## PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 4: Parts 17 and 18 inserted —**

Committee was interrupted after the clause had been amended.

**Hon STEPHEN DAWSON**: I move —

Page 18, lines 34 and 35 — To delete the lines.

Essentially, this is being done because earlier we carved the Environmental Protection Act out of part 17 of the bill. The reference should be removed, given vegetation clearing permits are issued under the EP act and the EP act is no longer dealt with in this bill.

**Amendment put and passed.**

**Hon ALISON XAMON**: I refer to the amendment standing in my name at 36/4 on the supplementary notice paper. I want to make reference to the fact that the following two amendments after that are attempting to address similar issues—that is, the time frame for substantial commencement. I note that the entire point of this part of the legislation is to speed up the generation of jobs through this pathway. The pathway is intended to work with all the relevant agencies that are involved from the pre-engagement process through to identifying and working out any major issues prior to approval, as well as the setting of conditions, which should significantly reduce the time required to meet those conditions and to seek additional pathways. Given this smoothing of the pathway, developers should be able to substantially commence their projects sooner than four years from approval. I note that the Western Australian Local Government Association, which is very familiar with these processes, has also recommended a 24-month time limit. I move —

Page 19, line 12 — To delete "subsection; or" and substitute —

> subsection, which must be a period of 24 months or less beginning on the day on which the approval is granted; or

I am aware that we may want to have a broader discussion that also deals with the subsequent amendments.

**Hon TJORN SIBMA**: Hon Alison Xamon has raised a not inconsequential issue. This goes to the heart of the bill's intent. I think the government has been consistent obviously in its advocacy of its own bill, but this is designed to get the—an overused quote—"shovel-ready" projects expedited. The expeditious part of that is unblocking bits of the development approvals pathway, which can become difficult and convoluted on occasion. I am interested in hearing the government's response to this. I think that nothing in what Hon Alison Xamon is proposing to move or the subsequent proposed amendments that we both share would inhibit or cobble what the government is proposing to do.

Another reason I think the whole idea conceptually is worthy of consideration—because what happens here will probably have an impact on what happens to the following two proposed amendments—is that we discussed earlier today a proposed amendment that I ended up not moving that would have obligated the Western Australian Planning Commission to make determinations within an 18-month period. One of my concerns is the potential for legacy projects to sort of drift on for some period beyond the time they were intended to begin. Logically, should this part of the bill receive royal assent potentially next week, applications can be submitted the very next day, determinations or applications can be submitted to the WAPC under the streamlined approval system until the end of 2021, and then there is potential for the commission to perhaps not make a determination on those applications until three or six months after that period and then grant approval with a 48-month conditional start. I am not saying this will always be the case, but potentially, an application that is not approved by the WAPC until very early in 2022 could be not substantially commenced until 2026, by which time we are in the unknown. Considering where we are in the course of this crisis, we should not be imperilled—well, who knows. I just think it is a very long legacy tail. I am happy to entertain a counterproposition from the government, but I can say that nowhere in my consultation with industry groups, quite aside from WALGA, did they find it objectionable that a 24-month commencement clause would be appropriate for a streamlined approval system, particularly if it is indeed the streamlined approval system that it claims to be. I will make my point and sit down. I invite the government to respond.

**Hon ALISON XAMON**: Further to that, I would appreciate advice on the way that this amendment and the subsequent amendments are drafted; and, if they were to be supported, whether there is a preference between the two amendments, which are slightly different.

**Hon STEPHEN DAWSON**: It is our preference to oppose the amendment that Hon Alison Xamon is seeking to move and support a somewhat similar amendment proposed by Hon Tjorn Sibma, because there is an extra element in proposed section 278(2)(a) that would remain if Hon Tjorn Sibma's amendment were to be passed. We are fine with reducing the substantial commencement period from 48 months to 24 months. The government thinks that that change would better emphasise the need for new part 17 to focus on proposals that are shovel ready. As the Minister for Planning has already publicly stated, that was always the intent. We prefer Hon Tjorn Sibma's amendment because, although it amends the default period from 48 months to 24 months under proposed section 278(2)(b), it retains some flexibility by keeping proposed section 278(2)(a). This means that the commission retains the discretion to impose a different period under proposed section 278(2)(a) if it can be justified. Of course, the relevant criteria that the commission has to consider is listed under proposed section 275(6), one of which is —

> (c) the need to facilitate development in response to the economic effects of the COVID-19 pandemic …

Clearly, a developer that can demonstrate that its proposal can commence construction as quickly as possible is more likely to be able to demonstrate that its proposal will facilitate a response to the economic effects of the COVID-19 pandemic. Nonetheless, Hon Tjorn Sibma's proposal seems to offer a measured outcome, and the government is happy to support it.

**The DEPUTY CHAIR**: Just before I put the question, I draw members' attention to the issuing of new supplementary notice paper 192, issue 6. We are dealing with proposed amendment 36/4 standing in the name of Hon Alison Xamon.

**Hon NICK GOIRAN**: Just to make sure I have it clear, the government's position is that it supports an amendment to 278(2)(b)?

**Hon Stephen Dawson**: Sorry?

**Hon NICK GOIRAN**: As I understand it, the government's position is that it supports an amendment to proposed section 278(2)(b) to bring in the time a development must be substantially commenced from four years to two years; however, the government wants to retain proposed section 278(2)(a), under which the commission can set the approval period for substantial commencement to be any period. It could be four years—exactly the period that is in proposed section 278(2)(b)—or five, 15 or 50 years. Is that what the government is saying?

**Hon STEPHEN DAWSON**: No, we are not saying that. Because it is related to the COVID-19 response, the commission is not going to say, "You can start your project in 50 years, go for your life." This is about getting projects up and running.

**Hon Nick Goiran**: It could.

**Hon STEPHEN DAWSON**: It could, but the commission is not going to say that.

**Hon Nick Goiran**: That would be ridiculous.

**Hon STEPHEN DAWSON**: It would be ridiculous, as the member said. This is about allowing a little bit of flexibility. If a proponent says that they want to build a new solar farm, for example, and it is going to take 28 months or 30 months to get up and going, then proposed section 278(2)(a) allows the commission the flexibility to enable approval to be given to such a project. It is not about being open-ended; it is about simply giving some flexibility to the commission to go outside the 24 months, if that is deemed to be appropriate and necessary.

**Hon NICK GOIRAN**: If the commission is in any way annoyed with the Parliament for reducing the four-year period to two years, the commission will have the flexibility, of course, under proposed section 278(2)(a), to allow it to be four years in every instance.

**Hon STEPHEN DAWSON**: I want to make a point: Hon Tjorn Sibma's amendment will reinstate what is able to happen now under the development assessment panels—nothing more, nothing less. It will simply allow what currently occurs under DAPs to happen under this legislation.

**Hon NICK GOIRAN**: Sure, but that was not my question. The point I am making is that the government is agreeable to the excellent amendment foreshadowed by my colleague Hon Tjorn Sibma, which will bring the period from four years to two years. The government is saying that it wants to lock arm in arm with the honourable member. It can do that with me also—we will all support the amendment together, when we get to it. However, I have also heard from the minister that the government is very keen to retain proposed section 278(2)(a) unamended. I am simply making the point that if the commission is annoyed by us locking arms and reducing the four-year period to two years, it will simply be able to use proposed subsection (2)(a) to make every approval subject to its preferred 48-month period. I am just seeking confirmation that that could be the case.

**Hon STEPHEN DAWSON**: I am confident that the commission will not be annoyed with the work of the Parliament on this bill. I reaffirm that the membership of the commission includes six directors general of state government

agencies, persons representing local government and specialist experts. I am confident that the commission will not be annoyed by what is before us. What Hon Tjorn Sibma's amendment does that Hon Alison Xamon's does not is allow some flexibility to get a project across the line after that 24-month period, if the case can be made.

**Hon RICK MAZZA**: I have been listening to the debate around this amendment and I agree with the government that we should keep that flexibility at proposed section 278(2)(a). Hon Alison Xamon and Hon Tjorn Sibma want to send a message that it should be 24 months to get developments going, because this is a COVID-19-related bill. However, we have to provide for the nature of many of these developments. Not all developments are the same; some may require a little more time than two years due to things like market forces or whatever the case may be. I am very keen to retain proposed subsection (2)(a) to make sure that the department has that flexibility to tailor-make the time period given, depending on the nature of the development itself.

