

CORONAVIRUS — PLANNING — THIRD PARTY APPEAL RIGHTS

Motion

HON CHARLES SMITH (East Metropolitan) [1.10 pm]: I move —

That this house —

- (a) acknowledges the current deficiency in community consultation and the absence of third party appeal rights in planning and development processes and decisions during the COVID-19 emergency period; and
- (b) notes the consequential erosion of Western Australia's democracy.

Honourable members, Western Australia needs a more transparent and democratic planning system. I understand that Western Australia is a unique jurisdiction. We are not afraid of being different. Although other jurisdictions confer their powers to the federal government, we retain those residual powers granted to us by the Constitution. Sometimes we follow national models; other times we go our own way. I would like to think that WA looks more to what actually works, which can be a great benefit to this state. It gives us unique strengths but it also comes with unique challenges. One of the many ways in which WA is unique is the role of third party appeal rights in planning. We are seemingly the only state not to allow this in some capacity under our planning and development legislation. Sadly, more and more, local communities across Perth in particular are increasingly losing trust in our planning system. It is the view of the Western Australia Party that this should change. Although this motion before the house refers to planning changes during the COVID-19 pandemic, the party I represent supports these changes across the board.

The first major piece of town planning legislation was enacted in WA in 1929—the Town Planning and Development Act 1928. This legislation came on the back of various showcases throughout Australia demonstrating the importance and benefits of town planning. This early legislation did not provide third party appeal rights. Since the 1960s, all jurisdictions in Australia, barring WA, have provided for third party appeal rights in planning. Victoria has granted such rights since 1961 in its Town and Country Planning Act, as has New South Wales, since 1970, with an amendment to its Local Government Act. Queensland provided these rights in Brisbane through the City of Brisbane Town Planning Act and the rest by amendment to its Local Government Act; South Australia, since 1972, in its Development Act; and Tasmania, since 1974, via amendment to its Local Government Act. It demonstrates that such rights exist in Australia—in the entire country, for nearly 50 years—except here in WA where we do not have any third party appeal rights. However, we have had a significant number of sometimes controversial changes to the WA system, and I will run through some of them. Since 2009, we have had, for example, the establishment of the Metropolitan Redevelopment Authority, changes to structure planning processes and changes to section 76 of the Planning and Development Act 2005, which empowers the minister to order a local government to devise or adopt amendments through schemes and plans. There was the introduction of the development assessment panels, or DAPs, and the introduction of the deemed provisions for local planning schemes in the Planning and Development (Local Planning Schemes) Regulations.

Even the Western Australian Local Government Association, also known as WALGA, has published its preferred model for third party appeal rights. I understand that until very recently, WALGA supported its own recommendations until something happened—I am not sure—and it no longer supports third party appeal rights, and that is a great, great shame. WALGA's publication is a simple three-page document, which I encourage everyone here to read. It can be found very, very simply on the WALGA website or by a simple google search with the key words "WALGA third party appeal rights". I will run through WALGA's model, which states —

- The model provides a good test for the introduction of Third Party Appeal Rights, which could possibly be expanded later if it proves to be beneficial.
- Local Government would be able to appeal a DAP decision and defend the merits of their policies and defend the enforceability of their conditions.
- Other interested parties and community members would be able to appeal a DAP decision.
- Addresses community concerns that decisions are being made by those 'removed' from the local community, leading to improved community confidence in the system.
- More transparent process in both decision making and condition setting, resulting in more accountable DAP members.
- Would allow for an appeal to be made on the conditions of approval or refusal
- ...
- Limits appeal rights to larger, more complex applications and would filter out 'smaller' impact applications which could potentially overburden the system.

Extract from Hansard

[COUNCIL — Wednesday, 9 September 2020]

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Hon Charles Smith; Hon Stephen Dawson; Hon Rick Mazza; Hon Tim Clifford; Hon Tjorn Sibma; Hon Alison Xamon; Hon Diane Evers; Hon Dr Steve Thomas

- Provides the ability to challenge any new information being presented at the DAP meeting without the responsible authority being able to undertake any assessment of the new information
- Able to appeal the 'Deferral' process being over utilised ...
- Can give the Local Government more confidence that the developer will provide a fully complete application and discuss the application with the Local Government first, rather than relying on the DAP to condition the proposal requiring additional critical information.

This model is very limited in scope, but it is heading in the right direction and will be a useful model for the government to examine and take up. It shows that even WALGA had an appetite for change but not so our Premier. Speaking to the Western Australian branch of the Property Council of Australia just a few weeks ago, the Premier labelled local communities that fight over developments as "critics and naysayers".

But back to WALGA. In August 2019, PerthNow reported —

More than half of WA Local Government Association delegates backed Bayswater Councillor Georgia Johnson's motion to change WALGA's preferred model for the third party appeals process at their August 7 AGM.

The decision called for closely associated third parties to have the ability to make appeals against decisions by the WA Planning Commission, State Administrative Tribunal and development assessment panels.

Concerns were raised that it could delay planning processes, but 93 members supported the change and 79 voted against it.

WALGA's State council had resolved in May to advocate for the State Government to introduce third party appeal rights and endorsed the preferred model, which would give local governments an avenue to appeal DAP decisions.

Since then, unfortunately, the push has died down. It is still an idea gathering steam in Perth and throughout Western Australia. There is no doubt about that whatsoever, but it seems that successive governments have had no desire to implement such an idea, relying on smaller piecemeal amendments that do not provide these rights.

Although I appreciate that there is undoubtedly a raft of arguments for and against third party appeal rights, it is curious that there seems to have been no serious undertaking in this area, even though the Western Australian Local Government Association, which seemed very supportive, had indicated an interest in such a system. It appears that this is a government without a real and sustainable economic plan. The only plan I can see is the continued reliance on housing construction to "grow the economy". This is, as the Premier well knows, a false economy because, as I have pointed out time and again, it requires the continuous importation of new consumers into the state. This economic model produces only a boom-bust economy, which Western Australia was going into well before COVID-19 hit these shores.

Why are third party appeal rights important now? The coronavirus pandemic has brought new and difficult challenges to not only Western Australia and Australia, but also the whole world. For the most part, we in WA have been very lucky. Across the board, the Western Australia Party has been very cooperative to get emergency bills through. However, members, in our haste there is a significant risk that we have been too permissive. As many have said, "Never let a good crisis go to waste." It seems sometimes that this government's questionable grab for executive power is certainly a prime opportunity seized. In the Planning and Development Amendment Bill 2020, the Minister for Planning was given enormous powers in the approval process, particularly for significant developments. The government has sold us this by saying that it is about cutting red tape and getting people back to work. That is partly true, but it empowers something of an ultimate decision-maker and lessens the checks and balances in place to protect people and to monitor these projects. The new powers in that bill have further stripped local communities of the power to decide on developments. As I stated in my second reading contribution, these new powers allow the Western Australian Planning Commission to give the tick of approval to unmeritorious overdevelopments without any consideration by the local community.

Hon Simon O'Brien: Ghettos of the future!

Hon CHARLES SMITH: Indeed.

This government is stripping away most of the decision-making power from local government and putting it into the hands of yet more bureaucrats such as the Western Australian Planning Commission and the development assessment panels, which are both unelected by the community. They are unaccountable, have zero transparency, and are stuffed full of appointees from the planning and construction industries. Western Australia is currently experiencing a multitude of planning issues. I am reminded of my friends involved in the Save Perth Hills campaign, the Ocean Reef boat harbour campaign, the Scarborough high-rise fiasco and the Elizabeth Quay residential tower.

The Save Perth Hills campaign is a classic example. Despite all the advice that showed what a dangerous and foolish thing it would be to develop around north Stoneville, things pushed ahead anyway. Ultimately, thanks to the strong spirit of the local community, that campaign was successful and commonsense won the day—or has appeared to have won for now. I note that Satterley has lodged an objection, as it demands that people die in fire zones. There is self-interest at every turn, which is endemic throughout the big property sector. Some of our business communities are really showing their sociopathic tendencies. That is a great concern as they chase ever greater profits at literally any price. That is why third party appeal rights are very important. Those people should have had a way of pushing back against the developers, but their cries fell on deaf ears until the risk of community backlash and the loss of local government seats became a reality. It should not have gone on for so long or needed rallies to stop it.

