METROPOLITAN REGION TOWN PLANNING SCHEME AMENDMENT BILL 2000

Second Reading

Resumed from an earlier stage of the sitting.

HON PETER FOSS (East Metropolitan - Attorney General) [5.32 pm]: Prior to questions without notice, I was explaining the process that is provided for the amendment of the metropolitan region scheme. I was directing members to the fact that there is more than one process and the reasons there was a problem with the former Government. The theory behind planning is to start with broad-brush planning and to move down to more detailed planning. The principal relevance of the metropolitan region scheme is that it sets that broad brush considerably into the future. During the period of the former Government no major amendments were brought down - one may have been – and they virtually vanished from the face of the earth. The then Government did not plan for the future by keeping a horizon for development in Perth. Not only is it important that changes are made from time to time to the metropolitan region scheme, but also those changes must be timely so that people have the opportunity to plan into the future and to know what is happening.

To give members an idea of the situation, urban deferred is a valuable zoning tool in the metropolitan region scheme, because it indicates that at that stage the land is not zoned urban; therefore, it cannot be developed for urban purposes. However, if someone moves to that area, they know it is possible that in the future the zoning will be changed and urban development will be allowed to occur. This is important because people do not mind changing their own lifestyles, but they do not like having their lifestyles changed for them. If one moves into a rural area, one likes to have some assurance that it will be zoned rural for at least 10 or 20 years. By then the kids will have grown up and moved out and one will be thinking about moving to a little flat in the city as opposed to sitting on a thumping big bit of ground which is too big to operate.

The idea of planning is to allow orderly development, which does not violate people's sense of place and where they feel they should be living. The Government has an important duty in the area of long-range planning. When development is to take place, the town planning scheme operates and the detail is painted in. That is why local town planning schemes that have been passed by local government use land maps. A matrix on the map displays along one side the types of things that can be done and on the other side the names of the various zones appear. The matrix will indicate whether certain uses are permitted, require special permission and so forth. One is then able to determine the types of things that may occur in an area. Under proper planning processes, the broad-brush boundaries are set well in advance and the detail is filled in over time. Once the detail is filled in, the developers use the zoning to develop in accordance with the guidelines. However, the planning stage should precede the development.

Because the former Government failed to bring in major amendments, we ran out of developable land in areas that were marked for development. No indication was given of where further development could take place. People were not told the direction in which it was intended to go. No land was zoned under the metropolitan region scheme. Obviously, if it had not been zoned under the metropolitan region scheme, it could not be zoned under the town planning scheme. Therefore, developers would look for a suitable spot and when they found one they would say, “Right, it looks as if we could put a big development here”. Having worked out their development, they would then go to the local council and say, "We would like to develop this land. What do you think?" If the local council thought it would be a good idea to increase its rate base and that it was a sensible development of its area, it would support a metropolitan region scheme amendment. The developers would then go to the State Planning Commission and say, “We would like to develop this area, but we cannot get a town planning scheme because the zoning in the metropolitan region scheme does not permit it. Would you support an amendment to the metropolitan region scheme to enable us to develop it?" That is the complete opposite of a good planning process. The State Planning Commission would then bring in what it called a “minor amendment” using section 33A of the Metropolitan Region Town Planning Scheme Act. The commission would promote a section 33A amendment. In law there is a difference between a section 33A amendment and a section 33 amendment in that, under section 33A, all that needs to be shown is that -

> . . . a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to the Scheme. . .

Once the commission has formed that opinion, it comes under section 33A.

Hon Derrick Tomlinson: There is the rub.

Hon PETER FOSS: There is the rub. The process under section 33A is somewhat different from that under section 33. I will briefly go over how section 33 works. Section 33 states -

(1) The Scheme may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme . . .

(2) Subject to sections 33A and 33B, the Commission shall adopt the procedure set forth in this section for submitting and obtaining approval of any amendment to the Scheme and any revocation of the Scheme by a subsequent Scheme . . .

> … when formulated by the Commission shall, after sections 33E and 33F have been complied with in relation to the amendment, be submitted, together with such reports, surveys and other material as the Commission considers desirable, to the Minister for his consent to public submissions being sought.

The proposed amendment is sent to the minister and, if he says it is okay, public submissions are called for. If the minister consents to public submissions being sought, the Act requires him to send copies of the proposed amendment to certain people and to make them readily available. Copies are required to be put in places that are most convenient for public inspection. It continues -

(c) As soon as practicable after the deposit of the copies . . . the Commission shall cause to be inserted at least 3 times in each of the following publications -

(i) the *Gazette*;

(ii) 2 daily newspapers circulating in the metropolitan region; and

(iii) one Sunday newspaper circulating in the metropolitan region,

a notice stating -

(iv) in short, the purpose of the amendment; and

(v) that the amendment has been deposited and the places and times where it may be inspected free of charge,

and notifying all persons who desire to make submissions on any provision of the amendment that such submissions may be made to the Commission . . .

(d) Submissions on the amendment may be made at any time within the period prescribed in the notice being not less than 3 months from the date the notice is first published in the *Gazette*.

The period in which public submissions are sought must be at least three months; it can be longer. I continue -

(e) The Commission shall make reasonable endeavours to consult in respect of the amendment such public authorities and persons as appear to the Commission to be likely to be affected by the amendment and may take such other steps as it considers necessary to make public the details of the amendment.

(f) (i) The Commission shall consider all submissions that have been duly lodged and where a submission contains an objection to the amendment the Commission shall not dismiss the objection until the person making the submission or his agent has been given the opportunity of being heard on the objection by the Commission or by a committee of the Commission . . .

That is an important point. Paragraph (f)(i) states that when an objection is raised, it must not be dismissed until the objector has been given the opportunity to be heard. It does not mean he must come before the Western Australian Planning Commission and state his objections, but he is at least given the opportunity to do so. The paragraph continues -

(ii) The Commission shall not uphold an objection to the amendment until it has given every person who has duly lodged a submission supporting the provision to which the objection relates, or his agent, the opportunity of being heard in support . . .

Once the process reaches the end of the public submission period and someone has objected to the proposed amendment, the changes cannot be allowed until the person who objected is given the opportunity to be heard at hearings, and the commission must not uphold the proposal until everybody supporting the amendment has also been given the opportunity to be heard. The Act then deals with what happens when a submission is made by a group of people. Paragraph (g) states -

> . . . after sections 33G(1) and 33H have been complied with in relation to the amendment and after considering all submissions that have been duly lodged, the Commission shall submit the amendment to which those submissions relate, with such modifications, if any, as it thinks fit to make, together with a copy of each of those submissions and a report by the Commission on those submissions, to the Minister.
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> (gaa) For the purposes of paragraph (g) the Commission may adopt a report by a committee referred to in paragraph (f) . . .

That part deals with problems that have previously been aired. To continue -

> (h) Before presenting the amendment to the Governor for his consideration, if the Minister is of opinion that any modification made to the amendment by the Commission is of such a substantial nature as to warrant such action, he may direct the Commission to again deposit the amendment as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.

The Act states that the minister must then direct the commission to publish notices and that the commission must comply with those directions. An integration process is involved if the minister thinks the proposed changes are substantial. The Act continues -

> (k) A person who desires to make any submissions on any modifications so made by the Commission may notify the Minister in writing in the form prescribed by the Commission in any notice . . .
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> (ka) If the report submitted with an amendment under paragraph (g) . . . recommends that the amendment should not be proceeded with, the Minister may, instead of presenting the amendment to the Governor for his consideration, withdraw the amendment.

At that stage, the amendment can be withdrawn. To continue -

> (l) The Minister shall then, if he has not withdrawn the amendment under paragraph (ka), present the amendment to the Governor who may approve the amendment with or without such modifications as he deems necessary to make and which he is hereby authorized to make.
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> (m) At any time before the amendment is published in the *Gazette* pursuant to subsection (3), the Governor may revoke the approval given under paragraph (l).
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> (3) Except where the approval has, pursuant to subsection (2)(m), been revoked, when the Governor has approved the amendment whether with or without modifications -
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> (a) the amendment or the amendment as so modified but not including any maps, plans or diagrams, shall be published in the Gazette, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
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> (b) a copy of the amendment together with a copy of the report of the Commission on the submissions made on the Scheme referred to in subsection (2)(g) and (k), shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publications of the amendment in the Gazette.
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> (4) Either House may, by resolution of which resolution notice has been given at any time within 12 sitting days of such House after a copy of the amendment has been laid before it, pass a resolution disallowing the amendment.
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> (5) As soon as the amendment is no longer subject to disallowance under subsection (4) the amendment shall have effect as though its provisions were enacted by this Act.

It is a fairly lengthy, time-consuming and public process that requires not only that the scheme be formulated but also that every relevant authority be consulted. The Act requires that everybody who has an objection must be allowed to raise that objection and that everybody who either objects or supports the proposed amendments must be given the opportunity to come forward to state what his or her objection or support is. It is a very public and consultative process.

One of the useful things that has emerged from the Government's use of section 33, rather than the employment of the highly controversial and time-wasting device of using section 33A, is that the process has become far

more settled and accepted. This Government's use of the public process prescribed in section 33 has been exemplary and has made an enormous difference to the way in which planning processes occur in this State. It is impossible for the reverse planning that took place under the previous Government to occur now.

Hon Norm Kelly: I said in my second reading speech that the Australian Democrats fully support the section 33 process.

Hon PETER FOSS: The important thing is that it is a planning process and not merely a process of changing colours on maps, as it was under the previous Government. It is a planning process that involves both professionals and the public. The professional input is made in the first instance and the public is then given the opportunity to comment. The professionals must then look at those comments and make a decision based on a number of factors. It should not ignore the depth of opposition but take it, and the validity of the opposition, into account. It is a professional planning process. This Government has changed it from a politicised, ad hoc and opportunistic process to a lengthy but public and democratic process. It is that appropriate combination of professional planning and public contribution that matters.

Hon Greg Smith: And doing what is responsible.

Hon PETER FOSS: Yes. If an amendment were allowed to be struck out in this House, the whole process - if it were ever to go through - must be started again. It is a lengthy process. We must ask whether the House is better able to determine whether an amendment should be allowed than the people who have that role under the Act.

Hon Derrick Tomlinson: And whether the Act gives us the right.

Hon PETER FOSS: I agree. I regret that we have not had a select committee of this House on this issue, as I hoped that one would consider this point. I will later provide some hints on what I think such a select committee should investigate. I contrast section 33 with section 33A. Section 33A states -

> . . . if a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to the Scheme, that amendment is not required to be submitted and approved in accordance with the procedure prescribed in section 33(2), (3) and (4).