**Hon ALISON XAMON**: I have made no secret of the fact that the Greens are not fans of the expedited process that will bypass ordinary, good planning processes. It strikes me that if we do not even have the pay-off, if we like, of ensuring that jobs and opportunities will be created to try to address the economic crisis that has now occurred as a result of the COVID-19 pandemic, then, really, what is the point? Why would the government do this?

**Amendment put and negatived.**

**Hon TJORN SIBMA**: I take this opportunity to move —

Page 19, line 14 — To delete "48 months" and substitute —

24 months

**Amendment put and passed.**

**Hon NICK GOIRAN**: I refer to proposed section 279(2). Can the minister indicate to the chamber the persons of a class or kind whom the government intends to prescribe by part 17 regulations for the purposes of that proposed subsection? Proposed section 279(2) refers to an owner of the land. It makes sense that an owner of the land would be able to apply to the commission to do certain things, including to amend or remove any conditions imposed on the approval. Apart from the owner of the land, who are persons of a particular class or kind whom the government intends to prescribe who might also be able to make such an application to the commission?

**Hon STEPHEN DAWSON**: I am advised that this is one of those catch-all provisions that the Parliamentary Counsel's Office has inserted out of caution only. There is a general principle in planning that all and every owner of land must sign every application for approval and every application to amend any approval. However, this principle can be modified by other statutes or in unusual circumstances. For example, if a development application for a pipeline traverses 50 properties, the pipeline operator could submit the application rather than expect the application to have 50 separate signatures. There are also special rules for strata companies, companies in administration, landowners subject to divorce proceedings, and landowners whose land is being foreclosed by a bank et cetera. There is also the added complication that part 17 includes applications under not only the Planning and Development Act, but also the Swan and Canning Rivers Management Act. The two acts generally work together but do have slightly different definitions of key terms, such as concepts relating to notions of development and land. Therefore, out of an abundance of caution, the Parliamentary Counsel's Office has recommended that a reference to regulations be included in the bill. The government does not think that any such regulations should be needed because most of these longstanding principles are well understood. However, the reference is there just in case.

**Hon ALISON XAMON**: My understanding is that the next amendment on the supplementary notice paper that is not consequential is in the name of the minister, at 23/4, unless I have missed something.

**The DEPUTY CHAIR**: Can I confirm that amendment 37/4 was essentially resolved in the previous amendment moved by Hon Tjorn Sibma and that it is also not your intention to move amendment 38/4?

**Hon ALISON XAMON**: For clarification, yes, because we effectively just passed the same amendment. The other thing to point out is that we have already debated and addressed the issue in amendment 38/4, and that was resolved in the negative.

**The DEPUTY CHAIR**: Thank you for the clarification. That takes us to amendment 23/4.

**Hon STEPHEN DAWSON**: This proposed amendment addresses a proposal that was first put forward by the Leader of the Opposition in the other place, but it has been slightly reworked by the Parliamentary Counsel's Office. The proposed amendment seeks to insert proposed section 281(6A). The wording is based broadly on the words found in section 264(4). I take the opportunity to thank the opposition and the crossbench, who have put forward constructive improvements. The proposed amendment will ensure that after the minister, with the agreement of the Premier—members should note that, in practice, this means cabinet—gives a direction to a decision-maker to resolve a conflict, that decision must be published in the *Government Gazette* and laid before Parliament. The government agrees with the opposition that this would ensure a further level of transparency. I move —

Page 24, after line 24 — To insert —

(6A) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

**Hon TJORN SIBMA**: I appreciate that sometimes imitation is a serious form of flattery, but not to make a pedantic point: what is the substantive or operational difference between those two amendments? I am here to be convinced that the government proposition is a superior outcome; and, if it is, I will support it. Can the minister please tell me the difference?

**Hon STEPHEN DAWSON**: Parliamentary Counsel's Office's amendment contains the words "must cause" rather than "is to cause". The PCO's amendment inserts proposed subsection (6A) rather than proposed subsection (8). I admit that those differences seem very minor, but this is the PCO's recommendation. I recommend that we adopt the wording formulated by PCO.

**Hon TJORN SIBMA**: On that basis, I indicate that the opposition will accept that amendment. However, I forecast the following: if we accept the government's proposed amendment at 23/4, we should probably also revert to its proposed wording further down the supplementary notice paper at 24/4 for consistency. I am not a trained lawyer and nor will I ever get a job at PCO, but I am sure that even it would admit that that is not a bad pick-up.

**Hon NICK GOIRAN**: Is one of the differences between the minister's proposed amendment, which is currently before us, and that otherwise foreshadowed by my colleague that the minister's amendment would provide for 14 clear days rather than 14 ordinary days?

**Hon STEPHEN DAWSON**: The honourable member is correct. Last week, I asked the same question to see whether we were being petty. I am advised that this is standard practice and this is how such clauses are normally drafted.

**Amendment put and passed.**

**Hon NICK GOIRAN**: I note that the amendment at 7/4 presumably falls away. Before we move to any further amendments, I have a question for the minister in sequence. I draw the minister's attention to proposed section 282(2) on page 25 of the bill. Who is the person of a particular class or kind that the government intends to prescribe in this proposed subsection whereby an application could be made to the minister for a direction on a conflict? Again, I can understand why an owner might wish to make that application to the minister, but who are the other persons being contemplated here?

**Hon STEPHEN DAWSON**: I am advised that the answer is essentially the same as the one that I gave the honourable member earlier about the PCO and the abundance of caution. At this stage there is nobody, but in the earlier answer I spoke about the Swan and Canning Rivers Management Act. The two acts generally work together but have slightly different definitions of key terms such as concepts. Out of an abundance of caution, the PCO has recommended this amendment and the reference is there just in case.

I am grateful for Hon Tjorn Sibma's comments a little earlier when he indicated that as a result of the chamber's support for the amendment at 23/4, it makes sense to support the amendment at 24/4. By making such comments, I believe he indicated that he does not intend to move the amendment standing in his name at 8/4. Therefore, I take the opportunity to move the amendment standing in my name at 24/4, again for the same reasons as indicated earlier. I am told that this amendment is standard practice and standard drafting by PCO. I ask the chamber to support the amendment. I move —

Page 26, after line 24 — To insert —

(7) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

**Amendment put and passed.**

**Hon ALISON XAMON**: Sorry, I was not expecting to move my amendment so soon because the amendment standing in the name of Hon Charles Smith was going to introduce third party right of appeal, of which the Greens are huge supporters—it is a longstanding policy position. I move —

Page 27, lines 12 to 15 — To delete the lines.

The reason I have moved this amendment is very similar to the tone of a previous amendment that I moved. This amendment removes the requirement for the State Administrative Tribunal to engage the minister. Again, there is concern that there is too much opportunity for the minister to pretty much influence every single step of the decision-making process. It is not appropriate for the minister to receive special consideration at SAT in determining a review of the Western Australian Planning Commission's decisions. Of course, my amendment

would not preclude the SAT from requesting information from the minister, but it makes it clear that it is not required to do so in its deliberations.

**Hon STEPHEN DAWSON**: I indicate that we oppose this amendment. This amendment removes the ability to provide submissions to SAT and any review before the tribunal under proposed section 283(5). Proposed section 283(5) simply replicates the current power of the minister found under section 245 of the act. In fact, proposed section 283 lessens the minister's powers under proposed part 17. In the usual process under part 14 of the act, the minister can provide a submission whether she is invited to or not. She can also call in applications to be determined by her rather than the tribunal if she deems them of state or regional significance, which all of these applications are. Therefore, we do not support this amendment.

**Amendment put and negatived.**

**Hon ALISON XAMON**: I indicate that I will not be moving the amendment standing in my name at 40/4 because it was consequential upon the passage of previous amendments. However, I would like to move the amendment standing in my name at 41/4. I move —

Page 28, after line 28 — To insert —

**284A. Approval granted by Commission under s. 274 disallowable by Parliament where approval is contrary to certain advice**

(1) This section applies if —

(a) the Commission grants approval for development under section 274; and

(b) the approval is granted contrary to —

(i) any submission made, or advice given, to the Commission in the course of a consultation under section 276(3)(a), (b) or (c); or

(ii) any submission made to the Commission under section 276(4) within the specified period.

(2) The Minister must cause a copy of the approval, including the Commission's reasons for granting the approval, to be laid before each House of Parliament within 6 sitting days of the House after the approval is granted.