Under the powers in the bill we recently passed, someone could, essentially, wake up tomorrow to find that the government sold the park down the road from their house to one of its property buddies that is planning to build a giant high-rise apartment complex. What could they do about it? Realistically, there is nothing they could do about it. Third party appeal rights are not, as the Premier suggests, just about upper-class nimbys complaining about their neighbour wanting to put up a shed that might partially obscure a view. It is about community and the rights of people in the community to have a say about what happens in their neighbourhood. The bigger the development, the bigger the reason for such a right. As the Western Australia Party recently stated, third party appeal rights provide the legal framework to link Western Australia's world-class planning framework with good development decisions by the decision-maker. The State Administrative Tribunal is the obvious and most cost-effective legal system to review unmeritorious development applications. Departures from that world-class planning framework and poor development outcomes are rife in Western Australia, especially in the Perth metropolitan area; for example, the planning framework calls for residential mixed-use developments in our town centres, yet in Subiaco four high-rise developments with no residential dwellings were approved by the development assessment panel. The state government forces infill to occur in the western suburbs, yet avoids sanctioning its own appointed panel members when a development has no residential dwellings.

Access to the rule of law is not evenly provided for. Councils and residents are unable to challenge DAPs and other decision-makers without costly appeals to the Supreme Court. That is undemocratic! Equal access to the law is a fundamental tenet of a functional democracy. I fear that Western Australia has been sold a lie. It is developers who are getting back to work in an economy run primarily on importing people to bump up gross domestic product and selling houses to each other in a horribly artificial and inflated market. Giving the okay to build evermore concrete box apartments and homes for evermore people, which is the only economic policy that the state and the federal government have, is the hallmark of a brain-dead policy and a guaranteed recipe for lower living standards. That is the future that we are heading into—a future in which developers command government policy. What great new leviathan have we created, members? We must return real planning powers to local communities through proper community consultation and engagement. Without third party appeals, we will continue to have only poor planning outcomes. In turn, this will lead to only greater community disenfranchisement and will become a danger to democracy as due process is put under threat.

The reason for the erosion of due process is simple. It turns out that the big property lobby is, unsurprisingly, one of the government's many donors. What do the developers get in return? The government churns out policies that will benefit the gluttony of those property developers, who seek to have Western Australian people living on expensive micro-blocks with no backyard, a few centimetres from the neighbouring block. There is nothing that anyone can do about it. If we cram more people into a suburb that is devoid of nature, we will have a high-density cesspit that has filled the pockets of the property lobby, leaving Western Australia looking like a grey concrete jungle with no character. Seemingly, no-one cares. We really are paving paradise in WA and building a parking lot. Members, democracy is about going through due process to reach an equilibrium and finally a decision. Government exists to represent the people, to carry out the people's wishes, but this government does not go like that. It does not believe that the people are smart enough to make decisions for their own betterment, so the government removes people from that equation and goes on its merry way to make way for its big donors. That is what we call corporate governance. Under this government, Western Australia has become a corporation.

I will conclude by once again quoting retired RMIT University professor Michael Buxton —

“People have lost control of their city to the development industry and government acting on behalf of vested interests instead of the voter,” ...

“It's been incredibly disappointing to see how public policy has been subverted toward achieving private gain at the public expense.

As my party likes to say, all the gains are privatised and all the costs are socialised.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [1.30 pm]: I thank the honourable member for raising this motion today. Obviously, it is one that warrants a discussion by this house. I have to say that the member's view of the property and construction industries in Western Australia is very disappointing. He failed to acknowledge the importance of them to our economy in Western Australia. Obviously, he has great disdain for them, given that he used words like "sociopathic tendencies". Let him say what he wants, but I want to acknowledge the property and construction industries in Western Australia and the fine role they play in the state's economy, employing Western Australians and keeping our economy ticking over.

The member talked about community consultation. Community consultation, without a doubt, is an intrinsically important component of Western Australia's planning system. One of the goals of the state government's planning reform agenda is to have a planning system with a greater focus on and awareness of strategic planning—specifically its role and its importance. This direction elevates the need for early engagement with community members at the beginning of the planning process. It provides an opportunity for our communities to help shape the vision for what they would like change to look like in the suburbs where they live, work and recreate. Historically, the focus has been on individual projects rather than on the scheme or planning framework under which projects are delivered. Over the past few months, we have had plenty of conversations and debates in this place about planning reform—more than I anticipated, being a representative minister of the portfolio. Nonetheless, I am learning quite a lot. The reform agenda will ensure that the planning framework, including the local planning strategy and scheme, has been developed in consultation with the community. To support this approach, a community engagement toolkit is being developed to provide best practice guidance and tools to local government on how and when to undertake engagement and consultation for strategic planning. The toolkit will strongly encourage early preliminary engagement in the preparation of local planning strategies. This principle will also be applied to other documents that make up the planning framework. We will also extend the minimum period of formal public advertising for a local planning strategy from 21 to 35 days, providing more time for people to give their feedback.

Engaging appropriately and meaningfully at the strategic planning stage will not only raise awareness about change and why it may need to occur, but also help to manage expectations of what change will look like. I know that communities out there do not like change for the sake of change. They do not like it and they will not countenance it, so we need to manage expectations of what change will look like to ensure that there are no surprises about the types of development that can occur within our suburbs. More consistent and appropriate requirements for the advertising of development applications are also being proposed through changes to the Planning and Development (Local Planning Schemes) Regulations 2015. Advertising of development applications will need to be appropriate to the type and complexity of the application to ensure that those who are affected are meaningfully consulted and have the opportunity to provide input into the development process. Appropriate engagement and consultation at all stages of the planning process allows the opportunity for stakeholders to have input into the planning process and help shape outcomes. This will involve a more holistic and streamlined approach to ensure participation. Regarding third party appeals more specifically, it will not be a surprise to the honourable member that they are not supported by the government. That would be opposite to the intent of the "Action Plan for Planning Reform" for a more strategically led planning system, adding unnecessary complexity and red tape to the planning framework at a time when the state government is seeking a better, simpler and more consistent system.

I will not rehash the discussions we have had in this place over the past few months, in particular when we debated the Planning and Development Amendment Bill 2020, other than to say that third party appeal rights have never been a feature of the Western Australian planning system. There has been a consistent, historic, bipartisan agreement to oppose third party appeal rights in this state. The former Liberal government's "Planning Makes It Happen: A Blueprint for Planning Reform", launched in September 2009, states that the current provisions for third party inclusion in rights of review before SAT are considered to be appropriate and there is no intention to widen the scope of third party appeal rights. This was also echoed in its phase 2 reform. Although they do feature in some jurisdictions across the country, there is no consistency or uniformity in the way they are applied. Each state has a uniquely different approach to the process, the triggers and how third parties are identified.

It is also noted that third parties can currently make representations to planning decision-makers like local governments, development assessment panels and the Western Australian Planning Commission on local planning issues through consultation processes, which are considered before a final determination is made. These processes will also be modernised and expanded to ensure greater and more meaningful participation at all stages of the planning process. Although only applicants can apply to the State Administrative Tribunal for a review of the merits of an application, third parties can make representations with SAT's permission. The government does not want policy outcomes to be largely driven by legal decisions made in a court or tribunal, rather than based on the principles of good planning policy. We have a very good planning system in Western Australia. I think the member might have said at one stage that it was not a bad planning system. Recent reforms will go a long way to further improving the system to create communities where people want to live.

I will come to the COVID element of the motion. Obviously, the honourable member has been through the debates and through the few months that we have all been through. It has been an unprecedented time. Things have happened that we have never come across before and decisions had to be made to keep the economy open and keep giving us the opportunity to ensure that buildings were constructed or developments were created. We have sought to achieve, through COVID, the appropriate balance between health and economic health. We have been fortunate in Western Australia, but we have still seen a significant impact on the state's economy. As we heard during last night's debate on the COVID-19 Response and Economic Recovery Omnibus Bill and previously through the debate on the Planning and Development Amendment Bill 2020, it is critical that we support the economy and maintain and grow jobs. Now is not the time to increase red tape and uncertainty for industry. We cannot afford that. We have been very lucky in Western Australia. Sometimes I think, "There but for the grace of God, go I", but we have had good policies in place and we have enabled our economy to keep ticking over. We are in a much better position than that of other states. We do not want to turn things on their head and start creating more bureaucracy and red tape, because that does not help anybody.

