b*) after "complaint." second occurring to strike out the comma and insert a full-stop.

Amendment carried.

The Hon. N. L. JUDE moved:

In paragraph (*b*) after "complaint" to insert "If".

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—"Governor may make regulations."

The Hon. N. L. JUDE: I indicate that I intend to ask the Committee to report progress after I have said a few words on this clause. Since I introduced the Bill, I have given this clause much consideration and am aware, as the Hon. Sir Frank Perry said, that it involves a rather wide-open power, although at the same time the Hon. Mr. Gilfillan drew attention to the fact that Parliament at all times has an opportunity to review the regulation-making powers contained in a provision of an Act, especially where it is of a far-reaching nature. I have no doubt that we must keep ahead of the traffic problem and not lag behind it. I appreciate also the fact that some buildings in the city have to produce parking space for cars but, if some formula based on the square footage of office accommodation were laid down, it would be difficult for small buildings and would virtually put them out of business, from an economic point of view. Therefore, I have pondered how to arrive at a formula.

It does not appear at the moment that any practical formula can be evolved that will be satisfactory to all parties. So it might mean that the Government would make a regulation proclaiming that a certain building should be required to provide parking space and then it would be for Parliament to decide whether that was reasonable, taking into account the size of the land involved. It is far more important that honourable members should consider, until I bring this matter before the Committee again, whether or not it is more desirable at this stage to insert into the Bill a provision compelling builders of new buildings to provide facilities for loading and unloading. That would go a long way towards overcoming the double ranking problem in our city streets.

The Hon. S. C. Bevan: To provide loading and unloading bays?

The Hon. N. L. JUDE: Yes, loading and unloading ramps or bays. I leave the Committee with that thought on clause 9. I shall be happy to consider amendments as a result of informal discussion on this matter. I ask that progress be reported.

Progress reported; Committee to sit again.

BOOK PURCHASERS PROTECTION ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 22. Page 920.)

The Hon. A. J. SHARD (Leader of the Opposition): I rise to support this Bill and make some comments on it. Its object is to strengthen the provisions of the principal Act passed last year. Clause 3, which amends section 4 of the principal Act, intrigues me. I do not know how people can get away with it and do what the Attorney-General says they do—and I do not doubt that they do it. It shows to what lengths some salesmen (not all) will go to dodge the provisions of the Act in making a sale. In the second reading explanation, the Attorney-General said:

> . . . certain words must be printed on a contract for the sale of books can be strictly complied with by printing the required words in light type and light ink in such a manner that it is by no means obvious.

As a layman I wonder how they can do that if section 4 (*c*) is enforced. That paragraph states that the required words are to be printed conspicuously on the contract in capital letters in heavy type of a size not less than 18 point face and so as to be clearly seen. The Hon. Mr. Kneebone tells me that a size of 18 point face is equivalent to a quarter of an inch letter. How do these people get away with it? They will go to any lengths to make a sale.

The Hon C. D. Rowe: They print it in that size, but they print it very faintly.

The Hon. A. J. SHARD: It is remarkable how they do it, but it shows what some salesmen will do. The Bill, which I support wholeheartedly, closes that up, as it amends section 4 (*c*) in three places so that nobody should be able to get away with this without the person signing the contract knowing what he is signing. With this amendment, section 4(*c*) will read:

> . . . unless there is printed conspicuously on that contract in capital letters in heavy type of size not less than eighteen point face and so as to be clearly seen the words "This contract is unenforceable against the purchaser unless and until the purchaser notifies the vendor in writing not less than five nor more than 14 days after the date hereof that he confirms it".

Clause 3(*d*) tightens up the matter further by inserting after the word "writing" in section 4(*e*) the words "signed personally by the purchaser". This paragraph will then provide that a contract shall be unenforceable unless the purchaser not less than five nor more than 14 days after the date thereof has notified the vendor in writing signed personally by the purchaser that the purchaser confirms such contract. I do not know how anyone will get around that. If we have any more complaints about book salesmen we should ban them for ever. Clause 4 makes it abundantly clear that the contract must be signed by the purchaser; it prohibits the salesman, acting as the vendor, from signing something on behalf of the purchaser.

I have not had any complaints in the last 12 months about book salesmen and my colleagues have had none, so apparently the Act has done some good. The Bill will make it much more difficult for an unscrupulous group of salesmen to take advantage of people, and my Party supports it. It deals only with book salesmen, however, but many salesmen are in the community selling various articles to which this type of legislation could be extended. I support the Bill, which I think must have the desired effect.

The Hon. C. R. STORY (Midland): I support the second reading. I think all members are aware that when the measure was before Parliament last session it created much interest, and, what is more, it became more and more apparent as the debate progressed that this practice was frowned upon very much by members. When that Bill finally got through both Houses members felt fairly confident that it was as fair as it could be to people who wanted to sell books, and that a very good measure of protection was provided for the general public. However, it has been found necessary, even in the short period since that Bill was passed, to introduce this amending legislation. I do not know how many people these companies employ to think out ways to get around the Act, but they have been extremely clever. As the Hon. Mr. Shard said, the Act clearly stated the type of print that was to be on the contract forms. These people conform to the Act by using print of the size stipulated, but it is nothing more than a trace across the contract form in such light print, and over-printed with the rest of the contract, that it is impossible to read it without using a magnifying glass. They have been clever and I do not know what sympathy they could expect to get from responsible members of Parliament.

The second way in which they have circumvented the Act is related to the cooling down period of 14 days. They have found a way to

get an authorization form which, when the other documents are signed, is also presented for signature. This reads as follows:

To the Branch Manager of (the company),

I hereby request and authorize you to act as my agent for the purpose of giving at your direction the notice in accordance with the Book Purchasers Protection Act, 1963, confirming the contract I have signed this day for the purchase of books from (the company).

That gets right round the contract and the cooling down period that members felt so strongly about. People have been sent to gaol for less than this.

The Hon. A. J. Shard: These people should be sent to gaol.

The Hon. C. R. STORY: I am pleased that the Government has introduced this Bill to get over these two difficulties. I have no doubt that we shall have this matter before us again when some new scheme is thought up by these people. It is unfortunate that genuine sellers of books are sometimes coupled with the people who follow these nefarious practices. I have great pleasure in supporting the Bill, and commend the Attorney General for introducing it. I hope its passage will be speedy.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

ADJOURNMENT.

At 4.36 p.m. the Council adjourned until Thursday, September 24, at 2.15 p.m.