(3) The approval is cancelled if —

(a) a copy of the approval, including the Commission's reasons for granting the approval, is not laid before a House of Parliament in accordance with subsection (2); or

(b) within 14 sitting days of a House of Parliament after the copy of the approval, including the Commission's reasons, is laid before the House, the House passes a resolution disallowing the approval.

(4) The Commission's reasons for granting the approval must include an explanation of why the Commission did not follow the submission or advice referred to in subsection (1)(b).

(5) That explanation must also be included in the reasons given to the applicant, and made publicly available, under section 274(7).

For the benefit of members, this amendment makes the commission's decision disallowable if the decision is in contravention of the advice that it received from the bodies responsible for upholding other legislation. Again, there is a great concern within the community that the effect of this bill may be to steamroll public protections that exist in other legislation to legitimately check the developments that occur where people live. We understand that this is not the intention of the bill; however, the wording of the bill opens up these avenues, especially with the minister's additional powers to direct other government agencies and bodies to do things that they would otherwise not be permitted to do. This amendment seeks not only transparency but also to permit Parliament to respond to any legitimate community concerns and disallow an approval if it turns out to be significantly out of step with natural or built heritage laws or significantly beyond what is allowed in the local planning schemes.

**Hon STEPHEN DAWSON**: It will not surprise Hon Alison Xamon that the government opposes this amendment. If one were to accept this amendment, one might better consider voting against part 17 in its entirety, noting that part 17 is a discretionary system, not a mandatory one. No developer would be likely to opt in to the significant development pathway if its approvals had such legal and operational uncertainty. Developers would almost certainly choose to adopt the current development assessment panel system. The government thinks it has the balance right with the current oversight provided for in existing section 284. It allows the Governor—meaning, in effect,

cabinet—to make a decision that would revoke or amend an approval under part 17. However, that decision would be disallowable to Parliament. In other words, if the commission grants approval under part 17, it is subject to a high degree of certainty. It would take, in effect, a bipartisan or multi-party agreement in Parliament to overturn that decision. This amendment in Hon Alison Xamon's name would do the exact opposite. It would mean that certain part 17 approvals would require bipartisan or multi-party agreement in Parliament just to make the approval operative. No developer would accept that degree of uncertainty.

The honourable member might say that the disallowance measures in her proposed amendment would apply only if the commission granted approval contrary to a submission made by one of the referral bodies. However, all it would take is a local council resolution recommending its opposition to the development in some way, and again, it is unlikely that any developer would accept that risk and would simply choose to opt in to the existing DAP system instead. The amendment would also be fundamentally unfair and unreasonable. For those who have concerns about political interference or other mischief, this provision would only seem to encourage it. I understand what the honourable member is trying to do and I appreciate it. I think we would all agree that oversight is very important, but the government feels that proposed section 284 is already sufficient oversight and is much more than is already found within the existing planning framework. Although I appreciate the honourable member's intent, her new proposed section 284A appears to be a step too far.

**Hon RICK MAZZA**: I thank the minister for his response. The first thing that ran through my mind was that there would be a huge degree of uncertainty for a developer. Disallowance motions take time to make their way through Parliament. Of course, if a particular political party or member wanted to create mischief and hold up developments that they did not approve, this would be one way of doing so. I can see why this amendment might be moved, but I certainly would not support it because we are trying to get some fast-tracking and developments up and running. This amendment would allow scope only for a very mischievous party or its members to move disallowance motions—whoever that might be.

**Amendment put and negatived.**

**Hon NICK GOIRAN**: We are still on clause 4 and I would like to draw to the minister's attention proposed section 286, "Regulations", which begins on page 29 and continues on page 30. As the minister will have become painfully aware over the course of this Committee of the Whole process, a massive number of matters have been potentially left to regulations. On several occasions, the minister has indicated that there are circumstances in which it is not currently the government's intention to prescribe any regulations. Does the minister have at his disposal a convenient list of all the regulations that the government does intend to prescribe under proposed section 286, which he might be able to table?

**Hon STEPHEN DAWSON**: The honourable member will not be surprised to hear that I do not have a list because there is no intention to make such regulations at this stage. However, out of an abundance of caution, which I think is the phrase I used previously, this provision is included in case such a circumstance arises in the future.

**Hon NICK GOIRAN**: To be clear, proposed section 286 deals with a general regulation-making power at proposed subsection (1) and the government does not intend to prescribe any regulations under that general provision, nor under the provision at proposed subsection (2), which makes reference to the part 17 regulations. It makes me wonder why the government would feel the need for proposed section 286(2)(b), which is plainly a Henry VIII clause, but I will confine my remarks at this point because we have an amendment in Hon Alison Xamon's name on the supplementary notice paper that presumably deals with this matter.

**Hon ALISON XAMON**: On that note, I move the amendment in my name at 42/4 —

> Page 29, line 21 to page 30, line 3 — To delete the lines and substitute —
>
> (2) Without limiting subsection (1), Part 17 regulations may prescribe powers, duties, procedures or any other matters for the purposes of, or in relation to —
>
> (a) applications, notifications, referrals or directions under this Part; or
>
> (b) the consideration or determination of applications or notifications under this Part.

As has already been alluded, this amendment would remove the proposed subsection that outlines the use of regulations to amend how other acts are going to be implemented. I understand that this provision is included to, once again, futureproof the bill for issues that are not currently foreseen. However, as we know, this bill already substantially affects the application of a range of other legal instruments, so I think it is unnecessary and inappropriate for a further power to be held in regulations for a just-in-case scenario. As was already identified by Hon Nick Goiran, proposed section 286(2)(b) in particular is potentially a Henry VIII clause and, as such, the Greens have particular concerns.

**Hon STEPHEN DAWSON**: I indicate that the government opposes this amendment. As I have already stated, the government has no intent to prepare new regulations. A new regulation that modifies any existing legal instrument is unlikely to be prepared precisely because, under proposed section 275(3), the commission is already not strictly bound or restricted by any legal instrument. This provision exists solely as something of a safeguard, recommended by the Parliamentary Counsel's Office to avoid any potential doubt. In any case, in the unlikely event that any such regulation was prepared, it would be subject to the oversight and potential disallowance of Parliament.

**Hon TJORN SIBMA**: I rise to register the opposition's support for Hon Alison Xamon's amendment. I think that, out of an abundance of caution, it is worthy of support and does not jeopardise the intent of the bill.

*Division*

Amendment put and a division taken, the Deputy Chair (Hon Martin Aldridge) casting his vote with the ayes, with the following result —

Ayes (21)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Peter Collier | Hon Rick Mazza | Hon Dr Steve Thomas |
| Hon Ken Baston | Hon Colin de Grussa | Hon Simon O'Brien | Hon Colin Tincknell |
| Hon Jacqui Boydell | Hon Diane Evers | Hon Robin Scott | Hon Alison Xamon *(Teller)* |
| Hon Robin Chapple | Hon Donna Faragher | Hon Tjorn Sibma | |
| Hon Jim Chown | Hon Nick Goiran | Hon Charles Smith | |
| Hon Tim Clifford | Hon Colin Holt | Hon Aaron Stonehouse | |

Noes (13)

| | | | |
|---|---|---|---|
| Hon Alanna Clohesy | Hon Laurie Graham | Hon Samantha Rowe | Hon Pierre Yang *(Teller)* |
| Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Matthew Swinbourn | |
| Hon Sue Ellery | Hon Kyle McGinn | Hon Dr Sally Talbot | |
| Hon Adele Farina | Hon Martin Pritchard | Hon Darren West | |

**Amendment thus passed.**

**Hon TJORN SIBMA**: Mr Deputy Chair, I seek some advice. Hon Simon O'Brien has a recommittal issue in his name on issue 6 of the supplementary notice paper. I do not know whether this is an appropriate juncture to deal with that or whether we deal with it after clause 67.

**The DEPUTY CHAIR**: Hon Tjorn Sibma has drawn attention to amendment 48/4 standing in Hon Simon O'Brien's name on issue 6 of the supplementary notice paper. It requires a recommittal of the bill, which, according to standing order 138, requires a decision of the house once the committee reports to the house and before the third reading.

