LEGISLATION COMMITTEE

on the

PLANNING AND DEVELOPMENT BILL 2004
PLANNING AND DEVELOPMENT (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2004
METROPOLITAN REGION IMPROVEMENT TAX AMENDMENT BILL 2004

The meeting commenced at 12.15 pm.

Advisers: Mr R. Stokes, Acting Executive Director, Statutory Planning, Department for Planning and Infrastructure.
Mr P. Hayes, Policy and Legal Officer, Department for Planning and Infrastructure.
Ms L. Harvey, Assistant Parliamentary Counsel, Parliamentary Counsel's Office.

PLANNING AND DEVELOPMENT BILL 2004

The committee adjourned on 21 September after clause 76 had been agreed to.

Clause 77: Effect of State planning policy -

Mr J.P.D. EDWARDS: I know the minister gave the commitment about the statutory part of the SPP, but there is a concern that there may be another outcome of arriving at that statutory issue that was apparent in clause 34. I am sure that is not the case, but perhaps the minister could give me an assurance on that.

Ms A.J. MacTIERNAN: This is the existing provision. As we have said, we have not changed the provisions. This is the existing regime that is in place. It just means that when local governments are preparing a new scheme, they must have regard to the SPP and they can incorporate it specifically just by referring to it. There is nothing new. This is not a change, this is the existing legislation.

Mr P.D. OMODEI: Subclause (3) reads as follows -

> Modifications referred to in subsection (2)(b) prevail over any later amendment of the State planning policy, or subsequent policy referred to in subsection (2)(a), which is inconsistent with the modifications.

Is it possible to modify a shire's planning scheme, in relation to say the condition of subdivision set out under the state planning policy, to have some flexibility in those conditions? I refer again to the situation in smaller country towns where property development is expensive. As an example, in some wheatbelt towns, blocks sell for $3 000 or $4 000 and the development costs are in excess of $20 000. I would just like to know whether there is a capacity for a local government to have some flexibility in applying conditions in country areas, vis-a-vis those that occur in major regional centres or the metropolitan area.

Ms A.J. MacTIERNAN: This has nothing to do with this particular issue. The provision to which we are referring means that one cannot modify a statement of planning policy after a scheme has been implemented and have that automatically apply to this scheme, so it has actually given primacy to the scheme. It is not about whether the scheme can have flexibility within it. This is a provision that says that where one changes one's statement of planning policy that has been incorporated by reference into a scheme, the incorporation is a reference to the statement of planning policy, as it was at the time that the local government decided to incorporate it into its scheme.

Mr P.D. OMODEI: Which takes precedence - the state planning policy or -

Ms A.J. MacTIERNAN: The state planning policy at the time - this refers to a provision where a town planning scheme incorporates by reference a state planning policy. What it is saying is that when they do that, it is to be read as if it is the state planning policy at the time that the scheme was adopted, so subsequent amendments to the statement of planning policy do not automatically apply to the local planning scheme, which is what I would have thought local government would have wanted. It reflects the existing provisions.

Clause put and passed.

Clause 78 put and passed.

Clause 79: Advice from Heritage Council -

Mr J.P.D. EDWARDS: Although I understand this clause reflects the existing provisions, I will ask a question about the timing of this. I am aware that planning schemes need to go to the Environmental Protection Authority

and there is a time frame involved with that. Is there a time frame in regard to a heritage issue, if there is an issue, within which the Heritage Council must come back with a response on this clause?

Ms A.J. MacTIERNAN: Again, I do not think this is a new clause.

Mr J.P.D. EDWARDS: No, it is not. I recognise that. I am running the line that we have already a time frame within which the EPA must respond to the Minister and I am just wondering whether there is a similar situation if the Heritage Council gets hold of the matter and whether it has a time frame it must work to.

Ms A.J. MacTIERNAN: There is no time frame.

Mr J.P.D. EDWARDS: If it is obvious it is necessary, there should be a time frame.

Ms A.J. MacTIERNAN: I do not know whether there is anything in the heritage legislation. Just check the heritage legislation.

Mr J.P.D. EDWARDS: I do not believe there is.

Ms A.J. MacTIERNAN: Although, interestingly, it works in two ways. If the Heritage Council does not come back with advice, the council is not locked in; it does not have to wait for the advice. I refer to the wording of paragraphs (a), (b) and (c). There is a let out here. If the Heritage Council has not come back within a reasonable time, or what the council thinks is a reasonable time, it can go to the minister and the minister can give approval for the council to proceed. Paragraph (c) reads -

> Is not to proceed, without the consent of the Minister, with the proposal unless or until that advice has been received.

If no advice has been received, then the council can go to the minister who can say that the council may go ahead. So there is an obligation. The Heritage Council runs the risk of being overridden if it does not come back in a timely way.

Clause put and passed.

Clauses 80 to 86 put and passed.

Clause 87: Approval and publication of scheme or amendment -

Mr P.D. OMODEI: Clause 87(3) states in part -

> . . . the scheme or amendment to be published in the *Gazette*.

Must the local people who are affected by the scheme be advised in writing as well?

Ms A.J. MacTIERNAN: I think, as we have suggested before, they would be advised during the advertising process and so would be alert that a scheme is under way.

Mr P.D. OMODEI: Under way, but once the scheme has been completed, it only has to be published in the *Gazette* rather than constituents advised in the local paper or by written notice. Is that what you are saying - that it only has to be in the *Gazette*?

Ms A.J. MacTIERNAN: Yes. Is there any requirement on local government to have this available to the public?

Mr P.D. OMODEI: Basically the question I am asking is why would you not carry the process through to finality if you are amending the scheme - that is, consulting with the community, preparing the scheme and then advising the community, I am not suggesting by written notice, but by advertising in the local paper.

Ms A.J. MacTIERNAN: I think the member has a point here. Can I ask that we put this clause to one side and I will get our people to work on that, because I think that is right; there should be a provision that the council should be required to advertise the completion of the scheme and make it reasonably available? We will work on that.

Mr P.D. OMODEI: I do not think it is necessary to give written notice.

Ms A.J. MacTIERNAN: No, but councils need to advertise and make it available. We should maybe even say - I do not know whether we have quite grasped some of the opportunities we have had with the rewrite of this legislation - that we should make things available electronically. I would like to put this clause to one side at the moment.

The ACTING SPEAKER: The minister must move that this clause be postponed.

Mr J.P.D. EDWARDS: Before the minister does that, I ask her what has been the procedure until now?

Ms A.J. MacTIERNAN: Once it is gazetted, that becomes the scheme and as a practical matter councils have them available, but technically the member is correct. There is nothing in it that formally requires the council to

advise the community that the new scheme is now under way; I think that is something we can correct. I will ask our trusty staff here to look at ensuring that when we do put that provision in, they might make reference to wherever possible making it available electronically as well. So we will get back to the member with an amendment on that.

I recall when the member was Minister for Local Government and occasionally he would accept one of my good ideas, so I am glad to be able to reciprocate.

Mr P.D. OMODEI: I think I might jump ship.

Further consideration of the clause postponed, on motion by Ms A.J. MacTiernan (Minister for Planning and Infrastructure).

[Continued on page 6378.]

Clause 88 put and passed.

Clause 89: Submissions on consolidated scheme -

Mr J.P.D. EDWARDS: That clause is actually reflecting the existing section, is it not?

Ms A.J. MacTIERNAN: There is a slight amendment. It is something new. What this basically provides is that a local government as part of its review can consolidate its scheme rather than change it. I think that is what we are talking about in this clause. What we are saying is that if people in the community want the scheme changed, they must be made aware that this is what the council is proposing to do. So if the council decides to go down the consolidation path, it must put the consolidation to the commission and then go to the public and say, "Okay, we have consolidated this scheme. This is what we reckon it looks like but you can make submissions on whether or not you believe we need to do a new scheme". In some places where there is not a lot of change, a consolidation is probably perfectly adequate and there is no real need for a review of the scheme. However, in places like the member for Warren-Blackwood's much-beloved August-Margaret River, for example, theoretically the council might not want any change and so will just opt for a consolidation that does not give those landowners, who might want more subdivision potential, an opportunity to make submissions on it. So this clause is just for increased input from the community. Just going to the logic of this argument, if the council decides on a review, the public will have input to it. If it decides to go for a consolidation rather than a review, under the current situation the public does not have any input. This is just to make sure there is that proper parity. If the council is going for a consolidation, it must put that out to the community and if there are divergent voices in the community about the need for a review rather than a consolidation, they can make submissions on it.

Mr J.P.D. EDWARDS: The submissions would go back to the local government in the initial stages, would they not?

Ms A.J. MacTIERNAN: That is right. Councils cannot just say that they will not think about it.

Clause put and passed.

Clause 90 put and passed.

Clause 91: Procedure where no change to scheme -

Mr P.D. OMODEI: I wonder whether the community needs to be advised that there is no change to the scheme. Obviously, council has to report to the minister on the scheme and that it recommends there be no change to the scheme. Should the community be advised accordingly? They are similar questions to those I asked about clause 88.