Sections 33(2), (3) and (4) describe the rather lengthy public process and Parliament's right to disallow amendments. To continue -

> (2) If under subsection (1) a proposed amendment is not required to be submitted and approved in accordance with the procedure prescribed in section 33(2), (3) and (4), the Commission shall, after sections 33E and 33F have been complied with in relation to that amendment -
>
> (a) send a copy of that amendment to the Minister;

That is a much simpler and quicker process. I continue -

> (b) publish in the Gazette and in a daily newspaper circulating in the metropolitan region -
>
> (i) a notice of that amendment . . .
>
> (ii) a certificate certifying that, in the opinion of the Commission, that amendment does not constitute a substantial alteration to the Scheme;
>
> (c) within 7 days of the publication -

Hon Norm Kelly: Seeing you have gone through section 33, perhaps you should go to 33A(2) and look at the detail of the amendment.

Hon PETER FOSS: Yes. Section 33A(2) states -

> (b) publish in the *Gazette* and in a daily newspaper circulating in the metropolitan region –
>
> (i) a notice of that amendment describing that amendment, stating where and when that amendment will be available for inspection and notifying all persons who desire to make submissions on any provision of that amendment that those submissions may be made to the Minister in writing in the form set out in that notice; and

Those submissions are to be made to the minister, not of course to the commission, and without public hearings and a certificate. The section continues -

> (c) within 7 days of the publication referred to . . . notify in writing the owners of land in the opinion of the Commission directly affected by that amendment of that amendment; and

(d) make reasonable endeavours to consult in respect of that amendment such public authorities and persons as appear to the Commission to be likely to be affected by that amendment.

Putting it mildly, it is pretty light on in terms of obligation compared with what section 33 requires. It continues -

(3) Submissions may be made on any provision . . . within . . . a period of not less than 60 days . . .

(4) When a submission is made . . . by a group of persons, that group shall appoint one person to represent that group for the purposes of the submission.

Then it says that the minister shall, on receiving any submissions made to him, transmit copies to the commission. It is nice to know that they will get a copy of them at long last.

Hon Norm Kelly: They have initiated the whole process.

Hon PETER FOSS: Yes, they initiated it. Everything else has been in the hands of the minister. Then one or more members of the appeals committee may consider and make a report and forward those submissions, together with a copy of the proposed amendments to which they relate, to the member or members appointed to the appeals committee, and that member or members shall, as soon as practicable thereafter, consider and make a report. The commission may comment to the member or members of the appeals committee appointed, and so on. It does not hold public hearings, and it does not give a person the right to be heard; it does not do all those things.

Not surprisingly, the use of section 33A would drive people absolutely mad because it was not used for what I would call insubstantial amendments; it was used for the most amazing amendments.

Hon Derrick Tomlinson: It was used to try to find the definition of what was a major and what was a minor amendment.

Hon PETER FOSS: Of course, there is no definition in the Act. It was a sleight of hand to call it a major and a minor amendment because the only legal distinction between the two was the opinion of the commission that it did not constitute a substantial amendment. It appeared to be something that it was prepared to give an opinion on, even for what I would call the most extraordinary things. There are some obvious non-substantial amendments, and a number of non-substantial amendments which could have reasonably gone under section 33A have come into this House as section 33 amendments. The omnibus Bills, when we dealt with road delineation, were plainly something, I would have thought, that would have gone under the section 33A procedure. However, Hon Richard Lewis decided that we would not use the section 33A process because he thought it was worth taking a bit more time and doing it properly. The old bull and the young bull draw attention to that.

Hon Derrick Tomlinson: The anomaly there is that a previous minister in a previous government argued that those amendments which you would characterise as not very substantial - changing road reservation and so on - were major amendments; rezoning from rural to urban was a minor amendment.

Hon PETER FOSS: Yes. I confess, as did Hon Derrick Tomlinson, that I found the distinctions to be somewhat facile. It caused such massive public disquiet that the town planning commission could not get on with doing any planning because it spent its whole time at rowdy public meetings trying to justify the reverse "planning" that was taking place, because everyone knew there was no planning taking place at all. Developers were going around picking a place on a random basis and then everything would work in reverse. It caused other problems too, because they would sometimes pick a place that was totally inconvenient for the supplier of services. There might be a 10-kilometre gap to the nearest electricity source or sewerage and water, and the cost of putting in the infrastructure was horrifying. Those affected by it were the utilities; they never knew where a new subdivision would sprout up and they would then be expected to bear the very considerable cost of reaching that new suburb. I suppose that is one of the reasons that to some extent development with septic tanks was allowed. However, that is now something that we refuse to go along with, except in very limited circumstances, because we are seeking to overcome 40 or 50 years of putting in septic tanks with the infill sewerage program, which has made a huge difference to the way in which people of Perth live.

That is the history of sections 33 and 33A. I will be frank: Although at times it might be useful to use section 33A, I support the policy initiated by Hon Richard Lewis - I think he is to be highly commended for it - of going through a proper planning process. The strange thing about all this is that the planning process which has been set out in the Act - in other words, we look at the way it should be done, we plan it, we notify everybody, we consult, we put it out for public hearings, we allow everybody to comment, we listen to those comments, we

consider those comments and we make amendments based on those comments - is the proper process. Nobody can doubt that that is what should be done.

Hon Norm Kelly: Perhaps we can delete section 33A from the Act.

Hon PETER FOSS: By the time it comes into this Parliament and we are certain that the proper planning process has been followed - because all the processes are written into the Act - that is the process that Parliament can disallow. When there is no guarantee that the proper processes were being followed, for which there has been a 10-year precedence of blatant abuse, there is no disallowance by Parliament. What an extraordinary statutory situation we have ended up with: When something has been through that proper combination of professional and public input, when all the right things have been done publicly and professionally, we can disallow it. However, we cannot disallow it when we have no such guarantee.

Hon Norm Kelly: Can you amend it?

Hon PETER FOSS: Let me finish the argument. The question then to be asked is under what circumstances should Parliament disallow it? I sought to have that question discussed by a parliamentary select committee, because I think it is a very important question. As soon as Hon Richard Lewis told me that he intended to bring all his amendments under section 33 of the Metropolitan Region Town Planning Scheme Act, I told him that before he did that, before the first one hit Parliament, he should have a select committee into what rules Parliament should set for itself in dealing with them, because it has not dealt with these for 10 years. Parliament sets rules for itself with dedicated legislation. We can disallow anything if we want to, but we do not. We disallow on rules that we set for ourselves. I told him that it is so important that we should set the rules for ourselves. Why do we have that power? What is an appropriate use of that power? I would never write into any legislation any limit on Parliament's power.

I happen to be one of those people who believes that Parliament should in its own rules set its own limitations on how it exercises its powers. We have this obsession with writing an awful lot of detail into Acts of Parliament on when we can and cannot do things. I happen to believe that Parliament should be supreme in these matters. We should have an unfettered power to disallow and we should decide when we will use that power. From time to time it may vary. This Parliament cannot bind a future Parliament. However, this Parliament should at least define for itself when it will use that power. Currently, each of the members defines for himself when he will use that power. I happen to believe, and I regret that successive planning ministers have not taken up my idea, that we as a Parliament in a committee, where I would hope that we could sit down and discuss these things from the point of view of basic principles, could take evidence and talk to the public - in other words, follow the processes of section 33 - and find out when it would be appropriate for us to intervene. I think everybody would agree, at one extreme, that we do not simply toss a coin and disallow when it suits us. It is not a matter of doing it on a whim. When we move a disallowance, we must have in our minds a logical reason for not accepting the process that has gone before.

Sitting suspended from 6.00 to 7.30 pm

Hon PETER FOSS: Prior to the dinner suspension I was dealing with the question of the principles to be applied when the Parliament uses a power in the statute which is unfettered in its nature in the same way as the Parliament has an unfettered power to disallow any statutory instrument. I put the proposition that currently we have no explicit statement of the principles that should apply, whereas the Joint Standing Committee on Delegated Legislation has enunciated a means by which it would move a disallowance. That does not prevent any member from moving a disallowance, which I believe should be the case. However, a member's motion for disallowance would run the risk that the rest of the Parliament would agree with the Delegated Legislation Committee and the member would have to persuade the Parliament as to why it should depart from the principles that had been enunciated by the Parliament as a whole.

I urge that this matter be considered by a select committee, or one of our standing committees, where it could be discussed in abstract using previous examples but without the political pressure that is applied at the time of a disallowance motion. I shall raise the question of why I believe some disallowances are taking place and distinguish between an omnibus amendment and a straight amendment because that becomes even more significant later in the process.

An omnibus amendment was used under section 33A of the Metropolitan Region Town Planning Scheme Act in a decision of Hon Richard Burges. He said that he would not bring into the Parliament section 33A amendments but would bring in an omnibus amendment that would bundle together a large number of individual changes to be dealt with by the whole process in an omnibus rather than an individual way, which meant they were subject to disallowance by Parliament. However, more importantly, he was trying to ensure that they were open to public consultation and hearings.

I shall give the House a bit of insight into how omnibus amendments work. The public process is gone through and frequently portions of amendments are removed before they come to this House, generally when the minister believes, first, that there is a matter of contention and, secondly, that the matter of contention leaves unresolved issues. Those issues are withdrawn if the minister believes the amendments should be allowed but that valid points have been raised which have not been dealt with and which still require planning approval. However, frequently issues will get to a stage when some people oppose them but they have general public acceptance. Some people may not like them, but there will always be those difficulties in Government. There may be two contending points of view. However, a veto is not applied to one contending view but, rather, the Government tries to work out the appropriate view.

The contending view may be a "not in my backyard" attitude. An important aspect of a metropolitan region scheme is that it is intended to deal with nimby issues. Many people say, "I recognise we need an X, a Y or a Z but I do not want it in my area." It is easy to get local governments to say that they will have nothing to do with these issues, as they know what will occur if they agree to them.

Hon Norm Kelly interjected.

Hon PETER FOSS: No, not at all. It is unfortunately all too common and nimby is one of the hazards of local planning. It is important that an opportunity exists for localised planning. However, there must also be regional planning when people accept that something must be done, but nobody is prepared to put up his hand and say, "We want it." That is when the metropolitan region scheme is so important in that occasionally matters are examined and it is decided that they must exist.

One of the reasons that matters are allowed by the minister is that he believes there is general acceptance of the correctness of the principle. Most people, other than the people near where an item may go, believe it should be there. It is just the people right next door to it who do not believe it should be there. That is just one of the issues, but often there is an unresolved issue. I recall in Cabinet when items have been deleted because the minister does not believe the matter is close to resolution with a little more discussion but that it is better to remove it and start it again. Therefore, issues that come into this Parliament have been subject to a liberal process of deletion.