**Clause, as amended, put and passed.**

**Clauses 5 and 6 put and passed.**

**Clause 7: Section 171A amended —**

**Hon TJORN SIBMA**: I am not seeking to move an amendment here but I am seeking clarification. Quite understandably, the overwhelming majority of this debate has focused on clause 4, part 2. I make the observation that there are 106 clauses in this bill. I am reminded of a *Yes Minister* episode and that if a bureaucrat does not want their minister to pay attention to a certain brief, they put it toward the bottom of the red boxes that the minister takes home. With that caution in mind, and even though I will limit my remarks to clause 7, my remarks effectively relate to clauses 5 to 9. I raise this only because a significant piece of work has already been undertaken by the minister to rationalise the number of development assessment panels as they presently stand. I am attempting to get, first of all, a sense of clarity from the government. Does the government intend this special matters DAP to be a permanent or temporary feature of the Western Australian planning framework?

**Hon STEPHEN DAWSON**: I am advised that it will be ongoing. It is intended to be in the DAP regulations, but it will meet from time to time as opposed to frequently.

**Hon TJORN SIBMA**: I appreciate that clarity. However, I also would like a sense of precision from the government as to how this new special matters DAP will interrelate with the other two or three DAPs. Which particular issues may be referred to the pre-existing DAPs and which matters will come under the jurisdiction of this new creation?

**Hon STEPHEN DAWSON**: I am advised that that work has not been done yet. We will need to consult on that. The commitment is that we will consult on it before the regulations are made.

**Hon TJORN SIBMA**: I leave that issue there for now.

Clause 7 is headed "Section 171A amended". Clause 7(2)(c)(i) states —

providing for a DAP to give advice to —

(i) a local government or the Commission …

First of all, what will that advice entail and will a local government authority be obliged to follow that advice, for example?

**Hon STEPHEN DAWSON**: I am told that local governments will need to give it only due regard. They will not have to follow the advice, but the detail will be worked out in the regulations.

**Hon TJORN SIBMA**: Is it also envisaged that the advice provided by this special matters DAP will remain confidential or will there be an obligation to make it publicly available?

**Hon STEPHEN DAWSON**: I am told that it will be more than likely a public recommendation from the DAP.

**Hon NICK GOIRAN**: Clause 7(2) refers to a "prescribed development application of a particular class or kind". What is that intended to be?

**Hon STEPHEN DAWSON**: I am told this is a head of power to work out which DAP makes the decision. I think that is it.

**Hon TJORN SIBMA**: This might not be immediately obvious as a connection, but I think that a thread is running through it. I am interested in understanding the interrelationship with this special matters DAP, which the minister has advised will meet occasionally—I do not mean that pejoratively, but on a required basis. Therefore, will it be permissible or allowable under this new system for applications already lodged with one of the existing development assessment panels to transfer into this new special matters DAP; and, if so, what criteria will need to be met to permit that to occur?

*Sitting suspended from 6.00 to 7.00 pm*

**Hon STEPHEN DAWSON**: Before we broke for dinner, Hon Tjorn Sibma asked a question about the ability to transfer an application from a geographic development assessment panel to a special matters DAP. I am advised that this will be prescribed through the development of regulations that we will draft in consultation with local governments, relevant departments and stakeholders. As I said earlier, the special matters DAP is intended to meet infrequently or on an as-needs basis to consider special matters. In introducing the DAP reforms, we are confirming confidence in the DAP system, with additional transparency and conflict-of-interest mitigations through permanent member appointments.

**Hon TJORN SIBMA**: I am relieved that the Minister for Planning has found the creation of the DAP system of some use, because I recall that some four or five years ago she possibly held a different view. That being said, this is my last question on clause 7. What is the intended membership of this special matters DAP? There has been some reference to at least three specified representatives, but I want an understanding of the government's intention around its full complement.

**Hon STEPHEN DAWSON**: The Minister for Planning has already stated that it will likely be the chairman of the Western Australian Planning Commission, the Government Architect and the president of the Western Australian Local Government Association. I believe there is still further thought on the role of other elected councillors on the special matters DAP, noting that the president of WALGA is already an elected member. Some consideration has been given to it, but a final decision has not been made.

**Hon TJORN SIBMA**: I appreciate the minister's response. This is not a question, but by way of suggestion I also recommend that a person with some significant town or urban planning experience might be a useful inclusion on the special matters DAP.

**Hon STEPHEN DAWSON**: Thank you for that suggestion. I am advised that the chairman of the WAPC has that.

**Hon Tjorn Sibma**: Other than.

**Hon STEPHEN DAWSON**: Okay.

**Clause put and passed.**

**Clauses 8 to 10 put and passed.**

**Clause 11: Section 4 amended —**

**Hon TJORN SIBMA**: I am hoping to ascertain the justification for what I read to be a redefinition of "public work", how that might advantage the operation of this bill on the planning system more generally and what its application to state projects, such as Metronet, might be.

**Hon STEPHEN DAWSON**: This will allow local governments to have flexibility in their local planning schemes. The Public Works Act 1902 is very old. As the explanatory memorandum states, although the definitions are reasonable, there are often issues. For example, in 1902 a school may well have been a building to which people went to learn. However, in the modern age, some students have kids themselves, so a childcare function might be needed at the school or we might feed children at the school. That falls out of the old definition of "school". This gives flexibility into the future.

**Clause put and passed.**

**Clauses 12 to 16 put and passed.**

**Clause 17: Section 195 amended —**

**Hon TJORN SIBMA**: I seek clarification. I will limit my remarks to clauses 17 and 19, but this might apply to part 5 as a whole, which deals with the acquisition of land. There is a thrust to my questioning. I ascertain from this and the explanatory memorandum that there are different instruments under which land might be acquired. I presume that this refers to the acquisition of privately held land. I want to ensure that there is equity in the treatment of landowners' compensation through the process of acquisition. This may or may not be a simple question. Referring to proposed amended section 195, what is the difference for landowners when their land is acquired under different instruments? I am talking about local planning schemes, planning control areas and the like.

**Hon STEPHEN DAWSON**: I am told that the bill will make it easier for people to get compensation when land is acquired. At the moment, an applicant has to apply under planning control areas, and when that is refused, they can access compensation. This provision will essentially change that fiction, essentially, of having to go through the process and have it refused before they are able to access compensation. Under the changes before us, they will not have to go through that process. They will get compensation if their land is acquired. The key issue is that the compensation would be the same. They will not be disadvantaged as a result of the changes before us.

**Hon TJORN SIBMA**: I thank the minister for clarifying that. Irrespective of the instrumental justification for the acquisition of land, whether that be a local planning scheme, a regional planning scheme or a planning control area, there will be no differentiation in the quantum of compensation offered. I want to clarify a point raised by the minister in his answer. Does this process of compensation require an amount of effort by the individual being compensated to initiate the process or is the process effectively initiated for them? I appreciate that the intent behind the minister's answer seemed to be that these modifications will make the process more expedient, for want of a better expression. I want to understand how it will work in practice.

**Hon STEPHEN DAWSON**: This clause is about streamlining the process. Currently, a landowner has to lodge a development application and it has to be refused before they can access compensation. This provision stops that process. They will be able to go directly to the Western Australian Planning Commission and say, "Please give me compensation for this land."

**Hon TJORN SIBMA**: These kinds of powers and transactions are pretty consequential for the individuals involved. Considering what is proposed in part 5 of the bill, I want to understand how this will relate to something that is topical—namely, the acquisition of land at the west end of Port Hedland. What regimen would those landowners go through?

**Hon STEPHEN DAWSON**: I am advised that that is a planning control area at the moment. Currently, they would have to put in a DA and have it refused before they can access compensation. I am advised that I could be getting different advice; I have been corrected. There is an improvement plan in place for Port Hedland—it is not a planning control area—and the scheme for that is currently out for public comment. The scheme in Port Hedland does not use planning powers. It will be paid for by industry so it was probably a bad example. It will not be affected by the bill before us.

**Hon TJORN SIBMA**: I wanted to establish the principle and I think the minister has done that. Irrespective of the legal article or instrument utilised, even under the Planning and Development Act—there are a number of them—the government's approach to equitable compensation for the acquisition of land remains consistent. Is that a correct assumption?

**Hon STEPHEN DAWSON**: The member is correct.

**Hon TJORN SIBMA**: I suspect I know the answer to this question, but, nevertheless, I am keen to have it verified. How does the government pay for the acquisition of land under the Planning and Development Act?

**Hon STEPHEN DAWSON**: Currently, the acquisitions are paid out of the metropolitan regional improvement fund. I am advised that in regional Western Australia we believe that it will be paid for out of consolidated revenue.