Finally, I will touch on development assessment panels. We are reforming DAPs through the recent Planning and Development Amendment Bill 2020. It will reduce the number of geographic DAPs to three, with permanent specialist members and full transparency of decision-making. Obviously, that might not help Hon Charles Smith—in fact, it might never make him happy—but can I say: we are happy with where we are at the moment. We do not support third party appeal rights and, therefore, I suppose unsurprisingly, we will not be supporting the honourable member's motion today.

HON RICK MAZZA (Agricultural) [1.39 pm]: I would like to thank Hon Charles Smith for bringing this motion to the house. I think it is very important that we air issues around development and housing, given the fact that shelter is one of our primary needs in the community. I agree with Hon Charles Smith on many things, but this is one issue on which we diverge. I am very concerned that developers are portrayed as being gluttonous, greedy, cigar-smoking capos who only want to work the community over for their own benefit. That is very far from the truth. Developers invest enormous amounts of money in identifying development sites and carrying out feasibility studies that can take years and years. They take significant amounts of risk—they usually work in a profit-and-risk factor—to, at the end of the day, construct shelter for the community. I do not deny that a third party appeal system might be of some benefit. As the Minister for Environment pointed out, third parties have the ability to make submissions to the Department of Planning, Lands and Heritage and other authorities to put their views within the community. There will always be some dissenters when building a new development in any given area.

As Hon Charles Smith pointed out, the Premier spoke to the Property Council of Australia on 28 August. A 31 August *WAtoday* article on the event was titled "McGowan: We will fight the NIMBYs and density 'critics and naysayers'", which sounds very Churchillian. I am sure the nimby part was a bit of a swipe at the Greens; they can take that up with him if they like! The fact of the matter is that we need development in our community. We need jobs and development. It was reported in the media recently that the state and federal governments have offered incentives to the construction industry. Despite this, many builders have now closed their books and cannot take on any more work because many of the tradies who they employed have moved off to do other things. The major concern now, of course, is that prices will rise as demand for bricklayers and carpenters increases. Currently, only about 17 000 new constructions are in the pipeline. Just to balance that out with population growth, we need about 23 500 new buildings, so we are not anywhere near a boom situation. We certainly need to have new properties constructed.

The minister also spoke about a reduction in red and green tape, and I welcome that because there have been a lot of hurdles over the years in getting developments underway because of red and green tape. We have to bear in mind the sorts of jobs that are created by development. In the very first instance, there is the sale of the land, which provides stamp duty to the government. Then, consultants have to be engaged to get approvals through planning and local authorities. Then there is earthmoving, drainage, roadworks, water and sewerage, power. Then we need the builders and tradies in building companies. I am talking about residential construction here; I will not go into the commercial sphere. On the residential side of things, building companies also employ many people, including supervisors and all sorts of staff. As far as trades are concerned, we need electricians, plumbers, bricklayers, roofers, carpenters, cabinetmakers, concreters, tilers, pavers, plasterers, gyprockers and painters. A huge number of trades are involved in the building industry. Once the house is built, what do we need? We need floor coverings, so all these retail outlets sell carpets and floor coverings. Then there are window trimmings, light fittings and furniture. It is a huge part of the economy. To have an onerous third party appeals process that frustrates developers' ability to get developments on the market will, in many instances, only serve to reduce the number of developments that get underway. On top of that, it will drive up costs, because the longer developers have to hold the land and the development, the more it is going to cost.

What really amazes me about people who oppose developers and developments is that, in the next breath, they will bang on about affordable housing—"We need more affordable housing!" In the meantime, of course, they are

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putting so much red and green tape and onerous conditions on developers that prices are driven up. They cannot have their cake and eat it. We have to accept that affordable housing will be out of reach if we are going to put other conditions and impediments on developers.

Hon Diane Evers: We don't have those conditions, and affordable housing is still out of reach.

Hon RICK MAZZA: We will never be able to reconcile that, member.

At the of the day, to get the economy up and running post COVID, we need to provide pathways for developers to get their products on to the market and to meet the market.

Hon Charles Smith also went on about concrete jungles and featureless developments into which people are crammed to live in these terrible environments. The fact of the matter is that all the developers and marketing companies I have been involved in meet market niches. They do not create markets; they actually meet market niches. If there is demand out there from the community for a particular product, they will develop that product to meet that market. In many cases, if it is price-sensitive, they will look at all sorts of ways to get the price down to meet that market and still meet their profit-and-loss factor.

Many of these developers are not single owners—the name Satterley gets thrown around from time to time—but public companies. Peet Ltd, based just north of Pinjarra, is a public company that has thousands of shareholders and, of course, at the end of the day, those shareholders are there to get a dividend. Although I am sympathetic to the idea of a third party appeals process, I think there are already mechanisms in place for the community to be able to make submissions to government or planners to put their case forward. It does not matter what we do; there will always be some objections. But we have to be very, very careful that we do not have a third party appeals system that frustrates the process of getting these developments on to the market, resulting in prices going through the roof. Unfortunately, on this occasion, I will not be able to support the motion that has been moved by Hon Charles Smith.

HON TIM CLIFFORD (East Metropolitan) [1.47 pm]: I rise as the planning spokesperson for the Greens today, and we will be supporting this motion. That is no surprise; the Greens have supported third party appeal rights for decades. If members were to look at *Hansard*, they would see how many times we have spoken at length about third party appeal rights, their importance to the community and their importance in ensuring that we have a better planning system, so I thank Hon Charles Smith for bringing this motion to the house.

Members have already gone into a lot of depth around planning and the state of play for planning in Western Australia, particularly in respect of the Planning and Development Amendment Bill 2020, which was assented to recently. In debate on that bill we went into a lot of depth on third party appeals processes and the fact that our planning system has not really served the community in the best way. There is an expectation in the community for a planning system that serves them, not developers, as Hon Charles Smith mentioned earlier. The community expects well-designed developments with adequate public transport and green spaces. These are all the things that the community expects to be developed for them and not for a developer who is only looking to roll out a poorly designed property that is more about maximising profits than ensuring that there are liveable areas in our community for years to come.

The previous speaker, Hon Rick Mazza, who is now on urgent parliamentary business, talked about the role of developers, and I agree that developers have their place in the community; they provide many jobs, as the honourable member pointed out, in many areas, from construction all the way down to flooring. I have quite a few friends in the construction industry, and we have talked about this at length. Although these people work in and benefit from the industry, they have also raised with me issues about poor planning. In Perth, planning is a conversation starter. We only need to look at what went on throughout the boom years and at the endless expanse of suburbs that were created. It literally was the wild west. Developments were being rolled out in new suburbs across the metropolitan region, which stretched our water, electricity and other resources. All we can see is this endless expanse. The comment frequently made to me when people came into my office was that the industry was pretty much out of control, especially considering some of the poor planning—for example, houses not facing the most energy efficient direction. When it comes to heating and cooling, that is a common issue. There has been a huge amount of land clearing without any consideration given to whether to keep the tree canopy within the community. It is galling to know that people are moving into houses and finding that their suburb is hotter than other suburbs.

Hon Rick Mazza mentioned that planning is demand driven and that people buy what they want. But people, obviously, get what they are given. There are given only limited options with a limited scope from a certain number of developers. That is why it is important that government must play a strong role within our planning system to ensure that people can live in communities that they can enjoy living in for quite some time.

Development assessment panels have been mentioned. The DAP system is arbitrary and planning decisions are made by people who do not necessarily live in the community and do not necessarily listen to what the community wants. One of the first things that came to my attention when I got into office was the proposed McDonald's

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development in Guildford. The only way that that decision was overturned was due to a technicality with a car park. I note again the fact that developers have a right to continually appeal a decision until they eventually get their way. That can leave the community frustrated with a development that they do not want, is out of character with the community and is something that pretty much becomes an eyesore, and leaves people in the future wondering why the thing was put there in the first place.

I was heartened last year when the government put forward planning proposals that looked at broad consultation, more experts and more layers and all these other things to ensure that we have a stronger planning system. But the fact that the government does not support third party rights worries me quite a bit. The fact of the matter is that developers will find a way if people are not given an opportunity to challenge these terrible developments so that they do not go ahead.

