

PERTH HILLS PLANNING BILL 2010

Second Reading

Resumed from 20 May 2010.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [10.42 am]: I understand that the second reading of the Perth Hills Planning Bill 2010 took place in 2010, so I want to make sure that nothing has happened in the meantime that I am unaware of, but I do not think it has. At the outset, I would like to say that the government will not support this bill, and I will give some reasons why. I have lived in the hills for about 45 years. Unlike the proponent of the bill, I have lived in different houses and in different parts of the hills since I was 18 years old.

Hon Alison Xamon: I'm not even 45 years old.

Hon HELEN MORTON: No, I know. The member could not have lived there that long.

Hon Alison Xamon: I was born there.

Hon HELEN MORTON: In that time I have seen the development in the hills balance the economic, environmental and social considerations to maintain the very enjoyable lifestyle that I have enjoyed for many years in that area. The hills areas continue to offer a lifestyle that is natural and sensitive to bushland and other environmental considerations. It is by far my choice of place to live of anywhere in the metropolitan area.

I do not believe that a committee of 10 people, eight of whom would be appointed by the minister of the day, could achieve a better outcome in balancing the economic, social and environmental issues and considerations than what is being done under existing structures. I do not think the bill has the capability to deliver the outcome that I think the proponent is seeking. It would provide merely an additional layer of bureaucracy, with no real ability to do any more than what existing planning bodies can do.

Under this bill, local government can dismiss the advice of the committee, the minister can dismiss the advice of the committee, the Western Australian Planning Commission can disregard the advice of the committee, and the minister, at the request of local government, can disregard the committee's advice about any scheme or amendment. This is legislation that essentially is of no value. This is a useless piece of legislation that will merely cost money and frustrate and confuse current processes for no real outcome.

What is in the bill? For those people who do not have a recollection of the bill, given that the second reading took place about two years ago, it is suggested that the Perth Hills Planning Bill 2010 is largely modelled on the Swan Valley Planning Act 1995. I will make some comments about why that is probably not quite so. It would establish a 10-member Perth hills planning committee. It outlines the processes for creating a Perth hills zone, which would most likely, because it is not yet defined, encompass the seven local government areas of Chittering, Swan, Mundaring, Kalamunda, Gosnells, Armadale and Serpentine–Jarrahdale. To my knowledge, none of those local government authorities has indicated support for the bill, with the exception that I understand that Serpentine–Jarrahdale has indicated some interest in it. I participated in a discussion with the Shire of Serpentine Jarrahdale at the time the bill was being discussed in some detail, and I detected that it had some interest in it, but I am unaware of any formal procedure that has indicated its support for the bill.

The bill outlines the process of creating a Perth hills plan, which appears to operate as an overriding de facto local planning scheme. It requires all development applications in the Perth hills zone to be referred to the Perth hills planning committee, which has 42 days to give its advice before the relevant local government makes its decision, and it requires all subdivision applications in the Perth hills zone to be referred to the Perth hills planning committee, which has 42 days to give its advice before the Western Australian Planning Commission makes its decision. As I have indicated in my earlier comments, these bodies can take notice of the advice given to them, but they do not have to have regard for that advice.

Since the commencement of the Planning and Development Act, there has been a deliberate trend in planning reform towards a consolidated planning system. The department believes that this bill would be a step backwards in that regard, would establish an adverse precedent, and would serve only to further fragment the planning approval systems.

For a bill of this nature to get the support of this Parliament, one would think that there needs to be some support somewhere for it, other than from the proponent. So, the question is: does the Western Australian Planning Commission support the bill in any way, shape, or form? The answer is no. On 18 March 2008, the WAPC resolved that it did not support the then earlier draft of the hills bill for the following reasons. The first was that the existing environmental and planning framework adequately protects the area, including through regional parks and recreation reserves. There is a lack of demonstrated need for the new legislation, according to the

Western Australian Planning Commission. Secondly, the commission says that the bill does not reflect the three pillars of the sustainability approach; it emphasises the environmental pillar only. Thirdly, it says that the bill would add another layer of development control rather than add policy, which could or would be more appropriate for addressing the issues.