Ms A.J. MacTIERNAN: There are two things. First, this clause is the follow-on of a procedure that starts at clause 89, which relates to a local government that has decided to go without a review and just wants a consolidation. The local government must go out to the public. It then has to report on that and get approval. It has to take it to the minister, with a report on all the submissions that have been made on the proposal for there to be no change to the scheme. If the minister agrees to that, clause 91 applies, which is publication in the *Government Gazette*. The member wants the same provisions as in clause 88. This part of the legislation operates on a roll.

Mr P.D. OMODEI: No -

Ms A.J. MacTIERNAN: It is the same provision. It is the same thing, although obviously it is not of the same significance because there will be no change to the scheme; in fact, the decision will be "no change". Is the member suggesting that once the procedure is finished and has been signed off, the council should advertise,

either in the now unfortunately long-lost *The Gnowangerup Star* or some other esteemed journal, so that people know that this has happened?

Mr P.D. OMODEI: I am very conscious that in a number of local government areas there are multiple publications and towns, and that could mean an extra expense. However, I realise that not too many members of the public read the *Government Gazette*. I just wonder whether it is commonsense. I can count, and in the end there are more numbers on your side than on my side. I am just asking whether in the minister's opinion the *Government Gazette* is an appropriate medium for such a notice to be published in, considering there is to be no change to the scheme.

Ms A.J. MacTIERNAN: I think that in this circumstance that is appropriate. I think the member made his point well about a change in the scheme. In this case, the decision is "no change" and these decisions will occur, by and large, in small, very stable communities where there has been no real growth or change in the nature of the economic or social activity. I think that, on balance, we do not require those very small councils, often with just a handful of people on them, to advertise in regard to this provision.

Mr P.D. OMODEI: We are not making a distinction. This clause applies to all local governments.

Ms A.J. MacTIERNAN: Can the member tell me what he wants, because he is flip-flopping around?

Mr P.D. OMODEI: I am not flip-flopping at all. I am just asking the minister's opinion. She is the Minister for Planning and Infrastructure, I am not. What I am suggesting to her is that -

Ms A.J. MacTIERNAN: Whatever I say, the member wants to go down the opposite road.

Mr P.D. OMODEI: No, I do not. I said that I can count, and the minister has the numbers. If I stop talking, the question is put, and whatever the minister says goes. I really understand that.

Ms A.J. MacTIERNAN: That is not the approach we are taking.

Mr P.D. OMODEI: The point I am making is that there are some local governments for which it would not be necessary to require a notice be published in the *Government Gazette*, but there are others for which it may be the case. I am just asking the minister to make a comment on that. That is the only point I am making.

Ms A.J. MacTIERNAN: This clause maintains the status quo. As I said, I think a good case has been made that if there is change to the scheme, there needs to be clarity that that change process has been completed; however, I do not believe that is necessary in this case, in which there will be no change.

Clause put and passed.

Clause 92: Procedure where amendments proposed -

Mr J.P.D. EDWARDS: I understand this addresses shortcomings in the Town Planning and Development Act and provides some further power to amend the consolidated scheme. Could the minister briefly advise how that will resolve the current shortcomings?

Ms A.J. MacTIERNAN: It is a question of scale, basically. In some schemes for which there has been substantial change, a review is held; all the zoning is looked at and a series of precinct meetings is held. It is a comprehensive review. This clause recognises that, as well as those schemes for areas in which there is absolutely no growth or change in activity and for which a pure consolidation would be sufficient, there is a band somewhere in the middle comprising schemes for which there is very little requirement for change but which contains some small areas where some change is wanted, such as within a town centre, for example. It often happens that an area is set aside for public purposes but there is no longer a public purpose. It might be set aside for a wheat bin or an industry that no longer exists in that area, and the council might want to, for example, rezone an area of the town centre from public purposes or wheat bin to something else. This provision enables recognition that fundamentally there will be a consolidation but with some minor adjustments to address some small desirable changes. It is a third alternative. There is a review, a consolidation, and something that is really a hybrid.

Clause put and passed.

Clauses 93 to 99 put and passed.

Clause 100: Consultation with local government on development approval -

Mr P.D. OMODEI: I note that this reflects the existing section 24(2) of the Western Australian Planning Commission Act. The local planning scheme would reflect the statement of planning policy. Obviously, it is already there and it is there for a reason.

Ms A.J. MacTIERNAN: What is the problem?

Mr P.D. OMODEI: This clause provides that the WA Planning Commission is to consult with local government on development approvals, and reflects existing section 24 of the Western Australian Planning Commission Act. What is the purpose of it?

Ms A.J. MacTIERNAN: No, this is for when a regional interim development order is in place. We have to get that focus. This is about a regional interim development order, and so a development application goes to the Planning Commission. The clause provides a mechanism whereby the commission has to go back to the council and get its views on the matter.

Mr P.D. OMODEI: Will there be just a local government interim development order, or are we also including a regional interim development order?

Ms A.J. MacTIERNAN: This is about a regional interim development order. If it is a local government order, the WAPC is not involved.

Mr P.D. OMODEI: I presume that if a regional interim development order is in place, there is not a region scheme.

Ms A.J. MacTIERNAN: No, the region scheme is on its way. It is the interim stage which the member's Government introduced relating to appeal, and which is now in place for the Bunbury and Carnarvon-Ningaloo schemes.

Clause put and passed.

Clause 101 put and passed.

Clause 102: Local interim development orders -

Mr J.P.D. EDWARDS: The explanatory notes on this clause state this should be used "only where it is necessary in the public interest". Could the minister make it clear to me how it would be determined that a local interim development order can be made when there is an existing local scheme and it is "necessary in the public interest"? Who makes that decision? Is it the local government?

Ms A.J. MacTIERNAN: These are put in place by the councils. The concern was that these local interim development orders were being used too widely. If a scheme was in place and the council wanted to effectively change the scheme without going through all the processes, it would institute these local interim development orders. There was concern that these were being done in too cavalier a fashion. The suggestion has been to place some constraint on those councils by restricting the use of the interim development orders by making it clear that they must be used only when it is necessary in the public interest. This is an added constraint, it is not a liberalisation.

Mr J.P.D. EDWARDS: No. The clause refers to the public interest. If a local government had a very real and genuine reason for going down this path and the public did not necessarily see that, the local government's hands would be tied.

Ms A.J. MacTIERNAN: What is the member concerned about? Is he concerned that the clause is in or that it is not in?

Mr J.P.D. EDWARDS: I am really concerned about local governments trying to do their job properly. I understand that local government is also looking to be streamlined. The minister is telling me that some local governments may be abusing this somewhat and she is trying to put a restraint on local government.

Ms A.J. MacTIERNAN: No. I am saying there have been concerns that if the process did not have any constraint on it whatsoever, it would be open to abuse. I hope that the member, a former senior person in local government, is not suggesting -

Mr J.P.D. EDWARDS: I am sure I am not.

Ms A.J. MacTIERNAN: - that councils would want to do things if it was not necessarily in the public interest. As an example, one of these orders was to be put in place in Ravensthorpe as a result of the nickel project - our Government's investment in that has seen it charge ahead. There was a concern by the local government that going through the normal scheme processes might not enable it to get residential land on stream quickly enough, so it was looking at using a local interim development order. In the end, it did not do that because it was not necessary as the scheme amendment was completed in time. I would have thought that that local government would have been easily able to show that doing such a thing was in the public interest. This clause is basically putting a constraint on local government, which I think is perfectly reasonable. It was suggested by the Environmental Defender's Office. I can see that the member for Warren-Blackwood is thinking about particular individuals and getting a bit hot under the collar, but I do not think that was the source.

Mr P.D. OMODEI: It is not fair to put those things on the record!

Ms A.J. MacTIERNAN: I am sorry; I take that back.

Mr P.D. OMODEI: I am smiling. The minister is giving a totally distorted view. I could not give a damn about the Environmental Defender's Office, to be quite honest.

Ms A.J. MacTIERNAN: That does not surprise me. Anyhow, it is a constraint that I think the EDO suggested. Quite frankly, if the local authority is not able to demonstrate that its interim development order is necessary in the public interest, it should not be doing it.

Mr P.D. OMODEI: On that same issue, was the minister saying that the Ravensthorpe council had a scheme and then put in place an interim development order?

Ms A.J. MacTIERNAN: No; it contemplated putting one in place because it needed residential land to be available very quickly. It wanted all the ducks in a row to ensure that there could be local employment in the area, rather than fly in, fly out workers. At the end of the day, the council did not need to do that because it was able to get the scheme amendment through in time to get that land on the market.

Mr P.D. OMODEI: For my edification, I understood that the only local government areas that had interim development orders were those that did not have a planning scheme, and that the interim development order took the place of the planning scheme until one was gazetted. Is the minister saying that a council can have a planning scheme and an interim development order that either underpins or overlays that scheme?

Ms A.J. MacTIERNAN: Yes, a council can have an interim development order with the scheme.

Clause put and passed.

Clause 103: Contents of local interim development orders -

Mr J.P.D. EDWARDS: This clause relates, again, to the Heritage of Western Australia Act 1990. I know this clause reflects a current provision. I see there is a requirement for local government to refer the application to the Heritage Council and it cannot proceed with the development order until the advice of the Heritage Council has been received and it has taken due regard of that advice. What would happen if the Heritage Council sat on the application and nothing happened? I cannot see anything in the way of a time frame. Is there a provision for the minister to step in?