**Clause put and passed.**

**Clauses 18 to 22 put and passed.**

**Clause 23: Section 38 replaced —**

**Hon NICK GOIRAN**: Looking at clause 23, the minister will note that on page 44, at what is intended to be section 38(3), reference is made to —

> … a proposed region planning scheme or amendment to a region planning scheme of a class prescribed by regulations under the EP Act section 48AAA(2) …

What is intended to be prescribed or indeed what is already prescribed under that regulation?

**Hon STEPHEN DAWSON**: Proposed section 38(3) provides a new head power for the Environmental Protection Authority under its own regulations made pursuant to new section 48AAA to set out the classes of region planning schemes or proposed amendments that do not require a referral to the EPA. Currently, the vast majority of new or amended planning schemes are not assessed and do not have any significant impact on the environment. However, current requirements to refer every single new or amended planning scheme clearly constitutes unnecessary red tape with no benefit to the environment. Nonetheless, to avoid doubt and risk repeating the point, any potential exemptions for referrals will be wholly a decision for the Governor, as advised by the EPA and me, to be set out in environmental regulations. This is about streamlining and getting rid of red tape. At the moment something like 98.7 per cent of the referrals from the commission to the EPA are not assessed. The statutory time line in which the EPA must assess these proposals is within 28 days. I think the standard is approximately 20 or 21 days, so a decision is made in that time frame. But in the future the vast majority—almost all of them—would not have to go through that process under the changes before us in this bill.

**Hon NICK GOIRAN**: To avoid having to repeat this question on any further clauses, does this provision apply anywhere else in the bill? While the minister is considering that and perhaps taking advice on it, can I draw the minister's attention to clauses 45, 55 and 56 where, potentially, it may be the case that there is reference again to a region planning scheme or a class being prescribed by regulations under this same provision. I seek the minister's confirmation that if that is the case, then the same explanation would be provided at those three clauses.

**Hon STEPHEN DAWSON**: The honourable member is correct. The member pointed out clauses 45, 55 and 56. There is something similar at clause 70. It is not the very same, but it is the same concept. I am not sure whether I indicated it to everyone but it is the intention of the commission to come to an agreement with the EPA on what needs to be referred to it in the future. That will be done and then the regulations will come out after that.

**Clause put and passed.**

**Clauses 24 to 26 put and passed.**

**Clause 27: Sections 41 to 44 replaced —**

**Hon TJORN SIBMA**: The way that it is presented in the amendment bill under contemplation here, clause 27 might strike one as being innocuous. But when I refer to the explanatory memorandum, a couple of points are made that are worthy of some elaboration. Clause 27 seeks to replace sections 41 to 44 of the existing act and insert a new section 43. The claim made in the explanatory memorandum on page 19 of the version that I have, as it relates to this section of the bill, states —

> This amendment will facilitate risk-based assessment and decision-making pathways for region scheme amendments.

What risk-based management assessment or decision-making frameworks are under contemplation here and how do they differ from the status quo?

**Hon STEPHEN DAWSON**: There is a definition in the Planning and Development (Local Planning Schemes) Regulations 2015 that refers to the basic amendments and complex amendments standard. The intention is to mirror those in regional planning schemes.

**Hon TJORN SIBMA**: Following on from that, I suspect that was part of the answer, but there is also another paragraph in the explanatory memorandum that flows from this. There are the basic changes and the more complex ones, as the minister put it. Nevertheless, there is a claim in the explanatory memorandum that states —

> The current process for preparing and amending region planning schemes is extensive, with current average timeframes for finalisation of the region planning scheme amendment between three to five years.

I have to say that is reasonably consistent with a lot of the advice I have received from private sector operators in this space. On what basis is it imagined that this amendment to the bill will have a meaningful impact on that pretty lengthy process, and by what margin will this three to five-year process be reduced?

**Hon STEPHEN DAWSON**: I am advised that at the moment even simple changes such as correction of errors take that three to five-year time frame. Because of the changes before us, those—not the mundane, but simple—errors can be fixed much quicker. That will take the pressure off the whole system and I am confident that, as a result of those administrative errors not needing to go through this long, laborious process in the future, the time frames generally will decrease.

**Hon TJORN SIBMA**: This might be the second-last question I ask on this clause. Can the minister please advise the chamber of the specific origin of those simple administrative problems that he just identified, because these simple problems seem to have a disproportionate impact on the efficient consideration of approvals, and that comes at some obvious economic cost? To facilitate a response, I am drawing on the example we heard earlier in this debate, perhaps in consideration of clause 4, about the range of enactments that the minister listed. The justification provided both in the course of this debate and through questions on notice was that these were the rub points, I suppose, between the operation of the planning approval system and consideration of other acts. I presume there is a corollary with the processing of region planning scheme amendments and there is an origin in that 60 to 70 per cent of the issues that can be categorised in a specific way. I am seeking whether the minister is in a position to provide more specificity about the problem.

**Hon STEPHEN DAWSON**: I am not in a position to give the honourable member a list or the statistical answers. I will take the advice of the advisers, and if there is an easy way to get it for us in the future, I am happy to provide it to the chamber at a later stage, noting that, hopefully, the passage of the bill will have taken place in the meantime. An example I have been given would be removing Bush Forever region scheme designation on an airstrip at Perth Airport. That is an example of it, but I do not have a list.

**Hon NICK GOIRAN**: I am picking up on the dialogue we had in the debate on clause 1 when I was concerned whether any clause in the bill might dilute the existing mechanisms of consultation and procedural fairness, and I was asking that question in the context of the 1 502 signatures on the petition I tabled last week. The minister might be aware that I tabled another petition today with, I think, 915 signatures of people generally in the South Metropolitan Region who are concerned about the existing consultation mechanisms and that in some way this bill might dilute them. In the debate on clause 1, the minister indicated that, generally speaking, this bill will not dilute anything existing, but he brought clause 27 to our attention and indicated that it was an example of something that might remove the requirement to inform the community when there is the preparation or amendment of a state planning policy, and that this is being shifted from the act to the regulations. Can the minister indicate to us where in clause 27 it does that? I take it that it is the deletion of sections 40 to 44, but where is it then clear that there is an intention by government for those consultation mechanisms to be in regulation?

**Hon STEPHEN DAWSON**: In clause 27, the last few words of proposed section 43 state —

> … the Commission must, in accordance with the regulations —
>
> (a) advertise the proposed scheme or amendment for public inspection; and
>
> (b) consider public submissions made on the proposed scheme or amendment.

I have some further information about Glen Iris that I want to place on the record, and I hope that this might be helpful. The key issue seems to be the proposal from the new owners for the conversion of the existing Glen Iris Golf Course into a new housing development. The key concern is whether part 17 of the bill could be used to bypass the usual planning rules to develop this golf course into more housing. I am told the answer is no. The majority of the site is zoned special use in the City of Cockburn local planning scheme 3. As a result, the land needs to be rezoned under the local planning scheme. In all likelihood, a structure plan would be required to be prepared as well. Neither of these processes is subject to part 17. The 2015 planning regulations require formal public consultation to be undertaken prior to the scheme amendment and/or structure plan being determined, and to date no request for rezoning infrastructure planning has been received by the local government or the Western Australian Planning Commission.

**Hon NICK GOIRAN**: I thank the minister; that is most helpful. Nevertheless, there is an indication that the commission must, in accordance with the regulations, advertise and also consider public submissions. That seems to be an indication that there will be some regulations prepared and drafted. I want to compare and contrast that with the answer I was given a little earlier. The minister might remember that I specifically took some time to look at page 29, and in particular proposed section 286, "Regulations". I asked whether there was any intention by government to make any regulations and whether the government would have a list of those things, but I was told

repeatedly that there was no intention to move any regulations. Can the minister clarify his answer in light of that earlier response?

**Hon STEPHEN DAWSON**: I answered the question about proposed section 286. There are no regulations for part 17. Some regulations will need to be drafted and proclaimed for the rest of the amendments in the bill. I am advised that those parts of the bill will not be proclaimed until the regulations have been consulted upon, drafted and gazetted.

**Hon NICK GOIRAN**: Just to be clear, when I asked earlier under clause 4 about the regulation-making power in proposed section 286, the response was that the government did not intend to make any regulations under proposed section 286. The regulation-making power that I am referring to now in clause 27 is a different regulation-making power and the government intends to make some regulations with it. I appreciate that confirmation and clarification. Clause 27, particularly at page 46, refers to the commission advertising the proposed scheme or amendment for public inspection in accordance with the regulations, and also considering the public submissions. What is intended to be prescribed in regulations about the manner of the advertisement and the manner of the consideration of public submissions?