The mover of the motion also noted that Western Australia is the only jurisdiction without third party appeal rights. It is quite astonishing that we have failed to establish rights for the communities on which these developments impact the most. I note that Hon Charles Smith mentioned a development at north Stoneville, which is something that I have been involved in and is a legacy of poor planning in the 1990s. A development is being rammed through by a developer who is only really interested in profits over the local community in the hills. That is quite significant, considering that there have been multiple objections to this development from the community. Hundreds of people have been involved in the campaign. People from across the political aisle agree that this development should not go ahead, yet there is still a threat that the north Stoneville development will get the go-ahead because there are no third party appeal rights to ensure that it does not go ahead.

Third party appeal rights also make the decision-makers accountable. The evidence is that the provision of these rights clearly discourages corrupt behaviour between developers and governments. When people know that there is another layer of people who are keeping an eye on what is going on, they think twice about ramming things through. They know that they will be held to account for such developments. The COVID-19 provisions adopted in the recent Planning and Development Amendment Bill 2020 bypass many of WA's current legal provisions in order to stimulate the economy. The Minister for Environment outlined that these are extraordinary times, but there are already opportunities in the community to keep people employed and to keep sustainable developments going without having the terrible legacy issues that occurred in not only the outer suburbs of Perth but also close to the inner city. We will be dealing with these projects for years to come. That is important. When I spoke on the planning bill that was pushed through a couple of months ago, I noted that every single local government across Perth has a story to tell. I think that that is significant.

There are also stories from local communities that are scarred by the fact that they have had to pull together hundreds of people, go to every council meeting and watch every process like a hawk to try to understand what is going on. That does not seem fair. That is exactly why the Greens have always supported third party appeal rights. A lot of developers rely on the fact that the community is not looking, so before we know it, something is being proposed in council. We know that a lot of people are not involved in the process and a lot of people do not understand it. It is complex, it is layered and it causes a lot of anger and distress in the community. People are left feeling as though the system has been designed to disenfranchise them when developments are proposed because it is about the developer making money and not about a development that will be built for the best interests of the community.

Finally, I support this motion. It is an important to keep planning on the radar. We need to hold developers to account. I note that paragraph (b) of the motion states —

notes the consequential erosion of Western Australia's democracy.

That seems like a pretty broad statement to make, but that is what we are really talking about. We need more people involved in our community planning processes. We cannot have a situation like the one we currently have. I was at the Midland Town Hall when the McDonald's development in Guildford was being discussed. McDonald's rocked up with 10 lawyers and there were 400 community members sitting in the town hall, hanging on the edge of their seat and wondering which way it would go. The process is so arbitrary that people are disenfranchised by it. It should not get to the point that people who live in the community must face off a whole group of lawyers who know the planning system inside out and know how to check all the boxes. It was only luck that a car park had not been included in the plan and so that development did not go ahead. That is really disappointing. This issue needs to be addressed with a strong planning system that in the future will include third party planning rights. In saying that, this motion is well overdue, considering it follows what we discussed recently with the Planning and Development Amendment Bill. We need to keep talking about third party appeal rights and implement them in WA's planning system.

HON TJORN SIBMA (North Metropolitan) [1.59 pm]: First and foremost, I would like to acknowledge the substantive motion moved by Hon Charles Smith. He has brought to this chamber a very interesting issue for discussion and I have enjoyed listening to the contributions of each and every member up until this point.

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It is clear that there are certainly some problems embedded in the planning system in Western Australia in its framework, processes and, to some degree, the prevailing culture. I share some of the sentiments expressed—I think to a lesser degree, to be perfectly honest, but, nevertheless, they are there and they are genuine—by Hon Charles Smith in the motion as it appears in today’s business program. However, I do not necessarily concur with the prescription he offers. I certainly understand and empathise with the issues that the member raises on behalf of the community he represents—a community of Western Australians who are, to a greater or lesser degree, frustrated and aggrieved or feel bruised by their interaction with the planning system in Western Australia—but I cannot agree with him that the introduction of third party appeal rights, certainly in an expanded form, is the appropriate prescription. I will explain why.

First, there seems to be an assumption on behalf of the individuals who make the claim that all the ills in the Western Australian planning system can be remedied by the introduction of this right to appeal. There is an assumption that every right to appeal will be upheld and that those appeals will be successful. That is an overly optimistic assessment of the likely outcome. It also speaks to the capacity to resource litigation. It also provides an opportunity for vexatious litigation to be funded by firms who specialise in this kind of case lawfare. There is a misplaced confidence that an expanded right to appeal in the terms that have been expressed by the honourable member are appropriate or will be successful. I think we need to start by disabusing ourselves of that concept.

There are issues across the entire planning system that relate to matters other than legitimate grievances held by communities about inappropriate developments being approved. The planning portfolio is a portfolio that has been, and will continue to be, in a state of almost continual reform and I think, effectively, that sentiment was borne out in the course of the debate on the Planning and Development Amendment Bill prior to the winter recess. There are also problems with the approval pathway for developers, and that needs to be recognised in the course of this debate. Those problems apply at the level of a built-form development application and it applies much further into the recesses of history around land assembly, metropolitan region scheme amendments, traffic corridors and the like. This process, on behalf of a developer or a proponent, is costly, time-consuming, cumbersome and does not provide them with any certainty. Therefore, I would be cautious of that when we talk about reforming the planning system. It has to be a principle-based reform that is to the betterment of every participant in that ecosystem simultaneously.

We will not improve the planning system or its performance or its outcomes if we descend into stereotyping the “other mob”. Frankly, this is what I find appalling on both sides of the debate. To categorise developers as all being sociopaths, driven only by profit, is a nonsense. I also believe that criticising members of a community who are invested in their community and are concerned about the fabric of their community changing unalterably, and categorising those people and dismissing them as nimby is completely erroneous and unnecessary.

We will not deliver a superior planning system in this jurisdiction if we descend into rock-throwing and name-calling. Frankly, that is just immature and juvenile and, to be perfectly honest, it is beneath the kind of contemplation of the people in this chamber. Each and every one of us here has a responsibility to engage in at least decorous public commentary, a civilised discourse, rather than pick all the low-hanging fruit and then throw it at the person with whom we disagree.

I take Hon Charles Smith to be a very genuine individual—almost a maverick—who is prepared to speak his mind. I actually think that this chamber is better for it, because at least we know where the member stands. But I do take issue with the character assessment that the member gave concerning Mr Satterley —

Hon Charles Smith interjected.

Hon TJORN SIBMA: No; I do not think this is germane to the debate.

Our issue with the planning system is not the individuals involved. North Stoneville has been rejected by the Western Australian Planning Commission on planning grounds and because of the widespread community momentum that was opposed to it. Therein lies a lesson for us all. The commission rejected a subdivision application that many members here found inappropriate, so tell me where the problem is in the planning system that demands the immediate introduction of third party appeal rights. I do not say this to be provocative. I am just asking members to please better define where they think the problem is. If members think the problem is that local government is not being listened to enough or does not have a significant enough role in planning determinations, please allow me to reflect on some of the very poor planning outcomes that have occurred within the City of Joondalup over the last four or five years by virtue of the City of Joondalup’s local planning scheme.

Hon Diane Evers: So maybe if we had third party appeal, somebody could’ve come forward beforehand and said, “Those aren’t going to work.”

Hon TJORN SIBMA: I respectfully disagree with that assertion and I have the opportunity here to explain why.

The problem is not necessarily a lack of democracy in the planning system; although, depending on the scale of an application that is lodged, invariably there will be different decision-making cohorts. There has to be, just out of sheer pragmatism. Particular applications demand public consultation, whether for the development of an aged-care facility or a church, or for an upgrade or expansion of clubrooms at a sports club in the suburbs, but that conversation cannot be endless. It also cannot be given widespread capacity to derail, dismiss and disrupt otherwise orderly development applications. If we get to that point in this jurisdiction, no-one will be incentivised to build anything. We cannot progress the planning system in this state on the basis that everybody must agree with the proposition. We do not live in that world.