As I have asked before: do any of the local government authorities support the bill? With the exception of the Shire of Serpentine Jarrahdale—which I understand has shown some interest, although I do not know about its formal support—the answer to that question is no. Does the Department of Planning have any significant concerns about the Perth Hills Planning Bill 2010? Yes, the department has the following concerns about this particular bill. First and foremost, the bill introduces an additional layer of development control, contrary to the objectives of the Premier's Directors General Working Group on approvals, development and sustainability, together with the state's undertaking to the Council of Australian Governments, which aims to ensure that economic growth and activity in Western Australia is not unduly hindered by unwieldy or unresponsive approvals processes. The bill appears to be overly environmentally focused, and if we look at the principles in the bill, the entire set of principles in the bill —

Distinguished Visitors

THE PRESIDENT (Hon Barry House): Order! Minister, I am sorry to interrupt, but just before the members leave the public gallery, I acknowledge the attendance of members of the Liberian Parliament in the public gallery. Welcome to the Legislative Council and the Parliament of Western Australia.

Members: Hear, hear!

Debate Resumed

Hon HELEN MORTON: Thank you, Mr President; I support your acknowledgment of those important people. I was just saying that if we look at the principles in the bill—and I am trying to look at it —

Hon Alison Xamon interjected.

Hon HELEN MORTON: What page?

Hon Alison Xamon interjected.

Hon HELEN MORTON: It is on page 13.

When we look at the principles of the bill, it deals only with principles to do with environmental issues. For example, it mentions the preservation and enhancement of the Perth hills area as a clean water catchment and as a source of water for major rivers. It mentions the preservation of flora and fauna and the preservation of the natural character of the area, including the natural topography, native vegetation et cetera. All these things, I might add, are worthy things and they are being achieved. There is the preservation and enhancement of the area as a highly accessible and visible natural and rural backdrop to the coastal plain; the protection of agricultural and horticultural land for its economic landscape, tourism and social values; the recognition and protection of Aboriginal cultural and historical areas of significance; the promotion of recreational tourism and cultural activities that do not conflict with the other planning objectives; and the limiting of residential, commercial and industrial development to areas and types of development that do not detract from the conservation values or character of the Perth hills zone.

The comment I am making, which I think is also being made by the Department of Planning, is that these principles are overly environmentally focused and do not balance the triple bottom-line requirements of principles around social, economic and environmental issues and considerations. Substantial environmental safeguards already exist under the Planning and Development Act, the Environmental Protection Act and the Aboriginal Heritage Act, so this bill just duplicates processes and policies that are already in place. In terms of sustainability, the hills bill fails to address the triple bottom line I have mentioned and appears to embrace the environmental pillar only. This is still based on comments from the Department of Planning. Whilst the Swan Valley Planning Act encourages certain types of industry and development such as viticulture and horticulture, this bill tries to limit almost all types of residential, commercial and industrial development. The department says that there are a number of state planning policies that local government in the Perth hills must consider when making a decision, and that insufficient reasons have been given for why any additional issues, if they exist, could not be addressed through these policies. The department also comments that the hills bill appears to give the Perth hills plan the legal status of an overriding local planning scheme. This appears to be a recipe for confusion and uncertainty with existing local planning schemes.

The department also says that the hills bill suggests that current decisions by local governments are not adequate. I guess this is one of the areas that I feel more concerned about—the suggestion that somehow or other this 10-person committee will have a greater interest in the preservation of an appropriate lifestyle in those communities

than the people who live there. If I recall rightly, there is a requirement for only three of the members of that 10-member committee to actually live in the hills. I suggested that the people who make up the current bodies across the hills—local government authorities—have a far greater interest in ensuring that the balance between these social, economic and environmental considerations are maintained for the lifestyles of their people. The bill implies that there needs to be more specialist decision makers with a greater degree of technical knowledge or expertise. To the extent that these concerns might be justified, it should be noted that the development assessment panels, which are now being created, are able to accommodate that requirement, and it is not clear why duplicate processes should now be introduced. The department continued with the comments that the intention of planning reforms is to reduce the red tape and costs associated with planning approvals. For example, the WA Planning Commission has recently reduced its number of specialist committees, and no additional resources have been budgeted for the proposed introduction of anything like a Perth hills planning committee.