Ms A.J. MacTIERNAN: No, there is none.

Mr J.P.D. EDWARDS: What would happen in that case?

Ms A.J. MacTIERNAN: The local scheme that underlies it would continue to apply and the council would need to go the way of a scheme amendment.

Mr J.P.D. EDWARDS: That would basically ignore the Heritage Council. Is that right?

Ms A.J. MacTIERNAN: It would appear that the council cannot proceed with the proposal. The member should bear in mind that this is not the normal process.

Mr J.P.D. EDWARDS: I appreciate that.

Ms A.J. MacTIERNAN: There is the normal town planning scheme process. This is an added power that may be used under certain circumstances.

Mr J.P.D. EDWARDS: Subclause (2)(d) states that the local government is-

> (ii) not to proceed with the application unless or until the advice of the Heritage Council has been received; and
>
> (iii) to have regard to that advice.

I understand that that will tie the local government fairly tightly. A local government order would not be able to move any further unless there were a ministerial direction or some other way of avoiding it.

Ms A.J. MacTIERNAN: We could look at inserting a proposition, as we have done within the other part, so that in those circumstances the order can go to the minister. We are happy to look at that.

Further consideration of the clause postponed, on motion by Ms A.J. MacTiernan (Minister for Planning and Infrastructure).

[Continued on page 6378.]

Clause 104: Consultation with public authorities and utility services providers -

Mr P.D. OMODEI: This clause makes reference to the council consulting with public authorities and utility services providers about interim development orders. What sorts of issues are there within an interim development order that a public authority might be concerned about?

Ms A.J. MacTIERNAN: It might be an interim development order to introduce residential zoning. The Ravensthorpe situation is an example. That was planned to introduce a whole tract of residential land. The Water Corporation might want to look at that order from the point of view of sewerage. The Water and Rivers Commission and Western Power might also want to look at it. Members should bear in mind that these things can effectively alter the land-use pattern. As with a scheme, the local government would consult all those people. Education is another example. A local government that wants to put up a residential development would need to get input from the Department of Education and Training about the impact the development will have on schooling.

Mr P.D. OMODEI: I thank the minister. I expect that one issue might be easements for high-tension powerlines close to a residential area.

Ms A.J. MacTIERNAN: Yes.

Clause put and passed.

Clauses 105 to 109 put and passed.

Clause 110: Revocation of interim development order -

Mr J.P.D. EDWARDS: This may sound like a silly question but I hope it will be a quick and easy one to answer. Can you give me an example of what perhaps a revocation might involve?

Ms A.J. MacTIERNAN: For example, if one decided not to proceed with whatever -

Mr J.P.D. EDWARDS: Is it as simple as that?

Ms A.J. MacTIERNAN: If a conservative Government comes in and decides it will not proceed with the Bunbury region scheme, it might then want to revoke the interim development order.

Mr J.P.D. EDWARDS: I thank the minister.

Ms A.J. MacTIERNAN: Are we getting a statement of Liberal Party policy out of this?

Clause put and passed.

Clauses 111 to 117 put and passed.

Clause 118: Effect of Part -

Mr P.D. OMODEI: This section provides for the continued lawful use or development of land that was carried out prior to a planning control area being put in place. What is the difference between the planning control area and a draft statement of planning policy?

Ms A.J. MacTIERNAN: The planning control area is a geographical area. There might be an investigation of the possibility of areas being set aside for various public purposes, and that basically overlays the existing region scheme. A classic example is Bush Forever, which is another great project that was started under and abandoned by the previous Government. Certain areas were identified as constituting the proposed Bush Forever sites. There was to be reservation over those areas, but it took some time - two years - to develop a metropolitan region scheme amendment. In the interim, a planning control was placed over those areas. That planning control ensures that any development that occurs within those areas has to be considered by the Planning Commission and that the Planning Commission can start acquiring those properties and paying compensation to the landowners, if it wishes to do so, even though the region scheme amendment is still to be sorted. It is like a holding pattern. This clause validates any horticultural or agricultural use, for example, carried out on a particular piece of rural property before the planning control area came into place and makes clear that that use can be continued.

Mr P.D. OMODEI: All those things set out under clause 118(b), which include buildings, constructions and excavations, were started before the planning control was put in place, and they can be lawfully continued.

Ms A.J. MacTIERNAN: That is right.

Mr P.D. OMODEI: The minister made comments about Bush Forever, and that was an initiative of the previous Government. The reason that there is concern about the Bush Forever process is that a lot of people have been disaffected. A lot of their properties have been blighted and a lot of their enjoyment and use of their land has been affected.

Ms A.J. MacTIERNAN: But the member would have known that when he was in cabinet.

Mr P.D. OMODEI: Let me speak. We know that that occurs when government sets aside areas or public utilities or whatever. It is an inevitable consequence. However, there is no doubt that many of those people's properties have been devalued. I think the consultation and compensation processes were not ideal. Many of those things people recognise with the benefit of hindsight. That is not to take away from the previous Government's wish to have a Bush Forever program. I think it has affected those people. Maybe, minister, people realise that more when they are in opposition than when they are in government. The minister is doing exactly the same as we did in Bush Forever with the Bunbury region scheme. Those areas of land that the Government is targeting to be placed in public open space etc are being protected now by the current landholders, so why do they have to be targeted under the region scheme? It is a valid question.

Ms A.J. MacTIERNAN: It is not entirely. I think it is a misguided question. I do not know how regional open space that is still in private ownership can be reserved for public use. The member should think it through and think about the sorts of quality public space that has been acquired for the people of Perth through the application of the metropolitan region scheme. I give the example of the South Perth foreshore. Many areas were under private ownership at the time the region scheme came into place. The difference between the Labor Party in opposition and the coalition in opposition is that we actually supported the coalition. When we were in opposition, we supported Bush Forever. When we were in opposition, we supported the Peel region scheme. When we were in opposition, we supported the Bunbury region scheme. The difference with the Opposition is that it has one position when it is in government and another position when it is in opposition. Of course these issues are hard. Of course the vast majority of landowners are going to prefer that their land not be earmarked in this way. That is a perfectly normal reaction. Of course, they demand that they be fairly compensated. There is always going to be a diversity of views as to how they can be fairly compensated. We in the Labor team have been consistent all the way along the line. The Opposition jumped horses when it fell out of government, and that is the fundamental difference between the two sides.

Mr P.D. OMODEI: I think the difference is that the Opposition has become aware of those issues relating to matters that were discussed in the Legislative Council standing committee report on the enjoyment and use of private property.

Ms A.J. MacTIERNAN: What an absolute lot of nonsense. These same arguments were being used by the same groups back in 1999 and the Opposition ignored them.

Mr P.D. OMODEI: The minister must admit that under the previous legislation we would never have had a freeway running along the eastern side of the Swan River foreshore. All of that foreshore has been redeveloped by mankind to protect it from erosion etc. It would never have happened today under our EPA laws. Under the current Government it has been dominated by sectional interests. It would never have happened previously.

Ms A.J. MacTIERNAN: Which section? It just happened to be a different section from the member's - his and his developer mates!

Mr P.D. OMODEI: The one that if they are not on the people's side, they lose government!

Clause put and passed.

Clause 119: Commission may recommend improvement plan -

Mr T.K. WALDRON: Clause 119(5) on page 82 states that section 195 applies with respect to the acquisition of land. Can the minister explain how that acquisition of land works under that improvement plan? I just wonder how the acquisition takes place.

Ms A.J. MacTIERNAN: It mentions section 195 of the Act. I will give the member an example of how we did this. In relation to that corner of the block surrounded by Wellington, Murray and William Streets that we were going to apply to build a new railway station under, we acquired that under these provisions. We put an improvement plan over that precinct and then we acquired the land pursuant to the provisions that are set out in section 195.

Mr T.K. WALDRON: Does that include compensation?

Ms A.J. MacTIERNAN: Absolutely.

Mr T.K. WALDRON: Is that on a recommendation from the Planning Commission?

Ms A.J. MacTIERNAN: It comes from the commission's recommendation but it is then approved by the minister.

Mr T.K. WALDRON: Did it come from the commission or did it come from the minister?

Ms A.J. MacTIERNAN: That fabulous "I did have an improvement plan"; I think it is a case of great minds thinking alike.

Mr T.K. WALDRON: We came to that conclusion at exactly the same time.

Ms A.J. MacTIERNAN: That is right, but I think the Planning Commission's idea was that the best way to progress this would be through an improvement plan.

I just need to make it clear, sorry. This does require the Governor's approval. It is a big ticket item, so it does need to go to Cabinet. The commission made the recommendation to me, I took the recommendation to Cabinet, the Cabinet agreed, and so did the Governor. It could not have happened otherwise.

Clause put and passed.

Clauses 120 to 123 put and passed.

Clause 124: Effect of region planning scheme on local planning scheme -

Mr J.P.D. EDWARDS: I do not suppose the minister will be surprised that local government had some issue with this clause. It is probably spelt out fairly well in the submission. Subclause (1) provides that if a region scheme is inconsistent with a local planning scheme, the region scheme shall prevail. However, because of the generalised nature of region scheme zoning, this could result in the effective absence of development control until such time as local authorities are able to complete an appropriate scheme amendment. Local government understands that although there is a requirement to bring the local planning scheme into conformity with the region scheme and an opportunity for concurrent amendment of the local planning scheme, there is a potential for uncontrolled and inappropriate development in the interim.