I will talk about the local government dimension. There is an issue with interpretation. Planning is not a hard science; it relies on individuals who operate under the system making interpretations. Sometimes they get it right and sometimes they get it wrong. I will very quickly reflect on an example, but without pointing the finger, because the City of Joondalup is moving amendments to its local planning scheme. That local planning scheme charged headlong into the infill of suburbs that were between 20 and 30 kilometres away from the CBD. Arbitrary infill targets were set. Planners at the local government authority thought only in two dimensions. They thought, “Okay, we have a series of train stations that run up and down Mitchell Freeway. Obviously, then, we should up-zone the residential estates that fall within about a 400-metre radius of those train stations.” The problem with that concept was that 200 metres either side of the train stations is sterilised by the freeway. The other problem is that there is not the density of development on top of the train stations to make that plan viable. Another issue is that these concepts do not work well in three dimensions—they do not take into account topography, local amenity and the like. There has been a problem. This process has aggrieved people in the northern suburbs, whether in Kallaroo, Warwick, Woodvale or Kingsley. People in those areas have a legitimate beef, because the local government, I think with the best intention in the world, created a scheme with which developers complied but which delivered substandard outcomes.

But that is very different. Every contentious development has its own story; it has its own benefits and drawbacks. The approach that we need to take to improve the planning system is to make it far more legible, far more transparent and far more predictable. That is what we want. We do not want to overcorrect, which is what I think expanded third party appeal rights, as countenanced by the honourable member’s motion, would fundamentally do. There is a problem with the planning system—absolutely. I admit that; I concede that. It frustrates people, and I absolutely 100 per cent empathise with them. However, the response should not be to overcorrect and provide, frankly, an avenue that would benefit one class of people above all others—that is, the lawyers. We do not want to see this kind of creeping expansion. As a conservative member, Hon Charles Smith will understand that the granting of rights leads inexorably to the extension of rights granted. That is what would happen. No matter how circumscribed I think is the model the member has presented for our contemplation, it would be amended and broadened to a class of applicants to whom it should not apply. If that happened, I think we would end up with the creation of environment and land courts. That is where we would end up. That is where this would lead. I do not think that such an entity is appropriate in a jurisdiction like Western Australia, in which legitimate powers are conferred on ministers and independent statutory decision-makers to make decisions in the public interest. Particularly when powers are centred on a minister, when the minister gets it wrong, they will pay the price. There is every incentive for that individual to get it right. We cannot say that a third party appeal rights system would provide a far more democratic outcome if it effectively led to the creation of a whole new class of courts and level of judicial review by those who would have absolutely no need to give consideration to matters outside the black letter law. I do not think that that would provide people with the democratic avenue that they think is being denied to them at the moment.

I made an issue of the prevailing culture in the planning system in Western Australia. I think 80 per cent to 90 per cent of participants, whether they be landowners, developers, planning consultants, local government people or members of the community, are of goodwill and good intention. Unfortunately, a minority of people can never be trusted. The issue is this: we want to see an improvement in the culture of the overall system. Like the member, I think there is a cultural problem. To the government’s credit, it has identified that cultural problem as well. It was identified in the planning green paper, which I think was called “Modernising Western Australia’s Planning System” and came out in 2018. Indeed, it was recognised in the Minister for Planning’s own action plan, which was released sometime last year. That cultural problem, particularly as it relates to the interaction between decision-making and communities, has been identified. However, it is very disappointing that there has been no real progress on that front. When we were debating the Planning and Development Amendment Bill 2020 before the winter recess, we were told in our briefing and through the course of that debate that it was the first tranche of planning reform in Western Australia. When we asked what would be in the second tranche, we were told that it would be around the improvement of community consultation. My view is that that legislation should be advanced. If the government’s sentiments were genuine about not only acknowledging the problem but also fixing it, it would introduce, as a matter of some expediency, legislation to improve the governing act and drive some regulatory change, so that people’s trust in the system can be restored.

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I concede Hon Charles Smith's point that there probably is a need to develop an avenue by which people with legitimate grievances can seek a review or be provided with an impartial understanding of why a decision was made in a particular way. I think Hon Charles Smith was absolutely right, as were the Greens and just about everybody else who spoke today. On occasion, there is an unfortunate tendency for decisions made by local governments and joint development assessment panels, and, potentially, by this new significant development assessment unit through the Western Australian Planning Commission, to not seem to line up with similar proposals on which those bodies have made determinations before. There has been inconsistency in the application of decision-making. The more insight into and access to those processes that community members have, the better we shall all be in the long term.

I think I also mentioned that there is an issue with local government. It needs to be understood that local governments do not always want to fight the fight. The majority of members in this chamber have probably not yet seen the Swan Valley Planning Bill 2020 that the Minister for Planning has read into the other place. That bill will effectively write the City of Swan out of the decision-making process for any development application process in the Swan Valley. We were advised that this was being done with the blessing of the City of Swan, which was a claim that I thought I should challenge, at least by way of email correspondence with the mayor and the CEO of the City of Swan. To a degree, and without divulging necessarily the full details of the correspondence, the City of Swan is more or less happy to acquiesce so long as it does not have to pay for the new system. This is the issue. If we had, on occasion, more forthright local government authorities that were actually prepared to do the job, member, perhaps that is where the community could find some comfort. However, if they happily concede decision-making, the introduction of third party appeal rights will not help them.

HON ALISON XAMON (North Metropolitan) [2.20 pm]: I rise, as my colleague Hon Tim Clifford has already indicated, to support the motion that has been moved. There are three key issues in the motion. It is obviously limited to the COVID-19 emergency and refers to third party appeals as a safeguard against the lack of community consultation in our planning processes and refers to the erosion of WA's democracy.

The first thing I would like to note in response to this motion is that the lack of third party right of appeal within Western Australia is a longstanding issue that has been raised many times in this chamber over the years by the Greens; in fact, it goes as far back as the Green's first MLC, Hon Jim Scott. I remember volunteering out of his office in the 1990s on this very issue of third party right of appeal and the need to have that in the system. It is not a new issue and one that the Greens have been absolute stalwarts on.

In WA we have the opportunity for appeal but the only people who can appeal are the first parties. In this case, we are talking about the developers. Developers already have the power to appeal refusals or specific conditions imposed on them. Should a developer have received an approval that should not have been granted, the affected community—in this case, third parties—has nowhere to go. There is no avenue for third parties to ensure that our policies and processes have been followed in the application and decision-making. There is no avenue for seeking a review of any discretionary decisions that may be without merit or in breach of law and regulation. There is no avenue for ensuring that if any cosy relationships have been formed between developers and decision-makers, they can be reviewed and removed from the decision-making process. For all those reasons, third party appeal rights have been part of the Greens' planning platform for decades.

The Greens are firmly of the view that third party rights of appeal are an essential mechanism to ensure fairness within our planning processes and compliance with policy and strategy. The ongoing lack of these processes within Western Australia has been and continues to be a major concern. It is a major way in which the system, unfortunately, can all too easily skew towards developers at the expense of communities that have to live with those developments. It is patently unfair—I struggle to see how anyone could think otherwise—that developers can seek review of refusals and imposed conditions, but those third parties who will be affected by planning outcomes, potentially every day of their lives, cannot seek a review. That is patently unfair, particularly considering that third party rights of appeal are available in every other state in Australia and have been, in some form, since the early 1970s at the very latest. Somehow, every other state in Australia has managed to deal with the apparently insurmountable issue of third party rights of appeal. I point out the bleeding obvious: we have not seen a reduction in development in other states. The suggestion that somehow allowing people to have a voice in decisions that could potentially affect their lives and homes would prevent development is, frankly, ludicrous. Every other state has managed this and we also should be able to do that.

Third party rights of appeal are often seen as one way of ensuring that the undue influence of donations and personal relationships have some sort of counterbalancing mechanism. They also ensure that when a somewhat dismissive tick-and-flick approach to community consultation has been taken—that does happen a lot; we hear the concerns from the community when that occurs—there is a mechanism to ensure that those valid concerns are properly addressed by a neutral arbiter. Again, it is ridiculous to suggest that people have a full say within those community consultations and therefore that is sufficient. I would bet anything that we all have some evidence of inadequate

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community consultation around planning decisions in at least one place in our electorate and potentially within this term of Parliament. I have multiple examples of that in the North Metropolitan Region, and it has caused significant disquiet over and over again.

I was expecting at least some of this debate to take place as a result of the amendment Hon Charles Smith had originally put to the Planning and Development Amendment Bill 2020 to implement third party appeal rights, so I was disappointed when that amendment was withdrawn. However, I am pleased to see that it is at least getting some dedicated parliamentary time now. I had plenty to say on the amendment at the time and was more than happy to support it. Third party rights of appeal are such a substantial part of a well-functioning and fair planning system that they deserve to have their own time and place in terms of attention in this chamber. We deserve to have them implemented in Western Australia.