Finally, the department said that it is noted that neither the Western Australian Planning Commission nor local governments seem to support the hills bill. It does not make sense to proceed without their support, especially at a time when other significant local government reform proposals are already being considered. For the above reasons the department makes it absolutely clear that it believes there is a lack of demonstrated need for this bill at this time and that it fails substantially to value-add anything to current planning and legislative frameworks.

There are also some comments about this bill supposedly being based on a bill similar to the Swan Valley Planning Act 1995. Whilst there is a claim to that, there are some quite significant differences that I would just like to comment on. Although similar, the hills bill and the Swan Valley Planning Act appear to contain the following significant differences. The first is that while the Swan Valley Planning Act encourages certain types of industry and development such as viticulture and horticulture, this bill appears designed largely to limit all types of development altogether. Secondly, the hills bill appears to provide significant additional powers above and beyond what is provided under the Swan Valley Planning Act. For example, whilst the Swan Valley Planning Act merely requires consistency with the broader objectives of the Swan Valley Planning Act, the hills bill appears to require consistency with the more definite and detailed provisions of the Perth hills plan. The hills bill also gives the minister a specific power to order a Perth hills local government to amend its local planning scheme, whereas the Swan Valley Planning Act does not appear to contain such a power—even though, as I mentioned before, those recommendations can be disregarded.

I guess the final question is: does the Department of Planning recommend supporting the hills bill—because at least that would be one area of support—if it were likely to be supported in Parliament? I say again, no: the department does not support the hills bill. The department's recommendations and concerns largely mirror the concerns outlined by the WA Planning Commission. For the reasons that I have mentioned, and because I still believe that this piece of legislation will do nothing more than add a level of bureaucracy to a system that is already preserving and protecting the lifestyle requirements of people living in the hills, the government will not support this bill.

HON SALLY TALBOT (South West) [11.01 am]: It is concerning to hear the government use such disparaging terminology about the Perth Hills Planning Bill 2010, because the view of WA Labor is that it has been conceived out of the reflection of very genuine concerns throughout the hills area. On that basis it deserves much more serious consideration than the government appears to have given it. I am curious to see that the minister's main objections are based on the response of the Department of Planning and the WA Planning Commission. I have to say that they would say that, would they not? They are the major component of the problem as people in the hills see it.

The two speakers on this bill so far have claimed some kind of personal experience of living in the hills; I shall claim that too and climb on the bandwagon; I lived in Roleystone for many, many years. Indeed, my son was born there and spent the first 12 or 13 years of his life there. I had one funny experience with which those members who have brought up children will probably be able to sympathise. We had a beautiful half-acre block, which was partly bush and partly cottage garden, and we lived on a corner. It was a very beautiful block in the neighbourhood. My son, when he was aged about eight or nine years, expressed a very strong wish to move to a Homeswest block at the back of Armadale; he said it was much more fun there because the kids could ride their bikes and skateboards on the roads, which of course people could not do in the hills. This brought home to me something very important and something that many hills residents have said to me over the years; it is all very well to focus on lifestyle choices for adults, but sometimes it does not result in an ideal environment in which to bring up kids. I think that governments of all persuasions should devote much more energy to making sure that we have environments that cater for everyone in our community.

I depart from advocating the adoption of the specific measures in the bill for several reasons. I express the view of the Labor opposition that we are a little puzzled about why the concerns of hills residents have been taken up

in quite the form that they take in this bill. I have to agree with the government on the basis of not only having listened to the government's response, but also the discussions that I have had over the past four and a bit years with hills residents, wearing my shadow Minister for Environment hat. Numerous environmental groups are scattered throughout the hills area and they do fantastic work. Many of their members are experts in their fields; they are scientists and weed experts. I remember having a very, very interesting discussion with a scientist who had joined his local activist group. We spoke about the fire dangers that were presented by many of the weeds that are not under control in the hills areas. If only for that reason, we should allocate more resources to weed control in the hills area. But nobody has expressed to me their wish to have another layer of bureaucracy involved in planning decisions in the hills. Indeed, people have expressed to me the opposite of that. They are sick to death of the bureaucracy and the choking effect on sustainable development when there is too much bureaucratic incursion on the process.