Hon Norm Kelly: What about an omnibus amendment, which was virtually totally opposed when it went through that public consultation process? It may have been a substantial amendment that would not have been ordinarily allowed under section 33A; yet, it was maintained in an omnibus amendment.

Hon PETER FOSS: I will get to that. Distinctions can be made between omnibus and non-omnibus amendments. The reality is that under the previous Government the amendment would have been made under section 33A and the Parliament would not have heard a hoot about it. However, omnibus amendments are what used to be legitimate section 33A amendments and the major amendments would have been section 33 amendments but which never made it to the Parliament because it did not get around to dealing with section 33 amendments.

The question then is: Who should do the planning? Should the planning process be conducted merely by politicians reacting to a lobby group or should the planning process be as I have described: Professional planners involved in the initiation of the plan; publication of the plan and an opportunity given to the public to comment on it with the right to be heard; the matter then going to Cabinet and a decision being made? Should a lobby group be able to come along and use the deletion of that issue as a political move or should it be subject to the fact that occasionally the Government must make decisions that are not entirely popular but must be made? One of the problems of being in government is having a capacity to alienate somebody with almost every decision one makes, unless it is a hugely popular decision. The reason for it coming to government for a decision is because people cannot agree without intervention.

In this case the question is on what basis we should intervene. I will tell the House the basis upon which I believe the Parliament should act and what I suggest a select committee or standing committee should look at, following which it may come up with a totally different set of principles. On occasions suggestions have been made that the public consultation process is flawed. If people believe the public consultation process is flawed, that would be an appropriate basis upon which to interfere with a major amendment, because the process set down in the Act has not been honoured in its practical application. There have been allegations of that nature and we have tried to deal with them. We should look at whether there has been a fundamental failure to consider matters that should have been considered. It is rather like an appeal. Certain bodies make decisions, and one can appeal them only if, on the face of it, a person has made a total error - not that he has merely made a decision that someone else would not have made, but that he has applied wrong principles and has not followed the correct process. We should not interfere just because we disagree with the decision, or because we have been

lobbied with it, or because we happen to think that it will be a popular political move; we should interfere because we believe that a set of principles which should have been observed have not been observed.

Hon Norm Kelly: At the same time, would you support, say, a Government overruling proper planning practices?

Hon PETER FOSS: No, I agree with the member on that. The solution is that the amendment should be disallowed. However, I do not believe a person should start the planning process himself. There is a difference between disallowing totally and starting the planning process.

Perhaps I will now move from an omnibus amendment to a general major amendment to illustrate the situation more carefully. However, the same principle applies to omnibus amendments. Let us take a major amendment, one of the amendments of which is to rezone an area from urban deferred to urban. Another part of that major amendment is to provide a major highway access to the new urban area. What if everyone was happy with the idea of the new urban area, but the people alongside the road were very unhappy about the fact that there was to be a major urban road -

Hon Ken Travers: This sounds like what you did in Wanneroo after the 1993 election, minister. Go on.

Hon PETER FOSS: I am glad that Hon Ken Travers is listening to me. It is always gratifying to know that people are hanging on my every word.

Hon Ken Travers: No, I am waiting for your solution actually.

Hon Simon O'Brien: Do not confuse listening with comprehending.

Hon PETER FOSS: That is true.

Hon Ken Travers: Tell us more about how you solved that problem.

Hon PETER FOSS: The important thing about that is that if we were to delete the major urban road, the difficulty would then be that there would be an urban conurbation which was not serviced by a major urban road.

Hon Ken Travers: Which is exactly what we have in east Wanneroo, thanks to you lot.

Hon PETER FOSS: I am glad that Hon Ken Travers agrees with the principle. No doubt he will vote in a way to show that he agrees with that proposal.

Hon Ken Travers: No, laws cannot stop people using their powers irresponsibly, minister. You have told us that before.

Hon PETER FOSS: That is exactly the point. Hon Ken Travers has picked the point, because if people do not support a particular amendment and if they believe it was incorrect planning, they should disallow the amendment as a whole. They should not start to do their own planning. If one were to delete that major urban road, one would be affecting the planning as a whole. One cannot just take out the road and say, "I don't like that particular amendment," and leave the conurbation without -

Hon Norm Kelly: If it had gone through the proper planning processes, there would have been a road reservation for that urban deferred area in the first place.

Hon PETER FOSS: Okay. Let us say that it was zoned from rural to urban deferred - I will use that example. What a person is doing is fiddling with the facts. The reality of the matter is that if something is being changed from, say, rural to urban or urban deferred, and a person says that it should have had a road, okay, let us do it; it is being changed from rural to urban deferred.

Hon Ken Travers: I hope you will give this speech to the people of Wanneroo.

Hon PETER FOSS: Would Hon Ken Travers stop interrupting me, please. The member says that a road reservation should be put in when a change is being made from rural to urban deferred. If the member thinks that is a proper planning principle, that is fine. However, does the member think that this House should be able to pick that out and say that we will not have that, or does he think that if the House believes there is an error in the way it has been put forward, the entire amendment should be disallowed? I put to the member that deleting individual parts of an amendment, especially in the case of a major amendment that is not an omnibus amendment, is doing one's own planning. The appropriate way to plan is not by this House taking a vote on it. No matter how expert we may be, even if all 34 of us were town planners, the method of planning the metropolitan region should not be that we 34 sit down and start to do the planning. There is a proper process, and that is set out in section 33.

If a person believes that the proper planning processes have not been followed and that the proper procedures of section 33 have not been honoured in practice, the remedy is to disallow the amendment - not to do one's own

planning and not to pick out little bits that one does not like, because a deletion from a major plan is just as much planning as an addition. I am sure that the member would not suggest that he should be allowed to add little bits, little colour changes of his own. For instance, we allow regulations to be passed by both Houses. A regulation can be passed if both Houses of Parliament pass it. One should not be allowed to add little bits. I argue that deletion from a metropolitan region scheme plan amendment is planning in exactly the same way as an addition. I do not think anybody here would argue that one should be able to add bits, nor should one be able to remove bits.

The amendment proposed will apply to any form of major amendment, whether it be an omnibus amendment or one of those major amendments which is an alteration of the whole. The member has not tried to distinguish the two, and it may be very difficult to do so because the omnibus amendment is not in itself a character known to the Act. It has been introduced by the minister to avoid using section 33A. I regret that one of the results of not using section 33A is that it has presented a new problem to the House, which it did not previously have, of an amendment which does not necessarily hang together as a whole. We have some omnibus amendments whereby, for instance, all the roads are changed. However, many of the omnibus amendments are an accumulation of minor amendments which have been put together in a major amendment to allow those minor amendments to go through the scrutiny process.

Hon Norm Kelly: They are an accumulation of minor amendments with perhaps one or two major amendments thrown in.

Hon PETER FOSS: Under the previous Government, they would not have been. There was no such thing as a major amendment. What was the big one that was done in the hills?

Hon Derrick Tomlinson: The foothills structure plan.

Hon PETER FOSS: That was all done by minor amendment, was it not?

Hon Derrick Tomlinson: No, that was an omnibus amendment.

Hon PETER FOSS: There was one in which a significant area - I think it was the Royal Australian Air Force land - was subject to a minor amendment which rezoned as urban a huge quantity of land. I would have said that under no circumstances could it have been considered a minor amendment, but it went through as such. I agree that it is a difficult definition. It is one that people have not had to worry about under this Government because we have not put through any minor amendments. By virtue of the fact that Hon Richard Lewis adopted this policy, there has been a collection of amendments. One may think of them as being isolated propositions; therefore, they should be capable of isolated disallowance. However, I do not believe that is a correct summation. It would be unfortunate if we were to take the attitude that little bits could be taken out and that resulted in being forced to go into a minor amendment process so that the whole significant part was not lost because of a minor objection to it.

Members should keep in mind that Labor certainly had no qualms whatsoever about using a section 33A process, and Hon Norm Kelly has not sought to address that problem. One could lose even the right to disallow the whole of an amendment through application of this Bill.

Hon Norm Kelly's proposition would allow the House to plan. The House should set down the rules that apply to the disallowance of section 33 amendments. We should enunciate those principles and let the planning people, including the planning minister, know them. We should say, "If you do not do this, we will exercise our power." We must work out for ourselves when we will interfere. I propose that the House not interfere under the following conditions. It should not interfere merely - I emphasise that word - because a sectional interest has asked members to do so. The House should not interfere when a sectional interest has managed to gain a political ear. It should not interfere if members believe the proper planning principles have been applied to the amendment, and that the decision has been made by the appropriate people with the appropriate procedure and is a decision which could be made fairly - that is whether or not we agree with it.

Hon Norm Kelly: We do that already when we debate a disallowance.

Hon PETER FOSS: I do not think we do. We allow ourselves to re-decide a matter. In one debate it was alleged that the processes were not followed. However, generally speaking, the argument is that members do not agree with the amendment in question. They believe it is wrong. We have given ourselves the freedom to sit in the place of the planner and the minister and say, "I would've reached a different conclusion. Therefore, I will become the planner, I will become the minister and I will plan by deleting this amendment." In the interests of good government in this State, people must have the job of getting things done. If we allow sectional interests to continually dictate what will happen, nothing will happen. As a Parliament, and as a Government, we must ensure - we take an oath to do so - that we act for the greater good. Our constitutional basis is to act for the

peace, order and good government of this State as a whole, not to silence sectional groups, minorities and people who do not want things in their backyards. By all means, we should listen to the sectional interests, but we should not allow them to dictate the decisions. Most of the disallowance motions moved in this Parliament have been for sectional interests. The classic example was the Trigg amendment, which Parliament ultimately did not disallow. I have never heard a clearer argument representing sectional interests of a couple of people than that made in that debate. We were at risk of losing a major amendment based on sectional interests.

Hon Ken Travers: It was an omnibus amendment.

Hon PETER FOSS: It was a section 33 amendment, and the grounds for objection were very much sectional interests, not the peace, order and good government of Western Australia. It had nothing to do with whether proper planning processes were followed. Somebody did not like it, and somebody else was prepared to back him on it.

Hon Ken Travers: When you pulled out the MRS for Yanchep at cabinet level, that was okay, but it was not okay in Trigg. I agree with you on the Yanchep one, by the way; it was a good decision.

Hon PETER FOSS: I have illustrated the process, but I will go through it again for the member.

The PRESIDENT: Order! There is too much audible conversation.

Hon PETER FOSS: If the minister decided in Cabinet that a matter could do with further debate and discussion - in other words, he believed resolution could occur with further opportunity for discussion - he would pull the amendment and take it back to the planning process. However, the intent is always to bring forward the amendment again, if the process indicates that to be appropriate. As I have indicated, planners have some control over the process. They carefully assess the risk and go back to the drawing board. I have no problem with planners going back to the drawing board, but I have a problem with people taking over from people we pay to do that job. We should carefully examine what we could be doing in passing this Bill.