Returning to the bill that we previously debated, I remind members that one of the huge concerns going into the debate was that the bill appeared to remove the requirement for community consultation for development applications going through the Western Australian Planning Commission approvals system. However, I once again acknowledge that this was not the intent of the drafters. As a result, community consultation remains a very major concern in every element of the planning process, especially as the planning process remains convoluted. It is complex for projects such as the Ocean Reef marina, which I have been talking about and dealing with since the last state election. I have raised it on multiple occasions during the fortieth Parliament. Talking about the Ocean Reef marina, the process often involves community members attempting to come to grips with what can be hundreds of pages of technical information, often in very short time frames, to provide feedback. When a process has been entered into in good faith, that should not be a problem. However, when good faith is not present, it will definitely be a problem.

Concern over our community consultation mechanism remains, regardless of whether the development application, the scheme amendment, the structure plan or the subdivision application takes place during the COVID provisions of the act or the regulations. Although I acknowledge that this is an older body of work, I note that Judge Trenorden, one of the founding members of the Environment, Resources and Development Court in South Australia, said in 2009 —

I am not convinced that consultation presently is adequate, nor that the community generally understands or is aware of planning policy.

We know that in Western Australia, even in cases when the community is widely consulted, the discretionary powers of a decision-maker can still lead to outcomes that do not match any reasonable expectation. This is particularly the case with decisions pertaining to the heights of buildings that go far beyond any envisaged in the local planning scheme. The obvious one to point to, which has occurred in recent years, is the proposed 3 Oceans towers in Scarborough, which ended up being approved. That project was wildly out of line with community expectations and any of those planning processes that had been subject to extensive consultation and ownership.

Beyond the community consultation elements, there are some clear benefits to allowing third party rights of appeal. Some of the benefits of the system that have been cited in various papers include a reduction in developer ambit claims and an increase in transparency and accountability. Some of the work done on third party appeals shows that third party appeals are often quicker to resolve than first party appeals, and the majority of third party appeals are resolved prior to the State Administrative Tribunal process being fully engaged. I think it is very important to note that third party appeals that make it to court are often upheld in some fashion. This is not a matter of appeals being put forward by people who are just nimbys, as everyone is wont to say, or people who are undertaking vexatious claims; many of those appeals are upheld.

To achieve these outcomes, we need to have a coherent planning system at both the state and local levels. Maintaining complexity and conflict across planning regimes opens up the potential for third party appeals to be used to challenge reasonable decisions, so, of course, we have to ensure that our state and local planning schemes are comprehensive, coherent and complementary. I take this opportunity to once again commend the work that has been done by Evan Jones and the Department of Planning, Lands and Heritage on the green paper for planning reform, which identified the complexity and lack of certainty for everyone involved in the planning system.

When we debated the Planning and Development Amendment Bill 2020, I moved to delete a wide sweep of the ministerial powers that that bill granted. I remind members that those powers included the minister being able to select and advocate for specific projects and to simply declare things legal that would otherwise not be. The solution that this chamber was willing to countenance was to make the exercise of those powers disallowable. Of course, disallowance relies on a suitably diverse and engaged Parliament. Should Parliament become less diverse, that will simply not be a mechanism that will be respected by the public. As we know, a less diverse Parliament can easily occur. Ultimately, it would be preferable if the rules and conditions set by the scheme were able to be appealed by third parties to a body that does not rely on a politician needing to bring forward a disallowance, or for the chamber to agree to it.

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This motion also touches on something that I have been increasingly concerned about—that is, the erosion of democracy under the guise of COVID provisions. I have been speaking out about this more frequently, particularly as more hastily drafted legislation has been presented to this place with huge Henry VIII clauses throughout. One of the fundamental tenets of democracy is that people have the right to participate in decision-making that affects their lives. We need to remember that that cannot simply be limited to once every four years or that people choose their government and, effectively, get what they get. We recognise that that is not a fair way to conduct business that will ultimately affect people's lives. We expect that adequate notice, a fair hearing and a non-biased process be an essential part of any decision-making. That includes, ordinarily, the crafting of legislation that comes before the Parliament for deliberation. One of the ways that we need to ensure that the public gets a say in the laws is for the government to provide sufficient notice so that we, as members of Parliament, can do our jobs effectively—that is, to consult, and, preferably, to consult widely with people who have an interest in or are affected by the legislation before the house.

I recently spoke about the ways in which COVID-related legislation is coming before the house and how unsatisfactory it is for us to make legislation in this fashion in a democracy. Legislation is increasingly coming through with little to zero notice, with wildly insufficient consultation, and no time between introduction and debate for members of Parliament to undertake relevant consultation. The small amount of consultation that has taken place has seen vast improvements to the bills, such as the recent removal of what we understand to be an unreasonable Henry VIII provision in the COVID-19 Response and Economic Recovery Omnibus Bill 2020, which was ultimately passed last night. Probably due to being so undercooked, a lot of the legislation attempts to futureproof itself by deferring large amounts of activity to regulation. There are huge issues when we decide to do that. The process of creating regulations happens outside the sight of Parliament. We have to rely on the consultation done by the government of the day, whatever it may have been, and, at the end of the day, we can only disallow regulations. I have already pointed out concerns with the disallowance process. That will be of even greater concern when Parliament goes into caretaker mode and there will be no capacity for anyone to disallow anything.

The concerns I have about the way this government has engaged with the community started almost immediately, with the debacle of the December 2017 announcement of education cuts. Since then, we have seen a steady reduction in the mechanisms that are designed to ensure that the government is fair and transparent. Questions are routinely being answered poorly or they are not even answered at all. There has been a steady uptick in refused freedom-of-information requests, the State Records Office has been mangled, legislation has been rushed and there has been an overwhelming deferral of powers to regulations. It is deeply concerning that we see this most clearly in the planning and development arena, but we are also seeing it right across the board.

I think this motion is infinitely worth supporting. If anything, I think that the intent of the motion needs to extend beyond the COVID-response time frame. The issues that I have raised about the numerous ways in which this government is undercutting the proper action of democracy need to be addressed. At the very least, the introduction of third party appeal rights to make us consistent with other states around Australia needs to happen to ensure that planning decisions are fair and can be held accountable. It seems like a simple thing to do. Everyone else has managed to do it, and the world has not fallen apart. It defies belief that Western Australia is so special that it cannot even consider it.

HON DIANE EVERS (South West) [2.37 pm]: I appreciate hearing everybody else's comments because it leaves a few new things for me to comment on and add to the discussion. First of all, it seems as though by agreeing that we should not have third party appeal rights, we are saying that the decisions that are made are always correct. As my honourable colleague suggested, sometimes the decisions made have been found to have been incorrect. If we do not have third party appeals, there is no way to find that out until it is too late. Even my colleague Hon Tjorn Sibma said that there are sometimes inconsistencies. It is not quite that they are wrong or bad decisions, but they are inconsistent. I guess that is his way of acknowledging that sometimes wrong decisions are made and that, possibly, there should be an avenue for appeal.

It concerned me that in his comments, Hon Stephen Dawson mentioned that the Labor Party and the Liberal Party agreed in the past that we are not going to have third party appeals—full stop—so it is over and we should go home because there is no point in trying to change it. I find that a lot of people in the community are not happy with that decision. If they knew that that was the agreement, maybe things would change. We have to leave it open for debate, change and opportunities to come forward. We may find that what we have been doing was not the right thing to do.

Hon Stephen Dawson also said that we do not need third party appeals because the government is going forward with a strategically led planning system. That implies that the community would not act strategically. However, the community is the people who live in a place and who plan to live there for a long time—in some cases, hopefully, intergenerationally. A lot of communities think strategically. They seek to maintain green spaces for the health of their community and maintain sunlight falling on their schools, so they may try to oppose a multistorey development next to a school. I have found communities to be very strategic. Although some people will just complain that they

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do not like somebody building too close to the fence on the neighbours' side, hopefully we have laws and planning decisions in place so those things do not happen. However, that is not always the case. That is why we have to think outside what we have been talking about here and start to look at what the community can do, and engage the community for a greater purpose. Maybe, if we had consultation—that is just a word; engagement, empowerment, whatever—in an honest, truthful, forthright manner and we actually paid attention to them, we would not need third party appeals. At this point, mistakes are still being made and communities are being ignored.