Quite an interesting case study was done in the hills when I was still living in Roleystone. That study was on the development of the Araluen golf course. I very quickly withdrew from the antidevelopment camp in the debate over that because it very quickly turned into an almost sort of xenophobic campaign against Japanese investment in the area. These things can get hijacked very, very easily.

Hon Helen Morton: Is that in recent times, about four years ago?

Hon SALLY TALBOT: No, a bit longer ago than that; it was the previous round of that campaign.

Hon Helen Morton: So it happened again four years ago in that same area.

Hon SALLY TALBOT: Yes. We have seen other campaigns in the hills turn into almost claustrophobic campaigns; people say, "I've made my lifestyle decision to live here for the following reasons, but I do not want to share it with anyone else." My point is that nobody over the years has ever said to me, "I know how to solve this problem; we need more bureaucrats involved." I am puzzled about why that approach has been taken in this bill.

A lot of draft legislation that the Greens give us puts a lot more weight and authority with local government. In my area where I work in the City of Mandurah, we have a very good local government from the elected councillors to the senior office holders to the whole local government bureaucracy in the Peel. It is pretty good, but that is not the case uniformly across Western Australia and it is not the case in the hills. It is a bit of a cliché to say that, in some senses, local government is the dirtiest area of the three levels of government because it deals with issues about which councillors are subject to a huge amount of local pressure. It moves from state government then into the commonwealth Parliament and we become progressively less hands-on with those matters. I was reading some local government minutes just the other day from out in the wheatbelt and there were a couple of items on the agenda for which almost all the councillors had absented themselves because of conflict of interest reasons. That becomes a less common occurrence as we go into the other two tiers of government.

I have mentioned before in other debates—I think it was when we discussed Hon Giz Watson's amendments to the Mining Act—the problems we had in Denmark about 10 years ago when the council was split over the relocation of the hospital and how very difficult that situation was. I find many measures in this bill quite troubling and, frankly, they do not seem to me to go to the core of a sensible way to answer the legitimate concerns of hills residents and, particularly, because of my other portfolio responsibilities, the environmental activists who are trying to get decent sustainable outcomes in the hills.

I notice that the bill has sat on the notice paper for a couple of years without anyone in the Greens trying to drive it forward. If it had been my private member's bill, I would have looked more closely at the bill on regional subsidiaries introduced into this place by Hon Max Trenorden. If we go back to that debate, we find that while many of us, including me, prejudged the issue because we thought Hon Max Trenorden would go down a certain path that would really make sense only to his constituency in the wheatbelt, on closer examination—of course, I was a member of the legislation committee that took that bill to pieces and rebuilt it with Hon Max Trenorden's assistance—there was a lot of very worthwhile substance in that bill. It had the potential to be at least adapted to meet many of the concerns of people such as those concerns that are supposed to be represented in this bill.

For those reasons, I express the opposition's unwillingness to support the bill in its current form without in any way going further than that, and indicating that we do support the basic principle, which is to listen more closely to the concerns about planning issues being expressed by people who live there, by people who have the expertise, and by people who have the very deep, profound and sincere interest of an area at heart.

HON ALISON XAMON (East Metropolitan) [11.08 am] — in reply: I thank those members who have spoken on the Perth Hills Planning Bill 2010. The first thing I would like to say is that the Greens get very few opportunities to debate our bills, so it is inevitable that many of our bills unfortunately sit on the notice paper for much longer than we would like. I want to remind members of a little of the history of this bill. The genesis of

this bill was actually before my time in Parliament, when Hon Giz Watson was responding to numerous concerns that kept coming through from various communities within the hills about what they deemed to be inappropriate developments that were occurring. As a result, Hon Giz Watson held a number of community consultations around the region, which were open to anyone. They were pretty well attended. The idea of the hills bill emerged from that. This is not an idea for which the Greens can take credit for having created; this is something that came directly from residents, who have quite serious concerns about the future of the hills and who feel as though they are constantly having to battle what they deem to be inappropriate development of our hills region.