Ms A.J. MacTIERNAN: Will the member read that again? I have not quite followed the logic.

Mr J.P.D. EDWARDS: I guess what they are saying is that if a region scheme is inconsistent with a local planning scheme, the region scheme prevails. We agreed on that. However, because of the generalised nature of region scheme zonings, this could result in the effective absence of development control until such time as a local authority is able to complete an appropriate scheme amendment.

Ms A.J. MacTIERNAN: Can the member say that again? I do not quite follow the logic.

Mr J.P.D. EDWARDS: If a region scheme is inconsistent with the local planning scheme, the region scheme will prevail. We are agreed on that. However, because of the generalised nature of region scheme zonings, this could result in the effective absence of development control until such time as the local authority is able to complete an appropriate scheme amendment.

Ms A.J. MacTIERNAN: No, because it would go to the commission first.

Mr J.P.D. EDWARDS: What if there is some inconsistency?

Ms A.J. MacTIERNAN: I imagine that what the member is thinking about is a situation in which there is an urban zoning. A classic example is what happened in Mundijong. For example, a metropolitan region scheme might have an area that was designated as urban, but under the council scheme it was just rural. I am trying to work this through. If an application were to come in for an urban subdivision and the council were to knock it back because, according to it, it is still rural, it would go on appeal. The tribunal would then say that, according to the overriding scheme, it is urban; therefore, the development should be allowed to go ahead. I can see that there is potentially a problem if the broad scheme is urban and the council has not put a particular zoning on it so that we do not know whether it should be developed as R20, R30 or whatever. Because of that inconsistency, a developer would be able to go forward. I guess it is just an incentive for the councils to get off their bottoms and make sure they have control. The tribunal would obviously need to consider the nature of the surrounding area, not just approve a high-rise in downtown Mundijong. However, it does provide that if the council wants to be a player, it needs to actually get its scheme in place. Otherwise, if we do not have something like this, councils can just sit around and say that they are not going to do anything and not move in conformity with the region scheme.

Mr T.K. WALDRON: Is that the 90 days that is referred to in clause 124(3) at the top of page 85? Is that the time they have?

Ms A.J. MacTIERNAN: I think they would have a bit more than that. They have 90 days to resolve to prepare a scheme, not to actually prepare it.

Mr T.K. WALDRON: How long do they have to prepare it?

Ms A.J. MacTIERNAN: How long is a piece of string?

Mr T.K. WALDRON: Some of them go on for years.

Ms A.J. MacTIERNAN: What was the Perth City Council's one? That was 15 years, I think.

Mr T.K. WALDRON: Is that 90-day period a fair time to give them to resolve?

Ms A.J. MacTIERNAN: To resolve, yes, but we need to bear in mind that this is allowing the council to participate in the decision making. By not acting, it is actually ruling itself out of the game. It is within its own hands to get into the game. Perhaps the member for Greenough would take back to local government that the framework is there to allow councils to participate. If they decide to be inert, they cannot blame someone else for that.

Mr J.P.D. EDWARDS: Sorry for being dumb, but if they do not participate, what happens then?

Ms A.J. MacTIERNAN: Then decisions can be made. It would depend on the nature of the application. A subdivision application would come to the Planning Commission, classically. The Planning Commission would then say that the local scheme is inconsistent with the region scheme, so it will not give any regard to the local scheme, because the local scheme is out of date. It will give regard to the metropolitan region scheme. Then, because the council has not put that in place, it would probably look at a raft of documentation that was used to reach the decision to zone it under the region scheme as a guide to what sort of development it would allow. Basically, if the council has not started the process and even got a draft scheme - the dreaded draft scheme - then there is a problem for the council, but basically the council would be snookering itself if it ruled itself out of the play.

Mr J.P.D. EDWARDS: I understand everything the minister has said. I suppose the key concern of local government is the generalised nature of region scheme planning, which could result in that.

Ms A.J. MacTIERNAN: It is within their own hands to resolve this problem. They can resolve the problem by getting their scheme under way. If they decide, through pure inaction or incompetence, to do nothing and not bring their scheme into line, they have no-one to blame but themselves.

Mr J.P.D. EDWARDS: What if it was for neither of those reasons but was for reasons quite apart from that?

Ms A.J. MacTIERNAN: What sorts of reasons?

Mr J.P.D. EDWARDS: I do not know. I cannot think of any.

Ms A.J. MacTIERNAN: They have an obligation to develop town planning schemes in line with the region scheme. Otherwise there would be no point in having a region scheme. The whole point is to rise beyond. We have 132 municipalities in the city.

Mr J.P.D. EDWARDS: Not quite that many.

Ms A.J. MacTIERNAN: Sorry, not 132.

Mr T.K. WALDRON: In the State.

Mr P.D. OMODEI: Clause 124(2) states clearly that a council has no later than 90 days after the day on which the region planning scheme has effect to resolve to prepare its scheme. What would happen if a council resolved to prepare its scheme but took a long time to do so? Would that then tie up that council's planning approvals so far as any approval by the Planning Commission, or any subdivision or land development? Could a council resolve to make the decision but then take a long time to make that decision?

Ms A.J. MacTIERNAN: If the council does not do it subclause (5) would apply, which states that if the local government has not done that, within a reasonable time after the passing of the resolution, the minister can direct it to do it. I think that was done in the case of Mundijong, where the people were directed to amend their scheme to comply with the town planning scheme.

Mr P.D. OMODEI: I understand that, and I understand why subclause (5) is in there. We have just been discussing how long it can take councils to prepare their schemes. There are huge numbers of examples of how long it can take to develop a scheme. Is the minister suggesting that in most cases the amendments that would need to be made to a council's scheme would not be significant and to that extent it could be done fairly quickly? Bearing in mind that a region scheme may require a local government to make significant changes to its local government planning scheme, what is a reasonable time? Has the minister defined what is a reasonable time in her mind?

Ms A.J. MacTIERNAN: No, we have not defined what is a reasonable time. I believe this is an existing provision. We cannot be too prescriptive about these things. The member needs to understand that to get a metropolitan region scheme amendment through takes, on average, two years. It is not as though the council would not have had a lot of time to think about this while the metropolitan region scheme was being amended. It

is not as though one night the council would wake up and say, "Oh, gosh, there is a change in the metropolitan region scheme and it is affecting us." The councils will be part of the consultation process, and they will have had two years, on average, to get their act into gear. There are some councils that cannot do that. As the member would know from some of the councils that he sometimes refers to in this Parliament, some councils find it very difficult, because of the divergent voices that are represented on those councils, to make decisions and to make progress. That will happen from time to time and we need to put the mechanisms in place to make sure that progress is made. It is within the hands of local government to get its act together and to put its schemes in place and to participate fully in the planning process.

Mr P.D. OMODEI: I did not have a city council in mind. I would say that 99 per cent of city councils have the wherewithal and the planning capacity to prepare the scheme. I do not think that even one city or town council would have an excuse, but a large number of the 112 small local governments in regional Western Australia would have an excuse for not being able to put a local planning scheme together fairly quickly. My question to the minister initially was about a local government that takes an inordinate amount of time. If under subclause (5) the minister were to direct it to make the amendment, the council may not have the wherewithal to make it. What would happen at that stage? Would the minister then invoke her section 212 order and go in and take over?

Ms A.J. MacTIERNAN: The member has to think this through. I would have thought that, as a former Minister for Local Government, he would have thought about it. He is contemplating that there are in Western Australia councils that are not of adequate size or do not have adequate resources to discharge their basic obligations under the Local Government Act. If that is the case - I am not saying it is; the member is claiming it is - we really have to look at whether those councils are viable.

Mr P.D. OMODEI: I am not the Minister for Local Government. The minister is the Minister for Planning and Infrastructure. I say that it is more in her hands than in mine to make that assessment. I do, by the way, make the comment that there are local governments in regional Western Australia that are struggling to meet their statutory requirements, and they do need help. That might mean a restructure of local government. To that extent, the member for Greenough has a very sound policy to work with local government to achieve some of those ends when we are returned to government.

Mr J.P.D. EDWARDS: I would like to make a comment about that. It is all right for the minister to make a generalised comment that those local governments that do not have the resources should not be doing the job they are doing, but there are some local governments that are finding it very hard to resource and finance the sort of expertise they need.

Ms A.J. MacTIERNAN: I absolutely agree with the member. It was not I who alleged councils could not do this, but I understand that there are. If councils make the decision that they want to stay as individual entities, representing the sum total of a population of 200, and they believe that decision is in the interests of their community, they need to devise some way of sharing resources in a cooperative manner. They cannot continue to mount inconsistent arguments that they are not viable and cannot undertake any of these activities and not try to resolve the issue. At the end of the day, I urge local councils to think about whose interests they are acting in. Is it their residents and ratepayers or their own?