In my area, there is the Greenpatch development in Dalyellup, which the state government is involved in. The community is fighting every way it can to make sure the development goes away. Because it does not have a right to third party appeals, it has to resort to using environmental concerns, maybe due to the toxic waste that has been dumped near the site. Some things are happening but it takes a long time. A developer is waiting to get in there, waiting until the community voice dies down and it can get in without protest, or waiting until the community has appealed so many times that it just gives up. The community cannot walk away from such developments, ever. They can stop a McDonald's from being built next to a school today, but nothing stops the developer from applying again next year or the year after that. The community shows their diligence in trying to keep these developments out.

I worry about us saying, "We need developers because they bring jobs!" I am not going to say that all developers are bad. I could even say that they are not all after profit; some developers out there may operate as a charity, but if they are operating as developers, they are trying to make a return for their shareholders so they are in it to make a profit, so I am not sure why we would be discussing such a thing. Developers will look at a project and do what makes a profit, which is why we do not end up with social housing. Social housing does not return a profit, whereas if developers can build multibillion-dollar apartments with \$200 toilet roll holders to up the price of the whole place by another \$1 000, that is what they will do, because some people have that sort of money to spend. Developers do not buy into low-cost social housing because there is no profit to be made, or very little profit unless the government intervenes and gives them some incentive. We cannot rely on developers to make decisions in the public interest. They make decisions in the interests of the people who are going to make profits out of developments. If we want something in the public interest, we need to go to the public.

Other developments in my area that people have fought against include the Puma Energy fuel station in Dunsborough. It was approved after a number of appeals and the community was deadset against it. The minister is the only one who has an appeal right. Luckily, she was able to step in and say, "Maybe this was a bad decision; let's have another look at it." The Supreme Court upheld that, saying that the centre of Dunsborough did not need a fifth fuel station. The council had agreed to it and the developer thought it was a great idea because it could see that it would get some of the fuel business. It happened in Albany as well, with another fuel station. I will spend a half-minute on it. We are building a \$175 million ring-road in Albany to go around a roundabout where there have been too many accidents. The accidents have not been fatal collisions; they were little bingles at school pick-up time. They were no more than what happens at any other intersection at that time with that amount of traffic, yet we are spending \$175 million to go around it. What happened? They wanted a fuel station at one of the intersections to the roundabout. Does it make sense to anyone that we would increase traffic flow and the comings and goings out of driveways within 100 metres of a roundabout, which we have to spend \$175 million on? Third party appeals may have made a difference in that case but it is done and dusted. The fuel station is in there and the road is being built. It was a very expensive, bad mistake.

There is also a development on the Nullaki Peninsula. A developer sold prime environmental blocks saying, "It's going to be really beautiful down here", but some years later applied to extract lime from a lime pit in the area. It is in an area where there are seven or eight other possibilities to extract lime within a 10 to 20 kilometre radius. The council said no twice and the developer appealed to the State Administrative Tribunal, which said, "Yes, sure; fine." Because the community has no third party appeal right, the only way the community can get back is to say it is not environmentally sound, then it can go through the Environmental Protection Authority process. However, that means it has to find a way against the lime pit based only on environmental reasons, not on community aspects such as the dust and noise affecting the people who live there, and not because the developer said it was going to be an environmental zone, but then went in there with trucks. It is another big mistake.

I want to come back to consultation. We need better consultation. Many of us have said that is what should happen, but it is not just consultation. I want to draw members' attention to the International Association for Public Participation, also known as IAP2. I refer to the document "IAP2's Public Participation Spectrum". The first step is to inform the public. The public participation goal under "Inform" is —

To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.

Extract from Hansard

[COUNCIL — Wednesday, 9 September 2020]

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That is it; we are going out to inform people. How many of us have attended community consultation? Basically, it is a bunch of posters and somebody speaking for a while. They may take a question or two and say that they have consulted: “Everybody’s here; they’re happy.” The IAP2’s promise to the public is “We will keep you informed.” The second step of the spectrum is “Consult”, which states —

To obtain public feedback on analysis, alternatives and/or decisions.

At that point, the promise to the public is defined as —

We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.

There is a chance here for a little bit of influence from the public. As long as they come along, provide feedback that is realistic, all they are promising is that they might make some changes to what they were going to do. The third step on the International Association for Public Participation’s spectrum is to involve. That means —

To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

They are going to work with the public in tandem, or go back and forth, to find out some information. The corresponding promise to the public is —

We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.

That is a great step. That is what I would say is the base of public participation. That is where we start—by involving them, working with them, giving feedback both ways, and making some changes according to what the public wants. Councils sometimes get to that step, but now I am asking for a little bit extra. The fourth step in this program is to collaborate, which means —

To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

The public has some representation here. The public is working to come up with the solutions that might be what the community wants. Collaborate with the public to get them working with us; bring back the democracy we were talking about so that people are working with the decision-makers, planners or developers to collaborate on a decision we can all agree with. Every now and again, this seems to get a little tick and we start getting to that point. I really appreciate seeing that. At this point, the promise to the public is described as —

We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.

That is saying, “We believe that our community can come up with some strategic thinking to bring us forward.” Again, some councils try to get to this step. I am unsure whether decisions are changed by public feedback, but some are looking to that and that is what I would like us to aim for—collaboration. As I have said in here, every now and then we see a little bit of collaboration, particularly with issues to do with COVID.

The final step on this public participation spectrum is to empower. Many of us in here would be scared of that because that is what we are here for. We are here representing; we are the ones who are going to make the final decisions. But we want to empower the public so that they feel empowered to speak up and be a part of those decisions. “Empower” is described as —

To place final decision making in the hands of the public.

At that point, the promise to the public is, “We will implement what you decide”. Now, I do not expect us to get to that, but around the world, that is where some places are going—they have these community representative bodies to go alongside their Parliaments to come up with solutions. When we empower the public to be able to do that, they come up with solutions from well-facilitated discussions and deliberations. We get answers and solutions that the public can stand by and say, “Yes, we agreed to that. We decided that that’s what we want.”

To return to third party appeals: best of luck. We are still holding out for it. It means that people have to go through whatever channels they possibly can to try to fight some of these things, whether it is through protests, petitions and sometimes court challenges over small things like six parking spaces instead of five. That really makes it petty, and I think draws out the process further. We could actually do this more easily if we looked immediately into third party appeals to give the public its voice and to find out who these decisions are being made for.

HON DR STEVE THOMAS (South West) [2.51 pm]: Thank you, Madam Acting President, for the opportunity to make a few comments on the motion before the house. Listening to the debate today, I think we have jumped from one end of the spectrum to the other—from pro-development activity to the old communist utopia, where all

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people make the decisions all the time. There is a reason the communist utopia does not exist in the world today—that is, it does not work. That is not to say that the capitalist system is perfect, either, but there is a reason why communism has been an abject failure: by having everyone involved in a decision, we ultimately guarantee no decision. This is the horse put together by a committee syndrome, and of course —

Hon Charles Smith interjected.

Hon Dr STEVE THOMAS: We will come back to the alternatives in a bit.

This is a question about whether we have limited or unlimited third party appeal rights. I will briefly talk about the difference. With limited third party appeal rights, it has to be demonstrated that there is some form of impact before a decision can be appealed, particularly in the case of planning decisions, but it could also be any other decision. With unlimited third party appeal rights, anyone anywhere can put in an appeal. That is very attractive to lobby groups—particularly those lobby groups that want to oppose any development, anywhere, anytime. Unlimited third party appeal rights have been part of such groups’ manifestoes forever. They are obviously immensely dangerous, but to some degree so also are limited third party appeal rights, because it then has to be decided who is directly impacted, and that becomes the problem. If a development occurs and a third party’s view is changed, are they directly impacted?