Hon Norm Kelly: Do you support the Government's being able to bypass Planning Commission approval if it is in what the Government believes to be the best interests -

Hon PETER FOSS: How does the member mean?

Hon Norm Kelly: For example, if the Government wanted to establish a public work or a government centre which would not get planning approval.

Hon PETER FOSS: I support the law as it stands, and people obeying the law and doing what they are required to do by the law. I return to almost my first sentence in this speech: The effect on the metropolitan region scheme of a reservation is to remove the area, to a large extent, from many of the other planning requirements. That is part of the planning process. The Government should be able to go ahead in that regard. I would never suggest any change of the law or subverting the law; I am happy with the law as it stands as it is adequate. The member wants to make a change.

I go back in this process as Hon Norm Kelly has missed the first step. I admit that perhaps I should have pushed more for the first step to be taken; that is, when the then Minister for Planning announced in 1993 that he would use section 33 rather than section 33A with amendments, I suggested to him that a committee of this House should first consider the principles. Until one enunciates the principles on which this House should interfere, we should not make amendments to allow it to further interfere. Under the principles, as I understand them, the member's proposal is very wrong indeed. Perhaps we will never agree. However, until such time as the House has some idea about when it should interfere, it is hard to change legislation determining its right to interfere. The principle I apply is that it would be wrong to do what the member suggests. I do not know the principles that Hon Norm Kelly applies, as perhaps I am the first person to enunciate the basis on which the House should interfere. Action must be based on some principle. It should not be on a whim, on the toss of a coin or simply because somebody asks a member to do so. One must have a logical reason for interfering. Our biggest problem is that we have not enunciated that principle. If we want to achieve anything in this House, I suggest that Hon Norm Kelly move to establish a select committee or refer to a standing committee these points of principle. I would be happy to work with the member to enunciate those questions. It would be in the interests of all members of this House if we were able to discuss those principles. As many different views of those principles could exist at the moment as there are members of this place. I have my views, which I am prepared to argue. I fully understand that other members may have different views. We will never get any form of useful and logical argument until we agree on the principles. The first step is to work out those principles.

The problem in this Parliament is that for at least 10 years it was not called upon to consider major amendments. They never came before the Parliament and nothing was done by major amendment. Before the first major amendment is considered by this House, I would prefer that members dispassionately reviewed the situation. I

confess that sometimes it is hard to make an in-principle decision without concrete examples to work on. Were we to give that consideration now, we would have concrete examples to think about and work on. I am concerned that people have committed themselves to a particular course of action and will find it hard at this stage to resile from what they have done. For example, Hon Norm Kelly has introduced a Bill, and I can hardly expect him to say in reply that I have completely convinced him, my arguments are overwhelming and he will, therefore, withdraw his Bill.

Hon Norm Kelly: You were convincing in the first 10 minutes.

Hon PETER FOSS: I am very glad. At least it was in the first 10 minutes.

Hon Ken Travers: In the meantime you will grind us into agreement.

Hon PETER FOSS: No. The only thing that is keeping me going at the moment is that the member has raised a number of irrelevant points to which I must reply. If the member is prepared to keep his mouth shut, I might finish my speech. The advantage of making this determination after we have been presented with some examples is that we have concrete examples to bite on when working out the principles that should apply. The disadvantage is that members have already adopted positions. Hon Norm Kelly has told us his remedy on a number of occasions. I do not agree with his remedy, but I agree that we must consider it. The House must first consider the principles. If we can agree on the principles, we may come to an agreement that the law does not need to be changed, or come to a conclusion that a change is needed. However, I do not believe change can be determined until we agree on the principles.

The Government has a fundamental objection to the proposal, and believes it is allowing the House to become the planner. The amendment is totally objectionable so far as a section 33 amendment is concerned. It has been suggested by the planning people that we may be able to more appropriately package it administratively. The only problem is how to bring these matters forward, and whether we must go through the whole process again. I do not know about the current minister, but the previous minister would never have accepted the use of section 33A under any circumstances. Perhaps if the amendment is disallowed as a whole, the parts that do not seem to be a problem could go forward as a section 33A amendment.

Hon Norm Kelly: That is what I suggested.

Hon PETER FOSS: That is one possibility. There are administrative ways of doing this. This, again, should be considered by a committee. If Hon Norm Kelly sat down with the planning officers, they could discuss it directly with him. The section 33 amendment process is expensive and time consuming, and we do not want to lose large chunks of that. On the other hand, we do not want it lightly set aside by people who pay attention to sectional interests.

The Government will oppose the amendment but it accepts that some points of principle need to be enunciated. If the matter were taken to a committee for examination we might get closer to an administrative procedure, or even an amendment, which the House would accept as a more practical way of dealing with a serious obligation of government. Planning is an executive responsibility. The Government has sought to use the section 33 process because it has a court of law. Therefore it prefers to bring amendments to this House through that process rather than use the section 33A process, which does not provide for public scrutiny or disallowance. It would be unfortunate if members opposite took action that encouraged the use of section 33A. This House should consider how this is best handled. Not all ministers will think that section 33A is anathema. It was the strong belief of Hon Richard Lewis, and it has been continued by Hon Graham Kierath, but members cannot bet that every minister from now to kingdom come will eschew section 33A.

Hon Norm Kelly: I have also debated various disallowance motions and been threatened with the use of section 33A. That threat still looms, irrespective of whether my Bill is successful.

Hon PETER FOSS: That is why we should have cross-party agreement. For example, I cannot think of many disallowance motions recommended by the Joint Standing Committee on Delegated Legislation that have been resisted by the Government. Other people's disallowance motions may be resisted, but the Government generally takes it on the chin from the Joint Standing Committee on Delegated Legislation. It knows it will not get away with saying that it should not happen. In those circumstances the Government goes to Hon Bruce Donaldson and begs for extra time to fix it. That is the sort of common process we should have.

It is ludicrous to have a set of principles for minor legislation but no agreed set of principles for planning issues. That is far more a matter of interfering in what is already an executive process than it is a delegated legislative process. It is remiss of this House not to have worked out the principles upon which it will disallow amendments. Once we have cross-party agreement on that, some of the mechanisms may disappear. It would

not be a bad idea for a committee to become involved before the matter comes to Parliament, and perhaps we should have the power to withdraw other amendments.

One of the problems is that if part of the amendment is disallowed, other parts may remain that are irrelevant without the disallowed part. Even if the process were passed, more would need to be added for the Government to be able to say one part has been removed and, that being the case, the other parts become impossible and should be withdrawn. That process does not fit in with the present legislation or the legislation proposed to be amended. The Government opposes the legislation, but it accepts that it is an important point. The Government believes the first step is to gain cross-party acceptance of the proper role of the Parliament in this process. That should be done in a practical manner by members considering their personal philosophy, the way in which the process works and how it should be handled, even administratively. When that has been done, and if a successful result cannot be achieved, the legislation can be amended.

Although the amendment will address one of Hon Norm Kelly's concerns, it would create more problems and concerns about the appropriate behaviour of Parliament than it would answer. I have not in any way dismissed the member's concerns. I have almost echoed his concern in greater measure, but I do not think he has picked the right answer. To get the right answer, we must start at a different place. I urge members to take heed of what I have said. I understand Hon Norm Kelly's point of view. The Government will oppose the Bill in this place and in the other place and, on those considerations, it is unlikely it will come into law. However, the Government is interested in dealing with the question of principle. Once we have dealt with that and the practicalities, we may not need an amendment, or we may need an amendment different from that put forward. Although I have sympathy for the point expressed by the member and some understanding of his frustration with the process, I urge him to recognise that part of the problem has arisen because of an openness on the part of the Government and a willingness to submit to the scrutiny of the Parliament matters that would not otherwise have been submitted for that scrutiny. He should not throw out the baby with the bathwater but regard himself as lucky to get the bathwater; in the past the bathwater came nowhere near this place. That is valuable and should be supported. With those comments, I indicate the Government will oppose the second reading of this Bill.

HON J.A. SCOTT (South Metropolitan) [8.10 pm]: I congratulate the Attorney General. In my younger days I attended Murdoch University and studied comparative literature, in which we were taught about a system of appraisal called the seven levels of meaning for literature and how to use that to examine the complexity of a good piece of literature. The Attorney General has managed to find about 14 levels of meaning in a four-clause Bill. That is quite extraordinary.

Hon Peter Foss: Is that good or bad?

Hon J.A. SCOTT: It might as well be a piece of Zen poetry.

I support the Bill. Had Hon Norm Kelly not introduced this Bill, I would have done so, because time after time omnibus amendment Bills have come into this place and one extremely controversial amendment has wrecked the future of what would otherwise been a very good Bill. The Attorney General has given a raft of examples of how we can take out a particular clause of an omnibus amendment Bill and thereby ruin the possibility that a highway will be put through a particular area. However, as we all know, omnibus amendments really link together a lot of minor amendments.

Hon Peter Foss: This is not restricted to omnibus amendments. Do you know that?

Hon J.A. SCOTT: We have dealt with things like the change of designation of a piece of high school land so that a few houses can be built on it to make some dollars.

Hon Peter Foss: This is not restricted to omnibus amendments.

The PRESIDENT: Order, Attorney General! Let Hon Jim Scott make his point.

Hon J.A. SCOTT: Omnibus amendments are not matters of great moment, otherwise they would be in an amendment Bill by themselves; and they should be in an amendment Bill by themselves if they are of great regional significance.

Hon Peter Foss is quite right. Omnibus amendments are a good move forward from the old system, which I agree was misused on quite a few occasions. I recall the case of Helena Valley, in which an amendment took the form of a minor amendment but did exactly what the Attorney General said and changed rural land into urbanised rural land and allowed for the subdivision of a huge area; that is not really what a minor amendment is about.

It seems that the Attorney General is very pleased also that by lumping these amendments together, they can be disallowed in this place; and he seems to believe in a bit of democracy - not too much - because he believes that by taking some tiny controversial piece out of an omnibus amendment, the whole cut and thrust of the Bill will

be spoilt. In most of the omnibus amendments I have seen in this place, the various sections have borne no relationship to each another, and bits of urban bushland in disparate areas have been collected together to add to the total amount; or a small piece of land has been taken from a high school to be used for urbanisation, or something like that, which hardly has a major effect on a region.

As Hon Ken Travers indicated by way of interjection, the Attorney General has also said that Cabinet can change these omnibus amendments, but we should not want the Parliament to be able to change these omnibus amendments, because the wisdom of Cabinet is far above that of the entire Parliament, for some reason.

Hon Derrick Tomlinson: It need not be Cabinet. It may be a ministerial decision.