Mr P.D. OMODEI: I think that the minister should visit the Shire of Leonora. I very clearly recall that when we rewrote the Local Government Act, which was a bipartisan effort, the reporting procedures and many other things that were required under that Act placed a huge burden on me. I became very conscious of that as the minister. I think the minister needs to have some sympathy for these councils and maybe assist them. Governments bring in region schemes, and they place a burden on some of those smaller local governments. We need to acknowledge that, and there needs to be flexibility in this legislation that gives them some assistance in a genuine situation.

Ms A.J. MacTIERNAN: I visit many small councils and many of them are doing an excellent job. However, I think that, like any organisation, they need to look at whether they have adapted to be able to meet the demands of the time. None of these things should be locked in concrete so that a particular configuration is to be the configuration for time immemorial. It is up to these councils to think about what is in the best interests of their communities. We do many, many things to assist local governments with their planning. Our officers go out of their way to work with them. We certainly do not take a punitive or heavy-handed approach. We are setting up regional planning offices all over the place to provide that assistance and guidance. I just say that, from time to time, some local authorities need to make some reality checks of whether they really are at a size at which they are able to properly service their community, and if they want to stay at that size, they need to consider the sorts of alternative arrangements they can put in place to provide the modern service their community expects.

Mrs C.L. EDWARDES: How does clause 124(2) sit with clause 127(1)?

Ms A.J. MacTIERNAN: Clause 127 is designed for a scheme that has been initiated -

Mrs C.L. EDWARDES: What about clause 124?

Ms A.J. MacTIERNAN: If there is an inconsistency between the region scheme and the local scheme, the council resolves to amend its scheme pursuant to clause 124 to make it consistent. It goes through that process and comes up with a scheme that is sent to the minister for approval. Under clause 127, the minister looks at it, and if the minister believes that it is not consistent with the region scheme, the minister may modify that scheme.

Mrs C.L. EDWARDES: The region scheme?

Ms A.J. MacTIERNAN: No, the town planning scheme or the town planning scheme amendment.

Mrs C.L. EDWARDES: There are 90 days in which to do a local planning scheme -

Ms A.J. MacTIERNAN: No, the council has 90 days to resolve to do one.

Mrs C.L. EDWARDES: Resolve to put in one?

Ms A.J. MacTIERNAN: Yes. We have had this discussion.

Mrs C.L. EDWARDES: The process in clause 127 could be reached at any time. If the scheme is inconsistent, the minister will direct the council to make it consistent. If it does not make it consistent, will the minister do it for the council under clause 128?

Ms A.J. MacTIERNAN: This is in the existing legislation. There is no change.

Mrs C.L. EDWARDES: Is there no change whatsoever through clause 127?

Ms A.J. MacTIERNAN: It reflects existing section 35A of the Metropolitan Region Town Planning Scheme Act. There is no change.

Mr P.D. OMODEI: I acknowledge there is an existing requirement. All I said to the minister is that she should be cognisant of the fact that some local governments do not have the wherewithal to do this. The minister responded by saying that the department helps those local governments. The truth of the matter is that we should remember when we prepare either a local government Act or a planning and development Act of Parliament that we have such a diversity of councils in Western Australia. When I was the Minister for Local Government, the City of Wanneroo wanted a separate Act of Parliament for the City of Wanneroo. The same Act of Parliament relating to local government applies to a city with mega wealth and growth, whether it be Joondalup, Wanneroo, Melville, Rockingham or whatever, and the council at Yalgoo. Likewise, under the planning Act, the same demands are applied to the metropolitan region scheme, the Bunbury region scheme, the Ningaloo region scheme or whatever, and those region schemes are then imposed on those local governments, many of which are very small with a low rate base and struggle. They do not have large planning sections.

What I am saying to the minister is that, as a Government, we need to acknowledge that some of these local governments struggle.

Ms A.J. MacTIERNAN: I am not going to keep on with this particular line of debate, but I will say this: if one looks at where region schemes are put in place, one sees that they are not put in place across areas in the eastern wheatbelt. They are put in place in areas that are undergoing rapid growth. They are areas by definition where there is rapid growth and where, quite frankly, in many instances the councils are finding it difficult to manage. For example, it is very difficult for the Shire of Carnarvon to manage Coral Bay and the enormous growth of tourism traffic throughout that region.

Mr P.D. OMODEI: Whether it is a region scheme or a statement of planning policy makes no difference.

Ms A.J. MacTIERNAN: It does. I know the member is fixated on statements of planning policies and he loves bringing them in. This does not have anything to do with statements of planning policy. This has to do with making region schemes and town planning schemes compatible. It has nothing whatsoever to do with statements of planning policy.

Mr P.D. OMODEI: I point out to the minister that the reason I get agitated is that the Government cannot even look after its own land let alone imposing its will on private property.

Clause put and passed.

Clause 125: Minister may direct local government to amend local planning scheme for consistency -

Mr J.P.D. EDWARDS: Some concerns have been raised about this clause. I understand this is a new provision, and it will enable the Minister to direct local government to advertise an amendment to a local government

scheme concurrently with a corresponding region planning scheme amendment. I also understand the power is discretionary. It seems this is to generally provide better opportunities for public comment. However, there is a concern with that direction, that amendments to regional and local schemes are often out of phase and do not always run concurrently and with some good reasons. Obviously whilst they are in phase they can be advertised concurrently and that actually happens now, I believe -

Ms A.J. MacTIERNAN: We have started that process.

Mr J.P.D. EDWARDS: So the question really is, is there any reason that the status quo could not remain and perhaps local schemes could be brought into line with amendments to region schemes as currently, within three months, and they should remain?

Ms A.J. MacTIERNAN: No, it is not within three months, as the member knows. As the member says, it is resolved to amend within three months.

Mr J.P.D. EDWARDS: Sorry, yes.

Ms A.J. MacTIERNAN: However, the reality is that there is an enormous frustration both in community groups and within the development industry about the length of time it takes to get these processes complete. One must go through the two-year process for the metropolitan region scheme amendment then one must start this process of the town planning scheme amendment. Members of the community get consultation fatigue because often this is essentially the same issue and they have to go through that same process twice over the same time. The idea of bringing these things into tandem when they are looked at simultaneously will stop those processes which are insanely long, and I urge members to look beyond local government as their source of inspiration for comment on this legislation. They are not the only stakeholders here.

Mr J.P.D. EDWARDS: But they are an important stakeholder.

Ms A.J. MacTIERNAN: Yes, but they are not the only one and I get the impression from the member's comments that they are the only ones who seem to have been taken into account in these comments.

Mr J.P.D. EDWARDS: No, that is not strictly true.

Ms A.J. MacTIERNAN: First, there is the question of the length of time and, secondly, there is the impact this has on the community and being able to make representations. Also, as the member has pointed out, a metropolitan region scheme amendment will often be very broad brush and people want to see what that will look like translated into a town planning scheme amendment. Depending on what it looks like in the town planning scheme amendment, it may alter how they view the region scheme amendment. So there are very good arguments for doing more to bring these two processes into line. They give a better transparency of what is actually going to happen at the end of the day, they make it easier for the community to engage on the issues and they provide some contraction to what are insanely long processes.

Clause put and passed.

Clause 126 put and passed.

Clause 127: Minister may direct local government to modify proposed scheme or amendment -

Mrs C.L. EDWARDES: We started to talk about clauses 127 and 128 a few seconds ago in relation to clause 124 and the minister said there is no change to the current system. Can the minister point out which sections we are talking about in the Metropolitan Region Town Planning Scheme Act? I am looking at section 35A.

Ms A.J. MacTIERNAN: Subsection (2a) on page 31.

Mrs C.L. EDWARDES: Where does it relate to clauses 127 and 128 in section 35A?

Ms A.J. MacTIERNAN: Okay. I direct the member to page 31 of the Act, subsection (2a) where it states -

> The Minister may require local government to modify the town planning scheme or amendment to a scheme prepared under subsection (2) in such manner as he may specify in order to ensure that the town planning scheme or amendment -
>
> (a) is in accordance with and consistent with the Scheme as amended; and
>
> (b) will not impede the implementation of the Scheme.

Mrs C.L. EDWARDES: Then under subclause (3) the minister is actually changing the process. What has been done - and I am not an expert on town planning matters - is that under clause 128 local government has been directed to adopt the scheme or amendment if it has not complied with clause 127(1) and if it does not do so within 60 days after the giving of the direction concerned - that is, the direction of the Minister - the minister will

actually cause the scheme to be amended, modified and adopted. Whereas under the current scheme it looks like the minister can actually approve of the scheme or amendment not necessarily in accordance with the direction.

Ms A.J. MacTIERNAN: I think this just picks up subsection (3) of the Act. It just sets it out in a clearer way. But it says there that, on behalf of the local government or a responsible authority as the case may be, the minister may cause a town planning scheme to be prepared and submitted under the Town Planning Act. Clause 128 states that the minister may cause the relevant town planning scheme amendment to be prepared or modified as the case requires and forwarded to the local government and may direct the local government to adopt it.

Mrs C.L. EDWARDES: I am not sure what happens in practice, but if we consider the exact interpretation of subsection (3) currently, it says that if, within a period of 60 days after the scheme or amendment - this is on page 32 of the Act - is delivered to either minister, the local government or the responsible authority fails to adopt the scheme or amendment, the minister to whom the administration of the Town Planning Act is committed may approve of the scheme or amendment or cause it to be published in the *Gazette*. That does not necessarily give the minister the power today to modify and/or amend the scheme.