Having been a shadow planning minister many, many years ago, when Hon Tjorn Sibma was still a very young man, I never saw a situation in which a group of people looked at a planning proposal and thought, “What a great idea; we’ll all get behind it.” There are a number of reasons why one might think that communities would get behind planning proposals, and usually the first reason is economic. The problem with the communist utopia is that it is predicated on zero population growth. I know that is an issue that Hon Charles Smith is actually quite fond of, but the problem with zero population growth is that we have this enormous industry in Western Australia and across the nation called the construction industry. It is one of the biggest employers in Australia. That is why we currently have programs of money being thrown at it by both state and federal governments to try to keep it going through the COVID-19 crisis. If people do their numbers right, they can get a free handout of between \$60 000 and \$70 000, in order to effectively support the construction industry. That is not inconsiderable. But if we are going to have a construction industry, we actually have to build stuff, and if we are going to build stuff, we have to put it somewhere. The problem is that if we have to put it somewhere, I have never heard a community say, “Let’s construct something here”. I would be interested to see how many members of this house have been approached by a community saying, “Let’s put some more houses in here; we think that’s a really good idea.” Occasionally there might be the odd person coming forward, particularly a shopkeeper or someone who might benefit, or someone who wants employment for their children, but it is incredibly rare; I have never seen it. We can almost guarantee that for any proposal that is presented, there will be an opposition group.

There is the old truism that a developer is someone who wants to build a house in a location and a conservationist is someone who built their house in that location last year. Although that might sound a bit facetious, it is actually true. The simple fact is that the economy has to progress a bit, and the government is required to provide services on occasion. I have also been shadow environment minister, as Hon Tjorn Sibma now is—again, probably when he was in high school! Having worked as shadow environment minister over a couple of decades, I have never yet seen any local community embrace a rubbish tip anywhere near their location, yet local governments are forced to put them somewhere; otherwise, we will simply fill up with rubbish and drown in waste. We have to put sewage recycling works somewhere, but I have never yet heard someone say, “I think it’s a good idea if you put it near me.”

When developments are put forward, I occasionally hear someone say, “Well, I don’t really mind”, and that is fantastic, particularly in areas upon which there might be some impact, whether it be from a noxious or slightly noxious industry or something as simple as an extractive industry. If there is an existing residence near a quarry of some sort, we can be pretty certain that everyone will be up in arms because there will be more trucks on the road than there were previously in the communist utopia as proposed in this motion and expounded by the Greens. I absolutely respect the Greens. As in many cases, they are opposed to the mining industry and they are not embarrassed by that. They are very forthright in their position, and I appreciate that. They are supporters of the communist utopia, and they are not ashamed of that one iota, and it is refreshing to see in this house. But at some point, sensible government has to allow for an economy to continue and, just possibly, develop. We cannot do construction, development and expansion with a zero population growth position. I do not hear too many people talking about zero population growth when they are talking about getting jobs for the future, jobs for their children and supporting their local communities.

Most of our debate on the COVID economy is about trying to boost our economy. That is why we have additional money going into boosting a number of sectors, none more so than the construction sector. We have to have a place for construction and we have to have a planning process in place that allows it to proceed. I can guarantee that if we bring in third party appeal rights, we will have no option but to slow the process, because we will simply be

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allowing those people who do not want to be impinged upon in any way, shape or form an additional avenue to try to prevent that activity from happening.

I accept that that is potentially the Greens' position. I suspect that the Greens would be happy with zero growth and no more development, only replacement. That may well be the case, and I honestly think they would promote that, but it would mean slashing jobs in the construction sector. There would be no more apprenticeships for brickies, carpenters and other trades. We will not need as many electricians and plumbers. The Minister for Education and Training's TAFE budget would be right down and she would be back in profit, doing very well, because she would not have too many people through. That might be good from the communist utopia position of the Greens. I heard the previous speaker talk about some agreement between the Labor Party and the Liberal Party on some of these economic principles. Unfortunately, I was out of the house on urgent parliamentary business when the minister gave the official government reply, but, I imagine, being a sensible minister, he would have said that the government of the day has to take a pragmatic approach to economic development. I am sure that Hon Tjorn Sibma in his official response on behalf of the opposition would have said exactly the same thing. That is exactly what we need to do. We need to provide a pragmatic approach. If we applied third party appeal rights, we would significantly impact our capacity to deliver that.

Of course, the next step from third party appeal rights is generally a whole new litigation procedure. Those people who are generally in favour of third party appeal rights are often also in favour of an additional court. There is a Greens bill on the notice paper that will probably never be debated. Debate on that bill will probably quietly precede the debate on ending the forest industry and providing human rights for ecological entities, none of which will see the light of day in this Parliament or I suspect in any Parliament going forward. But it is close to election time, Madam Acting President, so these things tend to arise. The next step would be an environment court in which anybody who is aggrieved by a decision of government could tie up any proposal for any particular number of years. This comes back to that significantly problematic issue of who is impacted. If an environment court existed, the environment would become paramount and perhaps be given its own legal standing and, in fact, its own human entity, and that would mean that any proposal, anywhere, would suddenly come under its purview. That would be just one way of hamstringing development.

I am not a believer in infinite economic growth or infinite population growth. Infinite unyielding economic growth is a furphy; it will inevitably come back and there will inevitably be a correction. Australia has had an enormously interesting and fantastic run of economic growth for nearly 30 years. That is to the credit of a number of Prime Ministers and both sides of politics, from the Hawke and Keating era—a pseudo-Liberal government—to the Howard era, perhaps the ultimate Liberal government, and then its current iteration. But the economic growth experienced, and all those people—giants of their time and in their field—set up an economy to deliver a fantastic economic outcome for Australia. But it will not and it cannot last forever. At some point it will correct. We cannot have unlimited economic growth forever. There must be a correction. There must be stabilisation. Long-term economic growth forever means minuscule economic growth, so it has to be averaged out over a long time. We are human beings; we are not so sensible that we would simply consume and develop at a sensible standardised, long-term rate. No system of government, communist or capitalist, has been able to manage that outcome, so it is not going to occur. In our lives, our planning system will always be in a boom-and-bust industry—the industry of human beings. But it is absolutely the case that we must allow planning to occur and government to govern.

I must say that I find it a little tiresome when people with experience in Parliament suggest that we could try to prevent government from governing. We have to govern. We go to an election every four years and someone wins and someone loses; someone has to take responsibility. The ultimate aim of these sorts of debates and this sort of legislation is to take responsibility away from the government of the day. I think that that is an immensely dangerous position to take on behalf of the Parliament of Western Australia. I would rather come in here and hold the government to account, as I think the opposition does frequently in this house, and, ultimately, take that position to an election every four years so that the people have the option to agree with the government or agree with the opposition.

I will never support hamstringing government to the point of immobility, on the basis that it hits a populist response and gains a few votes leading into an election. I hope members of the house take the same position.

HON CHARLES SMITH (East Metropolitan) [3.05 pm] — in reply: I want to quickly make a brief point about the comments of the last speaker, Hon Dr Steve Thomas. He seems to be confused about how communists plan their cities. There are no third party appeals in communist Russia or communist China. There are appeals only in liberal democracies.

It has been very interesting to hear the points of view from the major political parties in particular. It is good to know that they put people last and the corporate sector first. That is where the battlelines are increasingly being drawn in the community. We need to understand that that is what is happening at the grassroots level. If members do not understand that, they are woefully out of touch. Let us get one thing straight: I am not opposed to development or

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developers. I support sustainable development. What I do oppose is the population Ponzi scheme, which is the only policy that this country and this state are pursuing, whereby we build cities and stuff them with new migrants. That is all we do. That is unsustainable and leads to boom and bust. If members support that, they are on the wrong track.

I would like to thank all those who made a contribution. It has been enlightening to hear what people have had to say.

Division

Question put and a division taken, the Acting President (Hon Adele Farina) casting her vote with the noes, with the following result —

Ayes (6)

Hon Robin Chapple
Hon Tim Clifford

Hon Diane Evers
Hon Aaron Stonehouse

Hon Alison Xamon
Hon Charles Smith (*Teller*)

Noes (24)

Hon Martin Aldridge
Hon Ken Baston
Hon Jacqui Boydell
Hon Jim Chown
Hon Alanna Clohesy
Hon Peter Collier

Hon Stephen Dawson
Hon Colin de Grussa
Hon Sue Ellery
Hon Donna Faragher
Hon Adele Farina
Hon Laurie Graham

Hon Colin Holt
Hon Alannah MacTiernan
Hon Rick Mazza
Hon Simon O'Brien
Hon Martin Pritchard
Hon Samantha Rowe

Hon Robin Scott
Hon Tjorn Sibma
Hon Matthew Swinbourn
Hon Dr Steve Thomas
Hon Darren West
Hon Pierre Yang (*Teller*)

Question thus negatived.