Hon J.A. SCOTT: That would be even worse.

Hon Peter Foss: Where does the Bill say that it is confined to omnibus amendments? It does not.

Hon J.A. SCOTT: It covers omnibus amendments.

Hon Peter Foss: Among other amendments.

Hon J.A. SCOTT: I am not saying it covers only omnibus amendments. I am saying it cures the problem of omnibus amendments.

Hon Peter Foss: It does not cure it. It allows it to be used on anything. Is that a problem?

Hon J.A. SCOTT: I do not think so. If the Attorney General really believed that, he could simply make a small amendment to this Bill and change it anyway. It is certainly a very silly situation when years of work may have gone into a mixture of small amendments that are collectively significant and those amendments can be thrown out because one small section does not meet with the approval of most members of this House or may meet with huge community resistance. That seems to be rather silly, and it creates a lot of extra work for the Ministry for Planning and this House. It is a time-wasting exercise all around, and obviously it is also an expensive exercise, because it costs money to run this place and the Ministry of Planning.

Hon Peter Foss: The one thing about omnibus amendments is that we can always come back to section 33A.

The PRESIDENT: Order! Hon Jim Scott is not a witness at the Bar of the House and available for cross-examination. He is speaking on the second reading of a Bill.

Hon J.A. SCOTT: I do not share the minister's confidence in the pre-tabling process and the amount of input by the community in these amendments. I recall a number of major amendments and omnibus amendments to which there was significant community opposition and the planning authority did not take that on board or seem to be swayed in any way, even though people went to hearings and there were hundreds or even thousands of submissions. The only changes to amendments to the metropolitan region town planning scheme have occurred when just a few people of influence have had input. For instance, in the Fremantle Rockingham Industrial Area Regional Strategy that covers Leighton Beach, which is now a fairly contentious issue, quite a few submissions opposed parts of the amendment relating to the eastern bypass. However, the only aspect that was changed was a small extension to a park area. This was a result of the intervention of the member for Cottesloe. It just happens that the particular piece of land that will now have a park in front of it belongs to the then Minister for Planning. That change did not have broad community support; it had only narrow community support, but it went ahead. However, resistance to the eastern bypass by the vast majority of Fremantle residents got no truck at all. I do not have the same confidence in that process as members opposite. I also recall on that same amendment that a member of this House, Hon Barbara Scott, made some statements about crossing the floor over the widening of Canning Highway. That plan was also changed, saving that member a great deal of political embarrassment. Sometimes the planning commissioners listen. However, they do not seem to listen to the community but to particular interests. That is why the Parliament must have some input, and at the very least is able to draw to the attention of the community that these anomalies are slipping through. I do not know whether the amendments moved by Hon Norm Kelly are perfect. I do not claim to be a judge of that. However, I know they will relieve the situation in which otherwise perfectly good omnibus amendments are rejected or really awful sections of those amendments are not knocked out simply because people do not want to ruin an otherwise good omnibus amendment. It works both ways: Sometimes something awful will get through because we would lose so many good things by rejecting the amendment. I support this Bill because it will be beneficial to the operations of this place, and will not cause any great difficulty to the planning process.

HON DERRICK TOMLINSON (East Metropolitan) [8.23 pm]: I listened carefully to the lengthy, well informed and erudite argument presented by the Attorney General. The matter that Hon Norm Kelly's Bill is attempting to address arises from the emergence of a creature in the planning process that does not exist in law; that is, the so-called omnibus amendment. I understand and fully appreciate and sympathise with Hon Norm Kelly's intention in addressing the problem of disallowance of part of the so-called omnibus amendments.

However, the problem with the strategy proposed by Hon Norm Kelly's Bill is that he is trying to address a creature that does not exist in law with matters that exist in law. The matters that exist in law are the so-called major and minor amendments - the section 33 and 33A amendments. I believe Hon Norm Kelly's Bill should be rejected not because it is of unsound principle in its intent but because it is of unsound principle in its consequence.

Hon J.A. Scott: Do you think the parliamentary draftsman has not understood this?

Hon DERRICK TOMLINSON: I am not sure what the parliamentary draftsman understood; I am looking at this Bill. Let us go back to what exists in law: The section 33 amendment, the so-called major amendment of the metropolitan region planning scheme as entertained in the 1959 Act. In spite of the argument presented by the Attorney General that when Parliament disallows an amendment it should be only according to some well-established principles, the fact is that the law as expressed in section 33(6) of the Metropolitan Region Town Planning Scheme Act gives the ultimate decision making power to the Parliament, and so it should. The process allows at all stages for public consultation, assessment of consultation, and advice on that assessment of consultation to successive stages. Changes can be made at any of those successive stages. Even after the Governor assents to the amendment, authority for the approval of the amendment still rests with the Parliament, and whether the Parliament is composed of town planners is irrelevant. The Parliament is empowered. It is entrusted with the authority to make the decision. Therefore, each of us will make the decision according to the best information available at a particular time. That might be different information from that which has been brought forward and assessed at successive stages in the planning process. However, we will make that decision. The section 33A amendment, which was a subsequent inclusion in the Metropolitan Region Town Planning Scheme Act 1959, shifts the authority from the Parliament to the minister, who then has the authority. The minister is advised, just as the Parliament is advised. The minister will make a decision. Section 33A of the Act entrusts him with that decision-making authority. In either case an ultimate decision making power exists about what both section 33 and section 33A refer to as "the amendment".

The definite article is used constantly. It is "the" amendment; in other words, it is the singular. The singular can be taken to be the collective of separate amendments. Hon Jim Scott referred to it as a collection of disparate amendments. Indeed, that is what they can be in so-called omnibus amendments. Their only commonality is their general geographic vicinity, and these omnibus amendments tend to be a collection of disparate amendments in a part of the metropolitan region. We therefore have the north eastern metropolitan region amendment or the south east metropolitan region amendment covering the area south of Armadale, or the foothills structure plan amendment, which are aggregations of individual amendments. The Act does not entertain, in either section 33 or section 33A, an aggregation of individual amendments. The Act entertains the singular case; the amendment. If we then apply the proposal in Hon Norm Kelly's Bill, it is a power to disallow the amendment.

I will give Hon Norm Kelly an example of a true major amendment where part of that amendment was a single entity amendment, not one of those omnibus amendments to create an artefact of administrative decision and not a construction of the law at all. The true major amendment to which I refer is the land that is referred to generically as Ellenbrook. When the amendment came before this House, the entity called Ellenbrook comprised three separate land-holdings, part belonging to the State Housing Commission, part to Sanwa Vines Pty Ltd and part to Mt Lawley Holdings Pty Ltd. The part belonging to the State Housing Commission was very largely an area given to the eastern extension of the Gnangara pine plantation. The Sanwa holdings were to the east of the State Housing Commission amendments and the Mt Lawley holdings in the north-western corner of that amendment contained a significant wetland - so significant I cannot remember its name.

During the process of amendment, the vexatious question of what to do with the wetlands was the subject of a great deal of public debate as well as a great deal of administrative deliberation and decision-making. When the amendment was ready to come before the House, a very strong push was made to take the Mt Lawley holdings - the wetlands - out of the amendment altogether. It could be achieved only by the mechanism entertained by Hon Norm Kelly's Bill; that is, to disallow part of the amendment. The Act is clear. Section 33A says a singular whole entity may be disallowed. There is no opportunity to disallow part of the amendment although there may be cogent arguments for the disallowance of that part of the amendment. Fortunately, in that instance, a ministerial decision was made to take the Mt Lawley holdings land out of the amendment altogether. Therefore, the minister did by administrative decision what the Parliament could not do. That is an appropriate process under the process allowed by section 33.

I refer to the question of the so-called omnibus amendments and emphasise that neither section 33A nor section 33 entertain omnibus amendments or amendments that are an aggregate of discrete entities. They have no basis in law; they have basis only in administrative decisions. The administrative decision made was, instead of dealing with a series of amendments each of which would take between six and 18 months to achieve, to

introduce a collection of amendments in a geographic vicinity and deal with them in a single process, thereby cutting down the administration and time involved. It was an administrative convenience but it had no basis in law.

Hon Norm Kelly used as an example in the second reading speech the so-called Kiara technical and further education site in Morley Drive, Kiara, which had a public purposes (education) zoning and was designated as a site for a future TAFE institution. In the reconsideration of the future development of TAFE, it was decided that the site was superfluous to requirements and a decision was therefore made to dispose of it. To dispose of it required a metropolitan region scheme major amendment from public purposes (education) zoning to urban so that it could be realised at urban land values and therefore maximise the return to the nominal owner, the Department of Training and Employment. It was relatively undisturbed bushland, but a large portion of that site was degraded. There was also some - I always try to avoid the word - pristine banksia woodland.

Hon Peter Foss: Remnant?

Hon DERRICK TOMLINSON: It was not even remnant land; if anything, it was probably regrowth. However, it was of particular interest to members of the local community who had grown accustomed to using the land for passive recreation, and the interest of the local community, therefore, was to retain the land for that purpose. There were justifiable planning reasons for supporting that view. However, as Hon Norm Kelly pointed out, to disallow that part of the omnibus amendment under the law as it stands meant the disallowance of the whole of the omnibus amendment, because the law does not provide for a disallowance of part but only of the whole. When the whole - the singular entity - is an aggregation of disparate and separate entities, the authority vested in the Parliament becomes unworkable. In the same omnibus amendment there was a parcel of land in Benara Road owned by a Mr Roger Small.

It had been the subject of a long, protracted and in some instances unfair process - unfair to the landowner - in which there were substantial disagreements about the processes that had been pursued over 10 years. Mr Small was able to produce a persuasive case that he had been treated unfairly. His piece of land needed further consideration to tease out the legalities of what he claimed versus what the Western Australian Planning Commission claimed. They were two contradictory arguments. One argument was that the line on the map was in one place; the other argument was that it was in another place. However, the consequences of that line on the map for both Mr Small's property and the protection of the Bennett Brook reserve were substantial. There was a sound reason for disallowing that part of that same amendment. However, to do so meant the disallowance of other parts of the omnibus amendment which were -

Hon Norm Kelly: Worthy.

Hon DERRICK TOMLINSON: - worthy amendments. I thank Hon Norm Kelly. "Worthy" is an excellent word. I deal with the foothills major amendment and have a close look at Wattle Grove cell 9. Wattle Grove cell 9 was included in the omnibus amendment, even though it was a major amendment to the scheme, rezoning a parcel of land with about 40 separate landowners, from rural to urban. Half of the landowners supported the amendment and half of them opposed it. When the arguments were presented to the tribunal of the Western Australian Planning Commission, which was convened to evaluate the objections, the tribunal had to exercise the wisdom of Solomon, because those who opposed the rezoning from rural to urban said that under no circumstances should it become urban deferred. Those in favour of the rezoning, of course, argued for urban zoning.