Ms A.J. MacTIERNAN: Under the existing Act?

Mrs C.L. EDWARDES: Yes.

Ms A.J. MacTIERNAN: No. Subsection (3) says that the minister, on behalf of local government or the responsible authority as the case may be, may cause a town planning scheme or amendment to the town planning scheme to be prepared and submitted under the Town Planning Act to the minister.

Mrs C.L. EDWARDES: That is in the Bill?

Ms A.J. MacTIERNAN: No, that is in the Act.

Mrs C.L. EDWARDES: Sorry. Where is that?

Ms A.J. MacTIERNAN: Look at the last paragraph of page 31 of the Act.

Mrs C.L. EDWARDES: It states that it may take all or any steps necessary.

Ms A.J. MacTIERNAN: May cause a town planning scheme or amendment to the existing town planning scheme to be submitted.

Mrs C.L. EDWARDES: The time frame and everything else is in 120.

Ms A.J. MacTIERNAN: In fact, if anything, it seems to me that we have actually made the situation a little bit more laborious. Having made it, we go back to local government. We cause it and direct local government to adopt that revised scheme, and if they do not do it then, the minister can, after 60 days, approve it.

Mrs C.L. EDWARDES: That is number three, okay.

Clause put and passed.

Clauses 128 to 134 put and passed.

Clause 135: Approval required for subdivision -

Ms A.J. MacTIERNAN: I move -

Page 93, line 4 - To insert after "road" -

created under Part IVA of the *Transfer of Land Act 1893* or

That is just to give a more complete definition.

Mr P.D. OMODEI: What is the penalty if he commits an offence? What is the penalty for an offence?

Ms A.J. MacTIERNAN: This is not relevant to the amendment.

Amendment put and passed.

Sitting suspended from 1.45 to 3.04 pm

Clause, as amended, put and passed.

Clauses 136 and 137 put and passed.

Clause 138: Approval of Commission -

Mr J.P.D. EDWARDS: Some new wording has been included in this clause. Subclause (2) contains the words "have due regard". Will the Minister make some comment on those words? Will the minister comment also on the words "of a minor nature" referred to in subclause (3)(c). In relation to paragraph (f), given the previous

document, and albeit the minister's comments about local government, local government is very much part of planning as I know the minister well understands. Under paragraph (f) "the approval is given in circumstances set out in the regulations". However, I suggest the following small amendment: "approval is given with the concurrence of local government in circumstances set out in the regulations". I would be interested in hearing the minister's comments on that.

Ms A.J. MacTIERNAN: Is the member aware and does he understand the history of this clause and the mischief we are trying to address here?

Mr J.P.D. EDWARDS: Perhaps the minister can explain it to me.

Ms A.J. MacTIERNAN: A very controversial amendment was made by a former planning minister, Richard Lewis - the notorious section 20(5), which absolutely got up the nostrils of local government and it states -

> In giving approval under subsection (1)(a) the discretion of the Commission is not fettered by the provisions of a Town Planning Scheme except to the extent necessary for compliance with environmental condition relevant to land under consideration.

So this was considered by local government, quite rightly, to be a travesty because it basically said that really the commission does not have to have any regard to town planning schemes. We made a commitment early in the period of our government that we would amend that, and although I think it would be true to say the commission did not tend to act with complete disregard, it did not give proper status to town planning schemes and consequently we have agreed to change it. Rather than saying it is unfettered we have said it is to have due regard to the provision of any local planning scheme and, indeed, we have gone further to say it is not to give approval that conflicts with that, and then we just set out the sorts of circumstances in which it can depart, because there were some situations in which a town planning scheme was very antiquated, in which the town planning scheme was in conflict with statements of planning policy etc, and there were certain circumstances in which there would be justification. However, we did not want this to be carte blanche as it is under the existing legislation.

I urge the member to do what we have been trying to do and that is bring all stakeholders together. We could have a completely different set of provisions if we just got in the corner with one side - if we just got in and gave local government what it wanted, or we got into another corner and gave industry what it wanted! We have been trying to steer a course between all of the stakeholders. Therefore, of course local government will always want us to give it more and the development industry will constantly want us to give less. However, we are clawing back some of the concessions to industry that were made by former planning ministers and we actually think we have the balance pretty much right on this one.

Mr J.P.D. EDWARDS: Will the minister explain to me the reason for the term "the conflict is of a minor nature" referred to in subclause 3(c)?

Ms A.J. MacTIERNAN: Say, for example, there was a very minor overlapping, which involves the allowing of a sort of residential development that just steps slightly outside the zone in a town planning scheme.

Mr J.P.D. EDWARDS: Similar to what you were telling me earlier on.

Ms A.J. MacTIERNAN: Yes. At the end of the day these all become matters of judgment but we are giving a very clear message here to the commission that we do not consider it acceptable for local planning schemes that really have no status. Section 20(5) as it now stands is pretty extraordinary language. We have sat down with all of the parties, with the environmental groups, their local council and industry and worked through a proposal that represents a proper balance of those competing interests.

Clause put and passed.

Clauses 139 to 141 put and passed.

Clause 142: Objections and recommendations -

Mrs C.L. EDWARDES: Clause 142(3) states in part -

> . . . the Commission may determine that it is taken to have no objection or recommendations to make or advice to give.

If the local government does forward such a memorandum etc, which is supported, what is the time frame? Subclause (2) refers to "within 42 days of the receipt of the plan or copy or within such longer period as the Commission allows" the local government to forward to the commission. What is anticipated in subclause (3)?

Ms A.J. MacTIERNAN: It is 42 days unless the Commission says the person can have longer; therefore, within 42 days of receipt or within such longer period as the commission allows. So if the council contacts the

Commission and says "We've got some problems with this but we do need more time to get our submission coherent" and the commission says, "Yes, that's okay, you can have another 30 days" it is 42 days.

Mrs C.L. EDWARDES: If they only have 42 days and they have not asked for an extension of time, what is the normal procedure? Is it automatic on day 43?

Ms A.J. MacTIERNAN: They are not taken to have any objections and the commission goes ahead and determines it. As a matter of practice I would imagine that if they have not gotten around to dealing with this and if, in the interim, something comes in, the commission is unlikely to take a hard line on that, but in terms of providing a minimum, it is always open to the Commission to consider a late objection if it so wishes and I think as a practical matter it often will. However, there will be occasions when there is a very tight time line and a definite minimum is needed and there needs to be some certainty. It is important, therefore, that the application is lodged within that 42 days or an extension will have to be sought. It does not mean to say that at the end of the day it will not consider something else, but it cannot guarantee it.

Mrs C.L. EDWARDES: That is a change, is it not?

Ms A.J. MacTIERNAN: The position was ambiguous under the previous legislation, and we have just spelt that out clearly.

Clause put and passed.

Clauses 143 and 144 put and passed.

Clause 145: Endorsement of approval upon diagram or plan of survey of subdivision -

Mr J.P.D. EDWARDS: Subclause (4) on page states in part -

> The Commission is to try to deal with the request under subsection (1)(b) within the period of 30 days . . .

Is that giving some latitude to the commission?

Ms A.J. MacTIERNAN: It is picking up the same language that we have got. It is a bit different from the other situation, in which there is no comment. This is not something that people can just deal with by not doing anything. If someone does not do something within 42 days under that previous clause, then the caravan moves on. The caravan cannot move on here, because the commission has to do it; there will not be a process or a decision until the commission has done it. Therefore, we cannot put in a provision that says the commission will do it within a particular time. In our view, we have finite resources. We need to try to make those go around. This sends a clear message to the commission about the timeframes in which it is expected to deal with these things.

Clause put and passed.

Clause 146: No certificate of title for subdivided land without endorsement of Commission approval -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

> Page 102, lines 26 and 27 - To delete "submitted to the Commission under section 145".
>
> Page 102, line 31 - To delete "Act" and substitute "section".
>
> Page 102, line 34 - To delete "Act" and substitute "section".
>
> Page 103, line 3 - To delete "Act" and substitute "section".

These amendments are made necessary by the earlier amendment that has been agreed to, which will allow different parts of the legislation to be proclaimed on different days. These amendments will give effect to that change.

Amendments put and passed.

The DEPUTY SPEAKER: The question now is that clause 146, as amended, be agreed to.

Mr J.P.D. EDWARDS: I understand that there is a timeframe of five years.

Ms A.J. MacTIERNAN: Yes, in subclause 1(a), in the case of a diagram.

Mr J.P.D. EDWARDS: We have not amended anything there, have we?

Ms A.J. MacTIERNAN: I think the idea is that this -

Mr J.P.D. EDWARDS: I am sorry, minister. It is more to do with the 24 months in paragraph (b). It was originally 12 months, was it not, and it has now been extended to 24 months?

Ms A.J. MacTIERNAN: I will ask Paul to address that directly.

Mr J.P.D. EDWARDS: I think there are some concerns about the time frame being extended.