**Hon STEPHEN DAWSON**: I am advised that the provisions will be broadly modelled on the previous government's Planning and Development (Local Planning Scheme) Regulations. I am advised that they have worked really well, so we will likely model the regulations on those. We will consult on further changes but, essentially, they have worked until now so we propose to mirror those.

**Hon Nick Goiran**: Is it that the existing regulations will be maintained?

**Hon STEPHEN DAWSON**: It is current local planning scheme regulations.

**Clause put and passed.**

**Clauses 28 to 54 put and passed.**

**Clause 55: Section 3 amended —**

**Hon NICK GOIRAN**: Clause 55 will insert an additional definition to an "assessed scheme". The additional definition will include "a class prescribed by regulations". I simply ask: what is intended to be prescribed under this regulation?

**Hon STEPHEN DAWSON**: It is the exact same answer as the answer provided about clause 45.

**Hon NICK GOIRAN**: At clause 23, I asked a question about this matter. We have passed over clause 45 and we are now at clause 55. Can the minister have a look at clause 55. At line 6 on page 59, the minister will see that a period of advertisement for public inspection is intended to be prescribed. What will that period be?

**Hon STEPHEN DAWSON**: We have spoken about proposed section 43, "Advertising proposed scheme or amendment", in clause 27 already. The clause that the honourable member has asked about allows for the period that has been agreed on to advertise a prescribed scheme or amendment to be mirrored, so there will not be two different advertising periods. The same one will deal with both issues.

**Hon NICK GOIRAN**: I support the consistency, but my question is: what will be the period for advertising for public inspection?

**Hon STEPHEN DAWSON**: We do not know yet. The decision has not been made.

**Hon NICK GOIRAN**: The question that follows is: when is it anticipated that that information will be known?

**Hon STEPHEN DAWSON**: I am advised that once the bill passes, we will work on the regulations and there will be public consultation. Following that, we will have an understanding of what the agreed period will be.

**Hon NICK GOIRAN**: To avoid any exasperation whatsoever on the part of the Leader of the House, will the prescribed period be identical to the prescribed period for public review made reference to in clause 69(3), which can be found on page 69? Is it intended that the prescribed period of advertisement for public inspection, which can be seen at line 8 on page 69, will be one and the same period of advertisement as we are referring to in clause 55?

**Hon STEPHEN DAWSON**: I am told that this is dealing with a different area, so no, it will not be the same period. Is the member just trying to ask: if it is 28 days, might this one be 28 days also?

**Hon Nick Goiran**: Yes.

**Hon STEPHEN DAWSON**: Yes, it would be, so there would be that consistency.

**Clause put and passed.**

**Clauses 56 to 63 put and passed.**

**Clause 64: Sections 28 to 32 replaced —**

**Hon SIMON O'BRIEN**: I do not intend to spend long on this clause, but there are a few things that I would like to get on the record. Firstly, the chamber has noted that clause 64 proposes to replace existing sections 28 to 32, and it will replace them with some substitute matters that will deal, in general terms, with what they replace, but with some differences. I am sure the minister is glad at times like this that he is in a representative capacity and he is not the Minister for Local Government, so I hope it is not being unfair to put this to him.

**Hon Stephen Dawson**: Nor, indeed, the Minister for Planning!

**Hon SIMON O'BRIEN**: Sorry; I should say the Minister for Planning—actually, both! In effect, it seems to me that there is one remarkable difference between proposed section 28, and other matters around it, and the existing section 28, and that is that references to the Western Australian Local Government Association and other references to local government involvement in these matters are proposed to be deleted from the legislation. Am I reading that right?

**Hon STEPHEN DAWSON**: The member is correct, in a sense. It is being removed from the legislation, but it is being put into regulations. Local government will be required to be consulted on everything else, but we are moving it from the legislation into the regs.

**Hon SIMON O'BRIEN**: Why are we removing it from the legislation? What is wrong with the current provisions? How do they fail? Is this not some sort of demotion of the importance of local government that, indeed, raises the prospect of it being written out of the whole procedure altogether, depending on the pleasure of those who cast future regulations?

**Hon STEPHEN DAWSON**: This is very peculiar, sorry; I was not sure whether the member was finished and it was my turn to speak.

**Hon Simon O'Brien**: I don't know if I'm meant to go away in between things, but —

**The DEPUTY CHAIR (Hon Matthew Swinbourn)**: I think it is appropriate that you stay and seek the call when the minister has finished.

**Hon STEPHEN DAWSON**: The government is moving all process requirements for preparing or amending state planning policies from the act into regulations. The regulations will set out appropriate advertising and consultation processes, and those regulations will be subject to the oversight and potential disallowance of Parliament in the normal way. The main reason for this is to introduce streams or tracks for amendment, with different requirements depending on how substantial the change might be—similar to what the previous government did when it introduced complex, standard and basic tracks for amendments to local planning schemes in the local planning scheme regulations.

To give an example, "State Planning Policy 2.8: Bushland Policy for the Perth Metropolitan Region" has a map. That map forms part of the policy and depicts where all the Bush Forever land is. Not all Bush Forever land is reserved, which means it is technically developable, although it would be fair to say that if someone's land is on that map, it would pose some additional challenges if they wanted to further subdivide or develop their land. With the land being on that map, its value might also be affected in practical terms. The policy seeks to strike a balance between protecting our bushland and retaining a person's personal right to develop their land. I am told that, on occasion, the Bush Forever map is wrong, so landowners will contact the department and request that the map be updated. Normally, it is just an anomaly, such as a line drawn incorrectly on a map. Sometimes it may be due to changes in circumstances. It should be possible to fix this sort of thing very quickly, with minimal fuss, but, unfortunately, under the current system, landowners are told that there will have to be a formal amendment to the state planning policy, which will require formal advertising and assessment, and the local government will need to be contacted. An advertisement will need to be placed in the newspaper and copies of the amendment will have to be made available for inspection, and the process will probably take several months or possibly years. This is what the new regulations are trying to fix. The amendment is not about disenfranchising community consultation with anybody; it is about ensuring that appropriate community consultation occurs, as set out in the regulations.

**Hon SIMON O'BRIEN**: I thank the honourable minister for that explanation. I think members would concede that that is the sort of information it is important to get on the record at this time. However, my further point is this: to pick an example of what I am driving at here, the current section 28 requires —

> (1) When preparing a State planning policy, the Commission —
>
> (a) if the State planning policy is likely to affect a district or districts in particular, is to consult the local government for that district or the local governments for those districts; and
>
> (b) in any other case is to consult WALGA,

Which is, of course, the collective body representing local government —

with respect to the proposed State planning policy.

As we have already established, the proposed replacement clauses are quite silent on any local government involvement. I say to the minister, if I may—I know we are keen to proceed—that it also seems clear to me that the Western Australian Local Government Association, as the representative local government body, was not consulted about this. This has taken it by surprise and it has greeted this with some dismay. Can the minister confirm that, in fact, it has not been a party to this change?

**Hon STEPHEN DAWSON**: I can confirm that three briefings took place with WALGA. I was not at the briefings, and the advisers were not at every briefing, but certainly it was briefed on the bill at three meetings in May. I gave those dates and times earlier this evening to Hon Tjorn Sibma. I have no way of telling the honourable member what elements it was briefed on or what was said at the time, but I will place on the record that of course local governments will retain a role in consultation for preparing or amending state planning policies. Clause 64 removes sections 28 to 32 for the purpose of enshrining consultation provisions in regulations rather than in the act. The exact parameters of that consultation is to be determined as part of the process of preparing new regulations. WALGA and other stakeholders will be consulted as part of that process. The final form of such regulations will be subject to the usual oversight—that is, they can be disallowed in Parliament.

I cannot say definitively what WALGA was told in the briefing, but Mark Batty from WALGA sent me an email yesterday. Is WALGA happy with everything in the bill before us? It is fair to say that it is not, but we believe that where we have landed is the best place to take this forward.