Hon Peter Foss: And ne'er the twain shall meet.

Hon DERRICK TOMLINSON: Yes. The tribunal, confronted with a dilemma in which the number of land-holdings was equal on not urban deferred and not urban, had to make the decision of Solomon. The decision of Solomon was to recommend that it be zoned urban. There was a strong argument that no decision should have been made until such time as that matter could be resolved other than by dividing the baby in half. To disallow Wattle Grove cell 9 from the foothills omnibus amendment would have meant disallowing other amendments in the omnibus amendments which were, to use Hon Norm Kelly's word, worthy. To allow the worthy amendments to proceed, the Parliament had to make the judgment to allow the unworthy amendment to proceed. This is the mischief that Hon Norm Kelly's Bill attempts to address. It is intended to give to the Parliament the authority to disallow one part of an omnibus amendment - to take an amendment that is a complete entity in itself and withdraw it from that aggregate of amendments that comes under the umbrella of a single amendment. That is a worthy intention that addresses an entity which has no standing in law. I emphasise that section 33 and section 33A do not entertain omnibus amendments.

Hon Norm Kelly: But they allow for them.

Hon Peter Foss: Nobody thought about it.

Hon DERRICK TOMLINSON: It was a satisfactory way to go, given the circumstances. It was a bit like the cell 9: "What will we call it? Should it be urban deferred, urban or rural? Toss a coin. It is a majority decision. Let us call it urban". They are not good planning principles. Because Hon Norm Kelly's Bill is trying to address an administrative construct rather than a legal entity, the consequence is that, rather than addressing the omnibus amendment alone, it can address only the amendment entertained by section 33, and section 33 deals with "the amendment" - definite article, singular amendment. Therefore, the consequence would be that a decision in the Ellenbrook case, were it ever replicated, would mean that one would take out of the amendment a part that was integral to the total amendment. That was done by administrative decision, and the advantage of doing it by administrative decision was that the minister immediately set in train a process to evaluate the Mt Lawley land-holdings and to present a consequent amendment which dealt with the wetlands and, at the same time, dealt with the problem of the siting of the Perth-Darwin highway extension.

Hon Peter Foss: It probably could have been done under section 33A.

Hon DERRICK TOMLINSON: One can do anything under section 33A, because it is a construct of the minister at the time. A substantial amendment is that which the commission deems to be a major amendment. Again, it is nothing more than an administrative construct.

Hon Peter Foss: The administrative construct of the omnibus amendment came because the person applied section 33A.

Hon DERRICK TOMLINSON: Reluctantly, I oppose the Bill proposed by Hon Norm Kelly. I say "reluctantly" because I am in full sympathy with the principle he is trying to advance. That principle, however, addresses a phantom. By addressing the phantom - the administrative construct that does not exist in law - the Bill has an unintended consequence on that which exists in law, namely, the section 33 major amendment. For the very reasons that Hon Peter Foss argued, it would be an error of this Parliament to allow piecemeal amendment, by parliamentary decision, of amendments that have survived the rigorous processes laid down by section 33 - rigorous processes which take full account of a range of planning, environmental and community interest factors. Therefore, I join with Hon Peter Foss in opposing the Bill.

HON J.A. COWDELL (South West) [8.50 pm]: The Australian Labor Party supports this amendment to the Metropolitan Region Town Planning Scheme Act 1959. The Bill's primary intent is to introduce into the Act the ability to make partial disallowance of amendments to the metropolitan region scheme. The Labor Party recognises that section 33A of the Act allows for amendments that are not considered to be substantial alterations to the scheme to bypass the section 33 provisions. Omnibus amendments are often a compilation of minor amendments to the MRS. These minor amendments would otherwise be regarded as being non-substantial under section 33A of the Act and, as a result, would not be subject to parliamentary scrutiny. Hon Norm Kelly made the relevant point in his second reading speech that this House is presented with the option of allowing or disallowing all proposals contained within an omnibus or any other amendment. Indeed, it is an all-or-nothing situation. That is not in accord with the role of Parliament, particularly the role of this Chamber in its proper scrutiny of these matters. Members obviously face a difficulty when the lack of merit of a single proposal within an omnibus amendment is considered against the impact of disallowance of the worthwhile proposals contained in the same amendment. Omnibus amendments can be an extremely costly process, particularly if only one part is objectionable and many others are meritorious.

I noted the Attorney General's argument for some partial disallowance with omnibus amendments, but he outlined that the Bill would allow for partial disallowance in cases other than omnibus amendments. The Attorney General referred to amendments of a general nature, the integrated wholeness of such amendments and how it would be unwise to remove elements. The Attorney decried the fact that this Chamber would be doing its own planning and said that we must keep amendments as a whole; that is, they should be treated much the same as money Bills in that we may accept or reject them but may not tamper with them. His argument also was that politicians should not respond to lobby groups, and that decisions should be made rationally. He said that we have not established a set of principles upon which we can properly intervene, and that we should go away and set up those principles. We could then perhaps consider adopting this extra power. Reference was made in other speeches to the fact that the minister can do what this Parliament cannot do, and that somehow this situation is more appropriate than this Chamber's responding to community opinion.

This House on many occasions has responsibly exercised its disallowance powers. It might be anticipated that we would even more responsibly exercise those powers if we could differentiate between parts of an amendment. That would be particularly helpful with omnibus amendments, for which the procedure is more likely to be used. The ALP supports this Bill.

HON NORM KELLY (East Metropolitan) [8.55 pm]: I thank the members who have contributed to this debate. I note that the four members who have spoken are those who regularly make positive contributions to planning debates in this place.

First, the Attorney General said that section 33 of the Act was a responsible and democratic process. We could argue about the style and legitimacy of that democracy. However, by allowing the disallowance procedure outlined in proposed section 33(6) of the Bill to come to Parliament, we could address issues of democracy and the representative nature of this Chamber. As I said in my second reading speech, I applaud the Government's use of section 33 and its non-use of section 33A of the Act. Previous non-substantial amendments have been compiled into omnibus amendments and tabled in Parliament. The power of section 33A was provided by Parliament in 1986. I have not checked all MRS amendments since that time.

Hon Derrick Tomlinson: You will find that there was a retrospective validation of some 42 amendments between 1986 and 1991 that were flawed in their process; this was as a consequence of the abuse of section 33A.

Hon NORM KELLY: As the Attorney General said, the current Government has not used section 33A. I said in my second reading speech that I was concerned that if omnibus amendments were disallowed on a regular basis, it might encourage - as suggested in a sense by government people - the use of section 33A in the future to bypass parliamentary scrutiny. I have said on a number of occasions that the Australian Democrats support the use of section 33 to collect otherwise non-substantial amendments into omnibus amendments. As members pointed out in this debate, the current Act gives no standing to the term "omnibus amendment". It simply refers to a singular amendment. Therefore, it could be argued that there has been an abuse of the current intent of the Act to use section 33 in this case.

Hon Derrick Tomlinson: That is an imaginative interpretation.

Hon NORM KELLY: It is potentially a good abuse, if one can have a good abuse, of the current wording of the Act. It gets the otherwise minor amendments before Parliament for scrutiny. However, my experience in the past three or so years is that inevitably at least one substantial amendment is included in an omnibus amendment put before Parliament. When I have been lobbied on disallowance motions before this House, the damage which could be done by disallowing the worthy proposals contained in the omnibus for the sake of disallowing one unworthy proposal has been clearly expressed to me. However, as proper legislators, we should not allow any bad proposals to pass into law. If that means a delay in certain good and worthy proposals in order to delay one that is deemed to be unworthy, so be it.

Hon Derrick Tomlinson: How do you address the problem in section 33 of a partial amendment of a truly singular case major amendment?

Hon NORM KELLY: There is a limitation in the Act, in that there is no specific definition for an omnibus amendment.

Hon Derrick Tomlinson: No provision whatsoever.

Hon NORM KELLY: In this Bill amendments to the principal Act would allow for not only the disallowance of a singular proposal in an omnibus amendment, but also partial disallowance of a truly singular amendment of the MRS. That is for this Parliament to determine. The Attorney General said that that is politicising proper planning processes. However, planning processes often have a political genesis, and that happens time and again. We are currently dealing with a number of amendments to the MRS which, although they may contain a planning component, are political in nature in that they have been initiated by government for a government purpose.

Hon Derrick Tomlinson: Every one is political at one level, and that is in the allocation of values.

Hon NORM KELLY: I will get to that in a moment. Political decisions are made, and the weighting or bias given to the planning component of those decisions may vary.

Hon Peter Foss: They are not party political.

Hon NORM KELLY: Because a number of omnibus amendments are going through the process, the stages of which take 12 to 18 months, it would be extraordinarily difficult to amend the principal Act without causing a lot of confusion among the people involved in these planning processes. This matter has been before the Parliament for two years, and it would create confusion and uncertainty about how such changes can be applied. I am fully aware that there are a number of different ways of formulating this Bill to make changes either to define omnibus amendments or to delete section 33A entirely so that all amendments must come to Parliament for scrutiny.

Hon Derrick Tomlinson: I like the first option.

Hon NORM KELLY: However, it is my belief that this is the best possible way to amend the principal Act at this stage. The Attorney General referred to the need to look more broadly at the planning processes and suggested that perhaps a committee should look at how this version of delegated legislation could be better treated. I have some empathy with that position. The Joint Standing Committee on Delegated Legislation in its sixteenth report referred to the scrutiny of proposed regulations before they are gazetted to avoid possible disallowance at a later stage; that could likewise apply to the planning processes. Unfortunately, in the two years this Bill has been in the public arena the Government has not been forthcoming with proper suggestions about how it could be better dealt with. Perhaps when the planning appeals legislation comes to this place it would be best to send that Bill to a committee for the scrutiny to which the Attorney General refers and to consider planning processes in a more holistic way.

When omnibus amendments have been disallowed in this place, many worthy proposals have been disallowed; and because of the limitations of the current Act, this House has had no choice but to disallow those proposals. Many of these planning changes are political in their genesis, and the Attorney General and Hon Derrick Tomlinson referred to the Kiara TAFE site. That was very much a political decision on how to use resources that had been allocated to the Department of Training and Employment.

Hon Derrick Tomlinson: It was also a political decision to disallow.

Hon NORM KELLY: That is right, and that is what Parliament is for; that is, to look at the original political decision, consider that 601 of the 604 submissions opposed that decision, and place a weighting on the various contributions to the planning process.

Hon Peter Foss: You mix up the two meanings of "political". The political decision to pass it is the same whichever Government is in place because it is a decision Governments must make and there is no party bias. Often the political decision to disallow it is a party-political one in that people oppose it because the Government has proposed it.