Mr HAYES: The period relates to the period between when the commission endorses a diagram or plan of survey and the subdivider applies for titles. In the Bill as tabled on 30 June 2004 the period was 12 months, with the possibility of extending that by a further period of 12 months. That related to concerns expressed by the Institute of Surveyors about the length of the time. Therefore, upon reflection, and in consultation with the Commissioner of Titles, the period has been extended to 24 months.

Mr J.P.D. EDWARDS: That period has never been less than 12 months, though?

Mr HAYES: This is actually a new provision. Presently there is no period between the endorsement by the commission of a diagram or plan of survey and when a subdivider must apply for titles.

Ms A.J. MacTIERNAN: This is designed to ensure that things do not just hang around for years so that even though the commission may have changed its policy there are still old approvals that have never been translated into action. It is about ensuring that people have a certain and reasonable timeframe in which to take advantage of a decision. If they do not do it within that timeframe, then the decision will lapse. They cannot just keep it hanging there like the sword of Damocles for years.

Mr J.P.D. EDWARDS: I thank the minister. That is fine.

Clause, as amended, put and passed.

Clauses 147 and 148 put and passed.

Clause 149: Conditions on rural land (tied lots) -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

> Page 106, lines 2 and 3 - To delete ", in accordance with the regulations".
>
> Page 106, lines 4 to 6 - To delete "has first been approved in writing by the Commission or is taken to have been so approved under the regulations" and substitute "is endorsed with the approval of the Commission".
>
> Page 106, after line 19 - To insert -
>
> > (9) Subsection (7) does not apply to a transaction approved by the Commission.
>
> Page 106, lines 30 to 32 - To delete "and circumstances in which the Commission will be taken to have given its approval under subsection (6)" and substitute "of a tied lot or a principal lot".

These amendments are made because it was originally conceived that the regulations would provide for the circumstances in which the commission was taken to have approved a transfer of a conveyance lease or the mortgage of a tied lot or principal lot. After discussion with parliamentary counsel and the Commissioner for Titles, it was considered that the administration of the commission's approval to a transfer, etc, should be dealt with through the power of the commission to delegate its functions. The amendments are just taking what was to have appeared effectively in the regulations and are putting that power into the Act itself.

Amendments put and passed.

Mr J.P.D. EDWARDS: Rather than go into a lot of detail, I will couch my question in these terms. Can the minister give me some general comments about the benefits, and perhaps also some of the consequences, of this clause?

Ms A.J. MacTIERNAN: This introduces the notion of rural tied lots, which comes out of the agriculture and rural land use policy. The concern is to ensure that land is made available for agricultural use. One of the things that became apparent to us is that a lot of applications for subdivision were coming up. People were claiming that they wanted to subdivide their lot to allow their neighbour, or another farmer in the area who wanted to get bigger, to utilise that land. They were saying that they did not need that particular block and they wanted to give it to their neighbour to help make him more viable, or to ensure the consolidating of farming activity. We understand those ideas. However, we were in the position that we were reluctant to approve those applications, because as soon as we create a lot, there is then an automatic entitlement to put a house on it, and that then makes that lot capable of being sold separately. The argument about wanting to carve off a lot and sell it to a neighbour was really being used as an opportunity to subdivide, thereby fragmenting agricultural land and undermining the viability of broad acreage, which is what we had the argument about yesterday. Therefore, we came up the idea of a tied lot. A person may own a property with a house on it and decide that because he does not need his back paddock he will carve it off and sell it to either his immediate neighbour or someone who lives

half a kilometre down the road; it does not need to be his immediate neighbour. He will still be able to do that, but by making it a tied lot, it will be tied to the other land that is held by the person who accepts the transfer of that land and it will not bring with it an entitlement to build a house on that block. It will mean that if farmers want to trade bits of their block between themselves in order to have that flexibility in the management of their business, they can do so without our saying that they cannot do that because that amounts to a subdivision and a fragmentation of their holding. It is taking the farming community at face value and saying that we recognise that from time to time they will want to reconfigure their lots of land. The current law does not really provide sufficient flexibility to enable farmers to do that, because if they subdivide they are automatically entitled to build a house on that land, and they are then automatically entitled to sell that off as an individual lot, which will lead to the fragmentation that we are concerned about. This is the fundamental principle of saying that we will give them the flexibility to carve a lot off, but it must be sold to someone else with an agricultural holding, and then, even though it is not joined to it, it will effectively become part of it.

Sitting suspended from 3.30 to 3.37 pm

Mr J.P.D. EDWARDS: I thank the minister for everything she said and put forward. I refer to tied lots. If, for example, a farmer had a house and a set of buildings that he was not using and wanted to get rid of, so to speak, and replace them with a paddock, how would that feature within this particular clause?

Ms A.J. MacTIERNAN: This just offers another option.

Mr J.P.D. EDWARDS: Yes, I know. I am asking whether that would be -

Ms A.J. MacTIERNAN: It would depend.

Mr J.P.D. EDWARDS: I understood the minister to say that a farmer cannot hive off a paddock and build a house on it. Is that right?

Ms A.J. MacTIERNAN: There would be areas, for example, for which we have said that the minimum lot size is 40 hectares, so we would not allow a subdivision smaller than 40 hectares. Someone might want to sell 10 hectares to farmer Joe down the road, who already has 40 hectares and has a very vibrant enterprise. Normally, people would not be allowed to fragment properties in that way. However, this clause provides that if someone could show that the other lot was to be transferred to an existing agricultural enterprise, that person with the capacity to get a subdivision that he otherwise might not be able to get.

Mr P.D. OMODEI: Is it then tied to the parent lot and conditions on road access could be applied?

Ms A.J. MacTIERNAN: That is right. There will be conditions on that. This is the introduction of a new concept. It will provide an additional avenue so that instead of the Government knocking back subdivision applications because they amount to fragmentation, someone who genuinely wants to do that can do it.

Mr J.P.D. EDWARDS: Okay. I refer to broadacre agricultural lots. I move away from the minister's example of 40 hectares to talk about 5 000 acres; I am going back to my original question. If there is a farm that is no longer of use to the farmer, could the house and buildings and so much acreage around it be sold?

Ms A.J. MacTIERNAN: It is a question not of whether it can be sold, but of whether it can be subdivided.

Mr J.P.D. EDWARDS: Can it be subdivided?

Ms A.J. MacTIERNAN: It may well be that this would be the mechanism by which a person could do it, but he would have to make the remainder of that farm the tied agricultural lot. It is not about creating; it is about stopping fragmentation.

Mr J.P.D. EDWARDS: I understand the principle behind it. I also understand that if a farmer and agricultural owner wants to make use of an asset that is no longer useful to him -

Ms A.J. MacTIERNAN: He could attempt to do it under existing law.

Mr J.P.D. EDWARDS: Yes, through a subdivision.

Ms A.J. MacTIERNAN: This is subdivision. This is a different type of subdivision.

Mr J.P.D. EDWARDS: It is a more flexible subdivision.

Ms A.J. MacTIERNAN: There will be times when a subdivision application is knocked back. If it was just a straight subdivision, a person would not have a chance of getting the subdivision approved. Under this clause he might now have a chance of achieving a subdivision. That is because of this new mechanism that can provide assurance to the commission that the subdivision will not lead to the fragmentation of landholdings.

Mr J.P.D. EDWARDS: In that case, if a farming family wished to put a further dwelling on the property for a son or daughter, or whatever the case may be, would that not be a problem?

Ms A.J. MacTIERNAN: They could not do it as a tied agricultural lot.

Mr J.P.D. EDWARDS: Okay. Are they allowed two houses on one property?

Ms A.J. MacTIERNAN: Yes, but not on the tied agricultural lot. This will not change what people are entitled to do on their parent lot.

Mr J.P.D. EDWARDS: I am just trying to see how flexible this is in a case such as that in which a family wants to perhaps build a couple of other houses.

Ms A.J. MacTIERNAN: If a family already has a farm and wants to build a couple of other houses, there will be policies to govern that. This will not change those policies. This says only that if a person has a tied agricultural lot in addition to his parent lot, he cannot build a property on the tied agricultural lot. That is because of what would occur as soon as we allowed that to happen. Every second subdivision application that came to me on appeal - this relates to this whole thing about having two houses on an agricultural property - was based on the premise that because there were already two houses on the property, subdivision will not make any difference. The other applications were on the premise that the owner did not want to subdivide; he just wanted a second house. It would be a two-step process. The person would appeal the application and get a second house on the basis that it was for granny, the crippled kiddie or whatever. Having got that, the person would come back two years later and say that he wanted a subdivision, and that it would not make any difference because there were two houses on the property already. That is how planning has been done by stealth and what has led to fragmentation.

Mr P.D. OMODEI: Does this have any relationship to the cluster village-type concept?

Ms A.J. MacTIERNAN: No, that is a different concept.

Mr P.D. OMODEI: Does it not relate to strata title and tied lots?

Ms A.J. MacTIERNAN: No, this is a tied lot. The member is talking about a different arrangement whereby a cluster of residential buildings have lots between them. The member might remember that from grade 7 geography, when students looked at what the serfs had in England. It is similar to that sort of arrangement in which each has little lots. The residences are in a cluster and there are shares in the broader agricultural land. This is not related to that.