**Hon SIMON O'BRIEN**: I know that all of us want to make progress, so I will conclude with this: it is important that those matters the minister just shared with us are on the record because they add to the useful knowledge of not only this chamber, but also those people who are observing this debate. It is a matter that we may well revisit in due course; I am sure we will from time to time. Mercifully, it will possibly be after 22 May next year, so not all of us will have to deal with it. Some definite legacies are being developed through this process. I make the observation that I have heard countless ministers in charge of bills at this very table over the years reassure the chamber that it is all right because regulations are a disallowable instrument. I have previously reminded the chamber, in many and varied ways, that governments abuse that process. It has some very strict limitations to it, and we need to be mindful of that. I am someone who actually believes in the proper use of regulations, which is to prescribe things that are convenient and necessary to prescribe to give effect to the legislative machinery that is passed by this Parliament. When bills do not include these specific parameters, members are very much taking it on faith. I do not have a lot of faith left sometimes when I see some of the workings of successive governments in relation to these matters. That is no reflection on the minister at the table—none whatsoever. But he is not the minister with responsibility for the act; though heaven only knows he would probably be better than some other candidates that might be charged with its responsibility.

I will conclude by offering this observation about good faith when it comes to government: there was great fanfare on 2 August 2017 when an eight-page glossy publication was produced called the "State and Local Government Partnership Agreement". In that is a pledge, not quite written in blood, but certainly signed by the current Premier and the current Minister for Local Government, about how they are going to consult with the Western Australian Local Government Association as the body that needs to be consulted. That was done out of respect and transparency, and it was all in good faith and all the rest of it. I am afraid that a briefing about what we are going to do, after the bill has been drafted, cutting WALGA out of it, does not show transparency, consultation, good faith or mutual respect. That does not give me a great deal of confidence about some of the other measures that will be coming up in other bills, but I think I have made the point in relation to clause 64.

**Hon NICK GOIRAN**: My question pertains to what is intended to be section 29. It states —

> A person or body performing a function under this Act must have due regard to any State planning policy to the extent that the policy is relevant to the function.

Does this in any way change the existing process; in other words, are persons and bodies performing a function under this act—the Planning and Development Act 2005—required to have "due regard", or are they required to "apply" any state planning policy to the extent that the policy is relevant to the function?

**Hon STEPHEN DAWSON**: Clause 62, "Section 26 amended", has been included to insert "governments and public authorities". That outlines that government authorities must give due regard to planning policies. I am advised that this proposed section cross-references with that one.

**Hon NICK GOIRAN**: But there is no change or dilution in the process by virtue of this, in the sense that at the moment it might be the case that they have to apply the state planning policy and now they will only have to give due regard to it. That is not what is happening here.

**Hon STEPHEN DAWSON**: No. This is strengthening it, honourable member.

**Clause put and passed.**

**Clause 65 put and passed.**

**Clause 66: Section 77 amended —**

**Hon NICK GOIRAN**: What is the prescribed class of amendments referred to at proposed section 32B(3)(b)?

**Hon STEPHEN DAWSON**: It is the same as we have previously discussed, honourable member. The new regulations may prescribe something that does not need to be referred. That work will be done between the Western Australian Planning Commission and the Environmental Protection Authority. Obviously, regulations will be drafted accordingly.

**Clause put and passed.**

**Clause 67: Section 269 amended —**

**Hon RICK MAZZA**: My reason for opposing the clause at 47/67 is basically that it is a consequential amendment to an amendment at clause 4. It is just a tidy-up, basically.

**Hon STEPHEN DAWSON**: I indicate that the government supports the amendment on the supplementary notice paper.

**Hon RICK MAZZA**: I move that we oppose the clause.

**The DEPUTY CHAIR**: No; just vote against it.

**Hon RICK MAZZA**: Just vote no—okay.

**Clause put and negatived.**

**Clauses 68 and 69 put and passed.**

**Clause 70: Section 48AAB inserted —**

**Hon NICK GOIRAN**: Could the minister turn to clause 70 on page 70. What is the intended difference between the classes of codes or amendments to be prescribed at proposed section 48AAB in comparison with proposed section 48AAA(2)?

**Hon STEPHEN DAWSON**: We were trying to work out the honourable member's question, but I think we have. Proposed section 48AAB relates to planning codes, and proposed section 48AAA(2) relates to dealing with schemes.

**Hon NICK GOIRAN**: Yes, and in both instances there is a capacity for the Governor to prescribe by regulations, in this particular instance, planning codes or classes of amendments to planning codes that are not required to be assessed under this division. What is intended to be prescribed here?

**Hon STEPHEN DAWSON**: What we did for schemes, we will now do for planning codes. It is the same issue.

**Hon Nick Goiran**: To futureproof them?

**Hon STEPHEN DAWSON**: No, it is the same issue we spoke about earlier on the Environmental Protection Act.

**Clause put and passed.**

**The DEPUTY CHAIR**: Order, members! When the Chair is speaking, you are not to speak and not move around the chamber. Thank you.

**Clause 71: Section 48C amended —**

**Hon NICK GOIRAN**: To assist the chamber, the minister and my hardworking colleague the shadow Minister for Planning, I indicate that after clause 71, I have one other question at clause 106. Under clause 71 at page 71, what is the difference between the prescribed procedure referenced in proposed section 48C(7)(e) and that in proposed section 48C(7)(ea)?

**Hon STEPHEN DAWSON**: Knowing Hon Nick Goiran, I do not think the answer could be as simple as what I am about to give, but one is about a state planning policy and the other is about a planning code. It is about how things get advertised with the EPA. I am not sure whether that has answered the member's question.

**Hon NICK GOIRAN**: The minister is quite right; that is not it. If the minister looks at proposed paragraph (e) and compares it with proposed paragraph (ea), he will see that both are referring to a prescribed procedure. I am interested to know what the difference is between the procedure that will be prescribed under proposed paragraph (e) in comparison with the procedure that will be prescribed under proposed paragraph (ea). It may well be the case that the procedure will be identical, but if there is a difference, I would like to be advised.

**Hon STEPHEN DAWSON**: That is yet to be determined. They could be the same time, but they could be different. That has not been worked out yet.

**Clause put and passed.**

**Clauses 72 to 88 put and passed.**

**Clause 89: Schedule 7 amended —**

**Hon TJORN SIBMA**: I am seeking some clarity about the proposed changes as they relate to community infrastructure and the relationship these amendments have with the present draft "State Planning Policy 3.6: Developer Contributions for Infrastructure", which is due to be finalised in the fourth quarter of this year, as I am advised by way of an answer to a question without notice provided today. Is there any deviation between the two documents?

**Hon STEPHEN DAWSON**: The answer is no. This just gives a head of power to support those reforms.

**Hon TJORN SIBMA**: Could the minister explain the justification for the reforms being proposed under this bill and what difference there will be with infrastructure that was previously out of scope as it relates to potentially broadening a class of infrastructure for which contributions can be solicited?

**Hon STEPHEN DAWSON**: I am being told that on page 33 of the explanatory memorandum, clause 89 lays out the process. That is probably the most helpful answer I can give the honourable member.

**Hon TJORN SIBMA**: I am attempting to see, however, what expectations there might be. I am making an assumption, reading both the explanatory memorandum and obviously the very brief amendments made by way of this bill. I am trying to ascertain how infrastructure previously supported by developer contributions will be funded and what advantages there will be to the taxpayer for the broadening of class of potential developer contributions and whether this is matched by any improved visibility of these disbursements.

**Hon STEPHEN DAWSON**: I am told that this will essentially provide a head of power for local governments to more clearly start collecting developer contributions. At clause 89, proposed clause 5(2A) of schedule 7 will not automatically expand the scope of circumstances in which development contributions can necessarily be imposed on a developer.

**Hon TJORN SIBMA**: Facilitating the instruments by which local governments might improve community infrastructure, is there any line of sight between the Western Australian Planning Commission and a local government that would give a measure of oversight or comfort that those funds are being used appropriately?

**Hon STEPHEN DAWSON**: I am told that state planning policy 3.6 involves greater transparency and annual reporting and will address the issue raised by the member. Clause 11(4) of schedule 7 provides additional support and legal clarity for the management of developer contributions.

**Clause put and passed.**

**Clauses 90 to 105 put and passed.**

**Clause 106: Part 19 inserted —**

**Hon NICK GOIRAN**: We now consider clause 106, particularly page 92. Clause 106 begins at page 90 and continues until the end of the bill, being page 95. At the moment, I am interested in page 92, but I will also ask a question about page 94. I draw the minister's attention to page 92 and what is intended to become section 290(3). What circumstances are intended to be prescribed by government?

**Hon STEPHEN DAWSON**: Essentially, honourable member, if something is already in the system, this means that they will not have to go back to the start of the process because it can take three to five years to get through the system. This means that wherever they are in the system, they will be transferred across at a comparable level.

**Hon NICK GOIRAN**: I take the minister to proposed section 294, which is found on page 94 and carries on to page 95. Is this simply a Henry VIII clause?