I want to remind people why this bill is important. This is effectively enunciated in clause 19 of the bill, which outlines the principles. It is true to say that many of the principles outlined in this bill have an environmental focus. They have an environmental focus because the hills are actually the primary source of our dam water catchments. They have an environmental focus because the hills are an area of unique biodiversity and this is under threat. The hills in many ways contain what are known as the lungs of Perth in terms of our forests. I would also like to point out that the principles recognise that the hills have significant agricultural and horticultural lands which also need to be protected and which are increasingly under threat, particularly from encroachment by urban development. The bill is also about recognising and protecting Aboriginal cultural and historical areas of significance; promoting recreation, tourism and cultural activities that do not conflict with the other planning objectives of the area; and recognising that the hills within the Perth region have a really unique environmental, cultural and social place.

In terms of the support for this bill, as I said, the genesis of this bill came from hills residents themselves. I indicate that there has been explicit support for this bill not only from the Serpentine–Jarrahdale council, which I know is tired of feeling as though it is constantly having to fight not only inappropriate development but also inappropriate forestry activities and inappropriate mining—I recognise that the bill does not actually address inappropriate mining, but I wanted to mention that—but also from numerous resident and ratepayer groups throughout the hills region. I also indicate that there has been much in-principle support for what the bill is trying to achieve. It is an interesting exercise in that people are obviously pulling apart the various elements of the bill. I do not think that is inappropriate. I do not think it is inappropriate for this place to do that as well. However, I would like to make it clear that, even though some people within the hills region may have had some reservations about the structure of this bill, it has been suggested instead that they would like a specific state planning policy put in place to protect the cultural, environmental and social values of the hills. The thing to take from that is that even if people do not necessarily like the structure of the protection proposed in this legislation, it is unequivocally clear that there is a very strong desire, particularly from people who live in the hills, to try to protect the hills from what they believe to be a series of threats that are occurring through inappropriate planning.

I will argue very strongly that there is no doubt that our hills, going into the future, are in need of protection. I listened very carefully to the contributions of Hon Helen Morton representing the government on this matter. She made the point that there are numerous policies and legislation in place that potentially protect the hills region. Unfortunately, the reason this bill is here in the first place is that those policies and that legislation is failing in that regard. If we are talking about needing to protect Aboriginal heritage sites, they are failing. I could produce instance after instance of where that is the case. If it is about protecting our water catchment areas, those policies and legislation are failing. If it is about protecting our environmental areas, they are failing.

I have not lived in the hills for 45 years because I am not 45 years old—I am younger than that—but I was born in the hills, in Mundaring. As someone who has also lived most of their life in the eastern suburbs, the hills have been an integral part of my life. Just as people who live in the western suburbs often like going to the beach even if they do not live next to the beach, the hills have always been my playground. The hills are the place I take my family now and the place where I was always taken as a child. I have watched the hills slowly deteriorate. I have watched the values of the hills that are important to me, as someone who may not live there now but who lives near them, disintegrate. That is extremely concerning. On that note I wanted to point out that it is not just people who currently live in the hills who have indicated their support for this legislation. I have also received a lot of support for this legislation from people who like to use the hills for recreation—for instance, from those who engage in orienteering activities or bushwalking. A number of those sorts of recreational groups have indicated great concern about what is happening to our hills region and a great desire to look at additional protections, recognising that current legislation and policies are failing in the protection of our hills.

I would like to respond to a few of the comments made specifically about the structure of the bill. As I said in the second reading speech, this bill is based on the Swan Valley Planning Act, and by that I was referring to the broad structure of the act. It was never my intention to create a body that would have the effect of overriding local council decisions or, for that matter, taking away the sovereignty of the planning minister. It is interesting because I have received criticism from people who think that this bill has not gone far enough and who perhaps

felt that this bill needed to create a structure that would be able to override local government and the planning minister. I took the decision, after balancing a number of options, that I did not believe that that was an appropriate mechanism. I have always argued that if someone does not like their local council, they should change it, and if they do not like the planning minister, they should vote against the government of the day. I am not a fan of taking away democratic sovereignty. Having said that, the value of this particular structure of the bill, as with the Swan Valley Planning Act, is that it seeks to prescribe a vision for what we believe the hills should look like.