Hon NORM KELLY: There are various forms of political decisions. As was pointed out in the debate, there can also be a later political decision by Cabinet to withdraw a proposal from an omnibus amendment. That is placing Cabinet above the Parliament in that process. Some amendments, such as the plan to change the zoning of the Sunset hospital site, are very much a political decision. It is quite obvious that the previous use of the site no longer applies and there is a need to change the zoning. However, it could be argued that the zoning should revert to the use gazetted in 1900 and 1904; that is, recreational purposes for the good of the public.

Hon Derrick Tomlinson: The solution to that is to treat each amendment as a singular entity, as was entertained in section 33.

Hon NORM KELLY: As I said previously, there are various ways of treating these amendments. I have pointed out that no positive feedback has been received from the Government about how this Bill could be improved.

Hon Peter Foss: I do not think it could be.

Hon NORM KELLY: The Attorney General may be contradicting his earlier remarks.

Hon Derrick Tomlinson: You have given the solution yourself. You either define in the omnibus or define out the omnibus, but it does not exist in law.

Hon NORM KELLY: That is why my Bill seeks a solution to the deficiency in the principal Act.

Hon Peter Foss: It does not.

Hon Derrick Tomlinson: It is a solution to a problem that does not exist in law.

Hon Peter Foss: It is a problem for that singular entity law.

The DEPUTY PRESIDENT (Hon W.N. Stretch): Order! Hon Norm Kelly is summing up the second reading debate and trying to make his point. We do not need members on the government side re-running the debate. The member is obviously trying to draw his remarks to a conclusion.

Hon NORM KELLY: Just because the current Act does not define omnibus amendments, it does not mean that they have no entity at law, because the Act clearly allows omnibus amendments to take place. My Bill seeks to improve the principal Act so that omnibus amendments can be better effected through the entire planning process. As much as I appreciate the comments of government members, I do not agree that this Bill should be opposed. It is a positive contribution to the planning processes in this State. It allows the Government to continue with its established and worthy process of amalgamating otherwise non-substantial amendments into omnibus amendments. It also allows Parliament to act in the best interests of all proposals contained in omnibus amendments. I commend the Bill to the House and urge members to support it.

Question put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon Helen Hodgson	Hon J.A. Scott	Hon Ken Travers
Hon J.A. Cowdell	Hon Norm Kelly	Hon Christine Sharp	Hon Giz Watson
Hon G.T. Giffard	Hon Mark Nevill	Hon Tom Stephens	Hon E.R.J. Dermer (*Teller*)
Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Bob Thomas	

Noes (14)

Hon Dexter Davies	Hon Ray Halligan	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Barry House	Hon Simon O'Brien	Hon Muriel Patterson (*Teller*)
Hon Max Evans	Hon Murray Montgomery	Hon B.M. Scott	
Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch	

Pairs

Hon Tom Helm	Hon M.J. Criddle
Hon Cheryl Davenport	Hon Greg Smith

Question thus passed.

Bill read a second time.

As to Committee Stage

HON PETER FOSS (East Metropolitan - Attorney General) [9.12 pm]: I move -

That the Committee stage be made an order of the day for the next sitting of the House.

Question put and a division taken with the following result -

Ayes (14)

Hon Dexter Davies	Hon Ray Halligan	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Barry House	Hon Simon O'Brien	Hon Muriel Patterson (*Teller*)
Hon Max Evans	Hon Murray Montgomery	Hon B.M. Scott	
Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch	

Noes (15)

Hon Kim Chance	Hon Helen Hodgson	Hon J.A. Scott	Hon Ken Travers
Hon J.A. Cowdell	Hon Norm Kelly	Hon Christine Sharp	Hon Giz Watson
Hon G.T. Giffard	Hon Mark Nevill	Hon Tom Stephens	Hon E.R.J. Dermer (*Teller*)
Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Bob Thomas	

Pairs

Hon M.J. Criddle	Hon Tom Helm
Hon Greg Smith	Hon Cheryl Davenport

Question thus negatived.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Norm Kelly in charge of the Bill

Clause 1: Short title -

Hon PETER FOSS: One of the serious problems with the drafting of this Bill, as I pointed out during the second reading debate, is that it seeks to amend something that does not exist. It seeks to deal with what it calls omnibus amendments without recognising that there is no such thing as an omnibus amendment in section 33 of the Metropolitan Region Town Planning Scheme Act. If we are to find in an omnibus amendment the

opportunity to deal with minor amendments, it is to be found in section 33A of the Act. Hon Norm Kelly should get his principles right and see whether what he is doing will chase minor amendments back into section 33A, which will be most undesirable. It is probably fair to say that the genesis of the wording of these amendments is that when Hon Richard Lewis was Minister for Planning he gained an absolute loathing of section 33A amendments due to the abuse that took place during the 10 years of Labor government; and nothing has happened to change this Act to prevent a resumption of that abuse by Labor should it ever be entrusted by the Western Australian people to rule this State again. This amendment Bill does not deal with the reason for the problems that arise when there are minor amendments. What it does do is ignore the fact that, by administrative edict, minor amendments have been going through section 33 instead of section 33A. It does not even try to recognise them with the wording that is put in place.

During the course of this evening, having heard the arguments that have been developed, I have drafted some amendments. However, the Bill is still fatally flawed, and I do not believe the amendments will salvage it. I am sure also that the Bill will be defeated in the other place, so it is probably a bit futile to even bother to make amendments, but it is important to make these amendments so that at least -

Hon J.A. Scott interjected.

The CHAIRMAN: Order, members! The Attorney General will address the Chair.

Hon PETER FOSS: I thought I was getting a useful contribution from Hon Jim Scott, but past experience should have told me otherwise. We should do something to this Bill to illustrate that we are at least trying to send legislation to the other place that addresses what Hon Norm Kelly says he is trying to address. I had hoped to have the amendments I had drafted considered by parliamentary counsel. Obviously I will not have the capacity to do that. I propose these amendments with the qualification that they have been drafted by me during the course of the second reading debate.

Hon N.D. Griffiths: That is a worry.

Hon PETER FOSS: It is, and the reason is that when a member reasonably asks for an opportunity to consider a Bill before the committee stage, he is normally given it. Even when things have been brought on that have been sitting on the Notice Paper for some time and members say they are not ready, we give them time. They are not the rules in this Chamber any more. The rules are that if it happens to be the Australian Democrats or the Labor Party, all the courtesies they demand of the Government do not exist any more. I make the qualification that these amendments -

Several members interjected.

The CHAIRMAN: The Leader of the House and the Leader of the Opposition will come to order.

Hon PETER FOSS: This has occurred because we have a hyperactive Leader of the Opposition who spends his time painting himself into a corner by misreading standing orders and believing he can pick that up by engaging in the sort of abusive conduct he is engaging in here.

Point of Order

Hon TOM STEPHENS: I understand that the standing orders require during committee that even the Attorney General address his remarks to the matter before the Chair. That does not include hurling abuse at me.

The CHAIRMAN: There is no point of order.

Committee Resumed

Hon PETER FOSS: As I was saying, it is with great reluctance I ask that these amendments be circulated, because I do not believe that either I, the Opposition or even the mover of the Bill has had adequate time to deal with these amendments and consider them properly. It is a pity that we will need to deal with the Bill in those circumstances.

Hon Norm Kelly: It is a pity that in the past two years the Government has not come forward with any amendments.

Hon N.F. Moore: One would think Hon Norm Kelly was the Government. He has two members in the whole Parliament, so he must have some rights!

Hon PETER FOSS: We were given fewer than seven days' notice of this Bill, but Hon Norm Kelly does not worry about the seven-day rule.

Hon Norm Kelly: The Leader of the House brought on the Bill.

Hon PETER FOSS: Somebody else removed all the other business.

Before deciding whether we should go into committee I have always tried to ask members opposite whether they are ready. I have always given consideration to them when they have told me then and there that they were not ready. We will have to deal with it now. Obviously that is a pity. I do not think it is the right way to legislate or to deal with each other in here. I must say that in the past couple of weeks we have had a pretty good example of how people treat each other. All I can say is that one of these days the boot will be on the other foot and when members opposite appeal to our good nature, our good nature will somehow be absent.

The Bill as formulated does not address the problem that Hon Norm Kelly has outlined. Therefore, I have propounded a number of amendments that I freely confess are hastily drafted. I have not had the opportunity to put them to parliamentary counsel and therefore I put them forward with considerable hesitation. However, I have no option other than to do so. This Chamber should at least try to improve its legislation. Members should carefully consider the Bill and what has been established by the speeches given in the second reading debate and look at the amendments that I propose to see whether they address the problem. If they do not, I cannot do much more. These amendments should receive serious consideration. I do not think they should be considered tonight, but that is another matter.

Hon MARK NEVILL: I did not speak in the second reading debate as I was waylaid elsewhere at a critical time. One of the problems with this second reading debate was trying to pick out the gems in the speech of the Attorney General. It seemed to go on for an inordinate length of time. I am still not convinced about the merits of this Bill; I am straddling the fence to some degree. It was probably worth seeing the Bill pass the second reading stage just to see the Attorney General's pique at not getting his own way.

Hon N.F. Moore: There used to be some sort of rule that we took some consideration of other people's positions on matters and tried to accommodate them. That has all gone.

Hon MARK NEVILL: This Bill is much ado about nothing. If it does not get defeated in the other place it will get caught up in the dissolution of the other place.

Hon N.F. Moore: So why are you in such is a hurry to debate it tonight?

Hon MARK NEVILL: Why did the Attorney General speak at such inordinate length?

Hon Peter Foss: It was not inordinately long; it was appropriate.

Hon MARK NEVILL: The Attorney General lost my interest. I would like to have focused on the critical issue. I did tune into the speech a few times, but I did not listen to all of it. A dilemma with a Bill like this is that Governments are elected to govern.

Hon N.F. Moore: Provided Oppositions with the numbers let them get their legislation on the Notice Paper.

Hon MARK NEVILL: The Leader of the House knows that he behaved in the same way when he was over here.

Hon N.F. Moore: I have never done this before. You know that as well as I do. We never prevented your Government getting legislation on the Notice Paper. Members opposite are denying us the right to get legislation on the Notice Paper. They have done so for two weeks and Hon Mark Nevill is helping them, unfortunately.

Hon MARK NEVILL: When we have been in opposition it has been pointless moving Bills or even amendments, because very rarely would they ever get up on their merits. When one considers the work one must put into drafting amendments, and knowing they will not be given proper consideration, one decides fairly early in the piece that it is not worth putting in that effort.