**Hon STEPHEN DAWSON**: This is only for processing purposes; it will not affect anyone's rights. It is not unfettered because it relates to something of a transitional nature. It covers something that has already started that is not covered by other transitional provisions.

**Hon NICK GOIRAN**: My question was: is this not a Henry VIII clause? The minister might say that the whole of clause 106, which is the final clause of the bill, is not a Henry VIII clause, and I would agree with him. The minister might say that proposed section 294, which is one of six sections sought to be inserted by virtue of this clause, is not in its entirety a Henry VIII clause, and I would agree with him. But I draw the minister's attention to proposed section 294(3), which states —

> Regulations made under subsection (2) may provide that specified provisions of a written law —

There is no qualification or restriction of a written law; in other words, it refers to any law in Western Australia— any one of the laws on our statute books. The regulations may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

If that is not enough to alarm members, paragraph (b) states —

(b) apply with specified modifications to or in relation to any matter.

In the time that this chamber has looked at Henry VIII clauses over the journey, this is exactly what that is. There is a written law in Western Australia and there will be a regulation-making power enabling Premier McGowan to put his Henry VIII hat on and sign a modification into law. That is what proposed section 294(3) will do. It is ordinarily the case that that would not be agreed to by this chamber. Earlier, Hon Alison Xamon picked up exactly this type of issue and she had the chamber dismiss and despatch that Henry VIII clause. That was a clause that the government resisted. I would have to go back to my notes to find the exact count of the vote, but the hardworking Whip in the opposition here will no doubt have it at his ready disposal. There was a division and the government, from my recollection, was the only party that resisted that rightful amendment by Hon Alison Xamon. In that context, I draw to the minister's attention the supplementary notice paper in which an excellent amendment is sitting there in the name of Hon Simon O'Brien. He has foreshadowed the need to recommit this bill to deal with clause 4 and to deal with another Henry VIII clause, which I referred to earlier in the debate. I simply ask the minister: is there any appetite on the part of the government at this time—given the precedent set by Hon Alison Xamon and the committee already in this bill, and given what Hon Simon O'Brien has foreshadowed he would like to do, which he has my full support on when we recommit clause 4, hopefully—to look at proposed section 294 and to expunge proposed subsection (3), which is plainly a Henry VIII clause? I ask the minister to seek advice on that.

**Hon STEPHEN DAWSON**: If the honourable member moved an amendment deleting proposed subsection (3), we would not oppose it.

**Hon NICK GOIRAN**: I move —

Page 94, lines 28 to 32 — To delete the lines.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

*Recommittal*

**HON SIMON O'BRIEN (South Metropolitan)** [8.34 pm] — without notice: I move —

That the Planning and Development Amendment Bill 2020 be recommitted for the purposes of reconsidering clause 4.

The substance of what I am proposing to recommit is now under my name on the supplementary notice paper, issue 6. I think it is self-explanatory and understood by the minister in control of the bill as a result of discussions held behind the Chair. Unless the house wishes to have a further explanation, I would ask that we do this. The reason we are recommitting is that the relevant lines were passed over before this matter, which needs to be attended to, could have been attended to, so it was out of sequence. That is why I am now moving accordingly that we recommit the bill.

Question put and passed.

*Committee*

The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 4: Parts 17 and 18 inserted —**

**Hon SIMON O'BRIEN**: I formally move —

Page 6, line 26 to page 7, line 3 — To delete the lines and substitute —

***substantially commenced***, subject to subsection (4), has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 as in force at the beginning of the recovery period;

Members following proceedings will readily see that, in effect, what is happening here is that with the existing definition of "substantially commenced", I am proposing that we delete paragraph (b) of that definition. Because paragraph (a) also refers to paragraph (b), it is necessary to delete that portion in the first instance before referring it by way of the words that I am proposing be inserted. The effect then is essentially to delete the portion that reads —

(b) if Part 17 regulations prescribe for the purposes of this paragraph a meaning of ***substantially commenced*** — has the prescribed meaning;

That does not make a lot of sense until one reads it in the context in which it has been drafted in the entire definition as it stands. In the course of the earlier committee stage, I was not on the floor of the chamber; I was engaged in other parliamentary duties. I was not able to jump on this at the time, and that is the reason I am seeking a recommittal. At the time, Hon Nick Goiran in a couple of questions drew the Committee of the Whole House's attention to what has been described as a Henry VIII clause, and that is in effect what would happen if we were to allow this current definition to stand without the amendment I have moved. A Henry VIII clause is a bit of a cliché; the term is bandied around a lot. We hear it a lot as if it is some sort of novelty. Let me specify exactly how the current wording offends. It offends in a way that provides for the executive to have the capacity to change the substantive law that this Parliament might from time to time pass. That is a prerogative available to the Parliament and the Parliament alone, and it is not a power that should be made available to the executive to change the substantive law via regulation or some other subsidiary mechanism to suit itself. That is fairly simple, and to some observers it might seem a fairly dusty point of parliamentary procedure, but it is fundamentally serious. That is why when it is drawn to attention, as this provision was, we need to deal with it. That is why I propose that we deal with it in the manner I have outlined and why I have moved accordingly.

I wondered at the time this was brought to notice whether this bill was replete with other clauses that want us as a Parliament to extend this power to the executive in an unworthy way to override the wishes of Parliament. I fear that might be the case. I am aware of a provision that was opposed at the initiative of Hon Alison Xamon, and the chamber saw that off. Just now in debate on clause 106 Hon Nick Goiran again drew our attention to a similar clause and the chamber saw that off as well, as I am sure the house ought to with this current matter I am raising. Indeed, there is a precedent going back a very long way that we do not compromise as a house of Parliament on these matters, and neither should we. It would be shameful if we wish to do so. To his credit, I think that the honourable minister at the table accepts that view.

With that in mind, and as I conclude my remarks, I wonder whether another matter that used to be taken very seriously by this chamber will continue to be disregarded, and that is when there is a bill that is complex in nature, perhaps controversial, that has been subjected to all sorts of amendments, is it a matter of course that the report simply be adopted? Is it then a matter of course that standing orders are to be suspended to allow a third reading to proceed forthwith? Those are matters for the chamber to judge in due course, but what used to happen, and very necessarily, was that consideration of a report of this nature be moved as an item for next sitting of the house and then after that the third reading was laid down for a further sitting of the house. That is just the prudent thing to do. I hope that in his response, which we will be given a moment, the minister might answer me this one question: can he guarantee that we have in fact picked up all the Henry VIII clauses? Are there others to be discovered between now and when the house considers this matter again? That is what should be happening between now and when the house decides to adopt the report. There is no reason that should not happen. For now, I have moved the amendment on the supplementary notice paper.

**Hon STEPHEN DAWSON**: As I indicated to the honourable member behind the Chair, the government is happy to support this amendment. As I mentioned a number of times in the debate to this point, the government does not intend for there to be any regulations. I am advised this was here for a potential future government, but it is not needed and we will support the amendment. In relation to the further question the member has asked, I am not aware of other similar clauses.

**Amendment put and passed.**

**Clause, as further amended, put and passed.**

*Further Report*

Bill again reported, with a further amendment, and, by leave, the report adopted.

*As to Third Reading — Standing Orders Suspension — Motion*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [8.47 pm] — without notice: I move —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

**HON SIMON O'BRIEN (South Metropolitan)** [8.48 pm]: Although we are keen to progress the government's legislative program, I wonder whether there is any explanation, particularly in view of my earlier comments, about what the rush is to proceed to the third reading right now on a bill that has been so heavily amended. Perhaps if that could be clarified, the house would be better informed about how it approaches this third reading vote.

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [8.49 pm] — in reply: With the greatest of respect to the honourable member, and I appreciate his contribution tonight, this bill has been ranged over for the past couple of weeks. There are COVID-19 elements to this bill. It is important we get on with it and get dealing with the regulations as quickly as possible. This is an important matter. As I always am in this place,

I am very happy to take on board amendments or issues that are raised by the members in this place, but I am certainly very keen, as this has a COVID-19 nature to it, to get on with the bill so we can deal with these important matters outside the Parliament.

**The ACTING PRESIDENT (Hon Martin Aldridge)**: An absolute majority being required to pass the suspension motion, having counted the house, an absolute majority of members being present and there being no dissenting voice, I declare the motion is passed.

Question put and passed with an absolute majority.

*Third Reading*

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Environment)**, and returned to the Assembly with amendments.