I was very careful to make sure that the time lines within the hills planning body would actually fit within existing planning time lines, so that no additional time frames would be added and there would be no capacity to extend that out. That is because we recognise that we do not want unnecessary hold-ups to current planning processes. However, it would provide very important guidance. The other thing is that the bill also clearly states that only planning proposals of particular categories would fall under the potential examination of the Perth hills planning committee. It is not intended that the committee would deal with someone who is going to put up a shed, but it might deal with a quarry proposal, for example—that is, something that could significantly impact on the principles outlined in the bill. In other words, it would involve those elements that could potentially damage the characteristics that we value within the hills.

I think it would be a mistake for members of this place to assure themselves that people who live in the hills region are comfortable with the way planning proposals for the future of the hills are proceeding. Possibly because I am a member of the Greens (WA), I have received numerous concerns from constituents about inappropriate development proposals. I refer to anything from subdivisions that people feel are basically a bridge too far to inappropriate quarrying to a number of other proposals. I suspect that should I be fortunate enough to be re-elected in the upcoming election—who knows—I will have to continue to deal with this issue. I do not think anyone can feel confident that the development assessment panels have been a step in the right direction for the protection of the hills. In fact, the concerns that have been expressed to me by residents suggest the exact opposite. At some point we will have to address residential encroachment further into the hills region. It would be very disappointing if the entire scarp became an extension of suburbia. I, for one, really appreciate the fact that effectively bushland is only a short distance from where I live. That is something that a lot of people who live in Perth also value. It is important that we recognise the value of our bushland and water catchment areas and that they need to be preserved and protected.

With those few words, it is disappointing that both the Liberal and Labor Parties—noting that the Nationals chose not to speak; maybe they have no relevance in the Perth metropolitan area anyway—have decided to not support the bill. I would have felt more comforted if Labor or Liberal had given a clear undertaking about what they would propose to protect the values of the hills. For example, had they proposed that this bill is unnecessary because they want to create a state planning policy for the hills, I would have been perfectly happy to leave it at that. However, this issue is not one that will go away in a hurry. We will have to take an alternative look at the way we are developing the hills because that is what people who live in the hills, and those who live in the flats but love the hills, will increasingly demand. The Greens (WA) are disappointed that we will have to continue to deal with concerns from residents about inappropriate developments on a case-by-case basis over and over again without ever being able to address the big picture. The hills are effectively a series of small towns, and it amazes me how similar are the concerns within those small towns across the hills region, which is why this bill was conceived and why people are demanding protection for the region. It is inevitable that, at some point, we will have to review our planning process to achieve a better way of doing things.

Question put and a division taken, the Deputy President (Hon Col Holt) casting his vote with the noes, with the following result —

Ayes (4)

Hon Robin Chapple

Hon Lynn MacLaren

Hon Giz Watson

Hon Alison Xamon (*Teller*)

Noes (28)

Hon Liz Behjat

Hon Kate Doust

Hon Nigel Hallett

Hon Simon O'Brien

Hon Matt Benson-Lidholm

Hon Wendy Duncan

Hon Alyssa Hayden

Hon Ljiljana Ravlich

Hon Helen Bullock

Hon Phil Edman

Hon Col Holt

Hon Linda Savage

Hon Jim Chown

Hon Brian Ellis

Hon Robyn McSweeney

Hon Sally Talbot

Hon Peter Collier

Hon Jon Ford

Hon Michael Mischin

Hon Ken Travers

Hon Mia Davies

Hon Philip Gardiner

Hon Norman Moore

Hon Max Trenorden

Hon Ed Dermer

Hon Nick Goiran

Hon Helen Morton

Hon Ken Baston (*Teller*)

Question thus negatived.

Bill defeated.