Governments are elected to govern. This is an administrative action of a Government. If it makes a blue it will pay for it at the next poll or it will survive. I have particular objections to the development of the Scarborough high school site. However, one must put that into the perspective of letting Governments govern. When a Government does something like that in a marginal seat it is asking for trouble. However, on the merits of that decision I have a different view.

It would have been more appropriate if this Bill had been sent to the Public Administration Committee. That has not occurred. I suggest that if the Attorney General feels this issue needs to be resolved, this Chamber, via the Government, could put a resolution to the Public Administration Committee to deal with this issue.

Hon Peter Foss: I would like to see that.

Hon MARK NEVILL: That can be done.

Hon Peter Foss: I invited Hon Norm Kelly to do that.

Hon MARK NEVILL: This Bill is going nowhere in a legislative sense. For that reason I will not make any more comments during the committee stage.

Hon PETER FOSS: I agree with Hon Mark Nevill's point that Governments should be allowed to govern and hang on their own mistakes, not on other people's mistakes. It is unusual for an executive process like this to be subject to disallowance. It is unusual for one Chamber to be able to virtually rework legislation. I have had a concern all along that we would be taking an executive process, handing it to the Parliament and then allowing one Chamber of the Parliament to reframe the legislation by selectively disallowing it. I believe that somewhere along the line we must be able to keep that executive legislative process in the hands in which it should be. If we were to make a major change of that nature, both Chambers, not one, should make the change or we could disallow it altogether and not go along with it. My amendments to the Bill are an attempt to restore part of that process so that at least the Executive has the capacity to control the division.

The sentiments expressed by Hon Mark Nevill, although not fully recognised by those amendments, are at least partially addressed by them to give the Executive the capacity to group unassociated propositions so that at least we recognise that there is such a thing as an omnibus amendment which will have disassociated amendments. We can then find the power of disallowance to disallow groups of amendments which are disassociated. We would then have the capacity to deal with both the major, whole and omnibus amendments that occur because they are in the same area, some totally disassociated and some totally associated. The proper executive process of planning would then be maintained and therefore the Executive maintains the capacity to make the grouping.

One of the reasons that I do not like this amendment is that I believe other provisions should be included the section 33 amendment for the Executive to regroup them. After the process of public consultation and consideration of objections, it may be appropriate for the minister to take those matters into account at that stage, regroup them and make all those amendments. If we proceed with the committee stage, we must address some points that have been raised. I hope that parliamentary counsel can take us through the whole section 33 process and identify where we need to deal with them.

As I said, the Government still opposes the Bill. However, if we go to the committee stage we must acknowledge Hon Derrick Tomlinson's point that the omnibus amendment presently does not exist. If we amend the Bill, it should not be an ad lib amendment but an amendment based on the disassociation of various propositions. We should not disallow a major amendment to the Bill, which does not have a great deal of disassociated amendments. We should disallow only whole amendments because that is an appropriate matter for the Parliament to deal with. The Government will therefore not grant that legislative authority. However, it should not have taken away from it the capacity to take executive action. The amendments I propose seek to do that. We may go into committee; however, I suggest that we report progress as the amendments I have put forward should be considered and the arguments that have been made in the Chamber tonight require consideration and should be given more consideration than they currently have been given.

Hon J.A. SCOTT: I listened with interest to the Attorney General say that Parliament should not amend executive decisions. He said that this is an executive process and it is not the role of the Parliament to interfere with that process. That is a pile of rubbish. In fact, this Parliament is here to keep an eye on executive processes; that is one of its roles. There may be an executive role in planning but in fact it is an executive process which deals with changes that have very real impacts on the communities that we represent. It is fitting for this Chamber to supervise those planning amendments and, rather than throw out the whole amendment and waste much time and effort, to remove a small portion of the amendment and pass it largely unchanged. If the Executive still believes that the other amendment should go ahead, it should convince the community that it is in the community's interest as that is whom we represent in this Chamber, not the Executive.

Hon NORM KELLY: The Attorney General raised some good points which expanded on what we discussed in the second reading debate - not that I necessarily agree with all of his amendments. However, it is important to note that the seriousness with which the Government takes the proposed changes to this legislation is highlighted by the fact that the Attorney General had to scribble out some amendments in the past minute to a Bill that the Government has had for about five days short of two years. I am disappointed that inasmuch as the Attorney General may appear to be making well-intentioned changes, the whole administration of the Ministry for Planning has failed to put one word on paper in the preceding two years to improve this legislation.

Clause put and passed.

Clause 2: Commencement -

Hon PETER FOSS: There is a considerable problem with this clause applying to a process which is already partially complete. There are obvious administrative ways in which matters can be arranged to deal with this and

I believe it would cause some difficulties if it were passed now. I propose that this clause be postponed until after -

Hon Norm Kelly: We can deal with this now.

Hon PETER FOSS: We must be able to decide whether to make the amendments. If we do not make the amendments the need for it becomes significant as no groups existed before. I suppose we can leave it out because there are no groups and we can disallow the bits that are there. However, it is appropriate to discuss it later. If the member is prepared to deal with it now, I do not know the amendments that he will move. If the Chamber accepts these amendments, this process will become very much an essential part of how it is done. We should not allow a change in the amendment process for matters which are already on their way. They should apply only to ones which have not started.

Hon NORM KELLY: I think what the Attorney General is referring to is that his proposed amendments to clause 4, which he has circulated, could very much upset current amendments going through the processes. If his proposed amendments to clause 4 were passed, we would need to look at whether they affect existing omnibus amendments. If those amendments to clause 4 are passed, a further amendment may be needed specific to the Attorney General's proposed subclause so that that proposed subclause does not affect existing omnibus amendments currently under way.

The amendment to clause 2 in the Attorney General's name should not be supported, because my Bill seeks to enhance the further processes of those omnibus amendments already under way. If this Bill is enacted, it will be very important that it apply to existing omnibus amendments. I can readily think of a couple of amendments of which there would be a possible disallowance. Other members have previously referred to the Scarborough Senior High School site, which is currently contained in an omnibus amendment. That could possibly be subject to a disallowance motion. I think it is on the record that the Australian Labor Party has said it will move a disallowance motion regarding that proposal. I will not enter into the debate or the arguments about the merits or otherwise of that proposal. However, if, for instance, it were disallowed, there would be many worthy proposals contained in that omnibus amendment that would also be disallowed. My Bill seeks to avoid that. If the Attorney General's proposed amendment were included in the Bill, it would be counterproductive to the overall intent of the Bill.

Hon PETER FOSS: I move -

Page 2, line 3 - To insert the following subclause -

(2) This Act does not apply to any amendment process which has been commenced at the time the Act comes into operation.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Dexter Davies	Hon Peter Foss	Hon Murray Montgomery	Hon Simon O'Brien
Hon B.K. Donaldson	Hon Ray Halligan	Hon N.F. Moore	Hon B.M. Scott
Hon Max Evans	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
			Hon Derrick Tomlinson
			Hon Muriel Patterson *(Teller)*

Noes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon G.T. Giffard	Hon Mark Nevill	Hon Tom Stephens	

Pairs

Hon M.J. Criddle	Hon Tom Helm
Hon Greg Smith	Hon Cheryl Davenport

Amendment thus negatived.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 33 amended -

Hon PETER FOSS: I draw members' attention to the typographical errors in my circulated amendment. Most of them have been corrected in the photocopy that has been circulated. However, one error that was not picked up is that proposed subclause (3) should be proposed subclause (1). This proposed subclause would be the first statutory recognition of an omnibus amendment; that is, one which is not an amendment as a whole but which contains propositions which can stand separately from other propositions. It requires the commission, when it forms that opinion, to arrange those groups. Anticipating the final matter, when those propositions come before the House, what must be disallowed is that group of propositions. It may be that there is only one proposition in the amendment. We may end up with 49 amendments and 49 separate groups. However, instead of having just a part of a particular proposition that can be disallowed, propositions can be grouped together so that at least the concept of an omnibus amendment is brought into statutory effect.

I have a small concern. I believe that the process should be examined as a whole. Therefore, if this amendment is passed, I suggest that the appropriate course would be to report progress and to deal with this tomorrow, in case parliamentary counsel believes that there should be other parts of that process in which the idea of a group is recognised.

The CHAIRMAN: I ask the Attorney to go through the motion to make sure that the Table picks up all the changes.

Hon Derrick Tomlinson: You left out “the” before “other”.

Hon PETER FOSS: Hon Derrick Tomlinson has identified better grammar than mine, which illustrates another problem with drafting on the run.

Hon Derrick Tomlinson: Drafting on the run is a dangerous proposition.

Hon PETER FOSS: I agree entirely with Hon Derrick Tomlinson. I had no wish to draft on the run. I move -

Page 2, line 11 - To insert the following subclause -

(1) Section 33(2) is amended by inserting a new paragraph as follows -

(aa) if the Commission when formulating an amendment is of the opinion that it contains propositions for amendment which can stand separately from other propositions within the amendment it shall arrange the amendment into two or more groups of propositions each of which within that group bears a relationship to the other, such that they should be considered together for planning purposes and shall identify those groups in the amendment.

Hon KEN TRAVERS: This amendment has a lot of merit. The Bill so amended will achieve Hon Norm Kelly's intent, and also pick up the concerns raised by the Attorney General about parts of amendments being removed. Members opposite would know all too well what such part amendment removal did for the people of Wanneroo. At the time of the change of Government in 1993, the Government took out a road system from the metropolitan region scheme east of Wanneroo. However, it left the urbanisation in the scheme amendment. This was one of the biggest hoodwinks perpetrated on the citizens of Wanneroo at the time of the 1993 election. People now realise what a scam it was. Once the land was urbanised, a road system was always going to be needed. People are suffering now from the absence of that road system. I concur that we do not want a situation in which one can pull out a road system and leave an area urbanised. That would be a travesty and a disgrace, which describes what the Government did to the people of Wanneroo. I am glad that it is moving an amendment so such action cannot occur again by way of a disallowance motion. I hope the people of Wanneroo will get their revenge on this Government for the rort perpetrated on them. I am sure they will seek that revenge at the next election.

Hon J.A. SCOTT: I seek clarification. I think I understand what the Attorney General is trying to do with this amendment. Rather than independent amendments, is the Attorney General talking about a single amendment within which the commission can place groupings of related amendments to ensure continuity in the planning process? If so, I will support the amendment; if not, I will not.

Hon PETER FOSS: The problem is that the Bill introduced by Hon Norm Kelly has in mind a particular objective; namely, the problem he sees with omnibus amendments. As ably pointed out by Hon Derrick Tomlinson, there is no such creature as omnibus amendments within the Act and that creature could vanish tomorrow and disappear into section 33A, which would be most unfortunate.

Progress reported, pursuant to standing orders.