Mr P.D. OMODEI: It seems that the minister is limiting the tied lot to 40 hectares. Is there a limitation on the size of the tied lot? I ask that for a reason. I can understand that this will assist farmers for farm build-up. It could enable them to get a paddock for their heifers or could simply be a means of adding to their agricultural enterprise. Why would the Government not give them green title for that lot and allow them to build on it?

Ms A.J. MacTIERNAN: I have explained that - seriously - and I will not go through it again. Giving green title would mean fragmentation would occur. Effectively, fragmentation would occur and the lot would then become capable of being sold as a stand-alone unit or a house could be built on it. Our capacity to ensure that we maintain a critical mass for viable agricultural activity would be lost. There would be no point in doing it. This is a new provision. It is additional; it is not taking away anything that people already have. It is creating a new opportunity. The farm policy that was put out was embraced by the Western Australian Farmers Federation and the Pastoralists and Graziers Association. I do not know how the figure of 40 hectares popped into my head; it must have been something from a discussion we had yesterday.

Mr P.D. OMODEI: The minister has finally seen the light. WAFF and the PGA represent fewer than 50 per cent of farmers in Western Australia. There is a vast number of them out there. I know what the minister is trying to do, but if the lot that is to be subdivided is no larger than the predominant lot size, why would it not be allowed?

Ms A.J. MacTIERNAN: I will not explain it again. Seriously, I have explained it three times.

Mr P.D. OMODEI: Okay, all right. I give up. The minister just needs some practical application.

Ms A.J. MacTIERNAN: It is practical, but the member is not understanding -

Mr P.D. OMODEI: No, I am just a farmer. I have been a farmer only all my life. I do understand.

Ms A.J. MacTIERNAN: The member is not understanding that this is not taking away any rights that farmers already have.

Mr P.D. OMODEI: The minister should get out of her townhouse and look at how the real people live.

Ms A.J. MacTIERNAN: I frequently go to places like Bruce Rock and Wongan Hills, and we get a very good reception. I am in the country very often, except that we do not think that the country finishes south of Perth; we

also recognise the north of this State, which is something that the member for Warren-Blackwood totally forgot during the years he was in government. I will say it one more time: the sort of subdivision activity that the member is proposing is not being changed by this. This clause allows a new possibility. It provides the opportunity for subdivision in situations in which farmers might otherwise not be entitled to subdivide. Any rural member who would vote against this must be a complete lunatic.

Mr P.D. OMODEI: This has absolutely nothing to do with this issue, nor does the minister's comment about whether the Opposition went to the north. As a matter of fact, the shadow Cabinet was in the Kimberley only last week. We were in Geraldton only yesterday or the day before. If the minister wants to have her smart remarks recorded in *Hansard*, I will respond to them every time.

Ms A.J. MacTIERNAN: Normally the Opposition goes to Broome during the Shinju Matsuri Festival.

Mr P.D. OMODEI: I do not go to Broome.

The DEPUTY SPEAKER: All right, members; let us go back to the Bill.

Mr J.P.D. EDWARDS: I think that flexibility sounds like a good direction. I notice that subclause (6) basically deals with the approval requirements. Nothing else needs to be done within subclause (6). That basically sets out all the approvals that are necessary when applying for a tied lot. I guess I am asking the minister whether there are any additional approvals.

Ms A.J. MacTIERNAN: There are no additional approvals for a transfer, conveyance, lease or mortgage.

Clause, as amended, put and passed.

Clause 150: Conditions on road access -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

Page 107, line 16 - To insert after "subdivision" -

or a plan lodged for registration under the *Strata Titles Act 1985*

Page 108, lines 1 to 7 - To delete the lines and substitute -

(4) It is sufficient description for the purposes of subsection (3)(b) if reference is made on the plan or diagram to this section and regulations made for the purposes of this section.

The amendments confirm that the provision applies to diagrams, plans and surveys of the subdivision, and to plans lodged for registration under the Strata Titles Act. It ensures that registration is recorded by a notation on a plan. A notation on a plan marks the statutory covenant restricting access.

Amendments put and passed.

Mr P.D. OMODEI: Can the minister give us an example of some of those restrictive covenants? Do they relate to right of access or conditions of subdivision? Is it a condition of subdivision in relation to road access, or is it a condition in relation to the covenant?

Ms A.J. MacTIERNAN: Subclause (1) confirms that the commission may impose a condition that access from a portion of land to a road be restricted or prohibited as set out in the condition and in accordance with the regulations. Therefore, it might be the access points onto that road. That happens very often when neighbours complain about a subdivision or the creation of a lot. Therefore, the place where the entry point or exit point will be is specified.

Mr P.D. OMODEI: Will it be onto the main road?

Ms A.J. MacTIERNAN: Onto the road, so that the lot being created has a restriction put on it about where it can access that road, and often it is to protect pedestrian accessways.

Mr P.D. OMODEI: If, for example, there was a straight piece of public road with a number of lots abutting it, a caveat or covenant would be placed on the title of each of those blocks so that they would be required to enter the public road at the one place.

Ms A.J. MacTIERNAN: Only if there was a planning benefit in doing it. From time to time, in permitting a subdivision, the commission will want to control the way in which a lot is accessed by road, because quite often concerns are raised about safety etc. This enables the commission to allow the person to have his subdivision or lot created but provide for the way in which he will be able to access that road.

Mr P.D. OMODEI: Will the condition of road standards or anything like that be set out in the statement of planning policy?

Ms A.J. MacTIERNAN: No - that is for operational policies rather than the dreaded statement of planning policy.

Clause, as amended, put and passed.

Clause 151 put and passed.

Clause 152: Certain land to vest in the Crown -

Ms A.J. MacTIERNAN: I move -

Page 108, line 23 - To insert after "subdivision" -

or a plan under the *Strata Titles Act 1985*

This amendment is to confirm that this also applies to plans under the Strata Titles Act.

Mr P.D. OMODEI: When it refers to certain land to be vested -

Ms A.J. MacTIERNAN: We are dealing with the amendment now.

Amendment put and passed.

Mr P.D. OMODEI: Is this a carryover from the other legislation? Is it absolutely necessary to vest those areas in the Crown?

Ms A.J. MacTIERNAN: It reflects section 20A of the Town Planning and Development Act. As part of a condition of subdivision, the commission will often provide that certain land has to be surrendered for various purposes, be it environmental protection, waterways, pedestrian access etc. This simply provides a mechanism whereby that land becomes vested in the Crown.

Mr P.D. OMODEI: Is it reflected in the other legislation?

Ms A.J. MacTIERNAN: Yes, in section 20A.

Clause, as amended, put and passed.

The DEPUTY SPEAKER: We are fast approaching 4.00 pm, when we have to suspend, and it is timely to point out that we are due to come back at 7.00 pm. There was an indication that we might finish the Bills tonight. I throw it open to the committee to determine how it wants to manage its time.

Mr J.P.D. EDWARDS: I am aware the minister suggested that we may sit between from 6.00 and 7.00 pm, but I am taking part in a private members' debate today, so that will not be possible.

The DEPUTY SPEAKER: Well, there is the option of tomorrow as we have booked that time.

Ms A.J. MacTIERNAN: I was quite prepared to not sit later tonight if we sat between 6.00 and 7.00 pm. However, the rate of progress is slow; we are only halfway through. I think that without that extra hour it would be too risky.

Mr P.D. OMODEI: Why is it so imperative that this legislation be passed?

Ms A.J. MacTIERNAN: I am sorry; we had an agreement on this. We have put this off again and again because the Opposition was not ready each time it was due to be called on. This legislation was introduced into Parliament in June. We twice had to defer the second reading debate because the members of the Opposition were not ready. The agreement, after all the negotiations, was that this legislation would pass through the Assembly this week. That is the agreement that was made. As I said, we have spent a lot of time arguing things that are not related to the Bill.

Clause 153: When owner may pay money in lieu of land being set aside for open space -

Mr J.P.D. EDWARDS: This clause is about payment in lieu of land being set aside for open space. Obviously there has been a change in this in relation to an option for an owner to commit land in lieu of. I understand now it will be a matter of paying a cash amount to local government. Am I correct in saying that?

Ms A.J. MacTIERNAN: The member will notice that it is with the agreement of local government and the owner of the land. Quite often with small subdivisions tiny pockets of public open space were being surrendered. Because of the 10 per cent requirement, we were left with slivers that basically were unusable. Instead of that impractical outcome, this provision will allow that to be cashed out in lieu of land being set aside.

Mr J.P.D. EDWARDS: I take the point the minister is making about small pockets or slivers, but is there some protection that it will not be a piece of land of two acres or one acre or whatever it may be? What is the criterion for a sliver of land or a pocket of land?

Ms A.J. MacTIERNAN: It does not say that.

Mr J.P.D. EDWARDS: It could actually broaden the whole issue, could it not? It could be a much larger piece of land.

Ms A.J. MacTIERNAN: No, it could not. I am sorry, I do not understand.

Mr J.P.D. EDWARDS: I am sorry, I am just using the minister's words.

Ms A.J. MacTIERNAN: The commission generally requires 10 per cent to be ceded for public open space. In the case of subdivisions of five lots or less, that area is generally too small. At the moment, the cash in lieu contribution is at the election of the landowners. What often happens is that no contribution is made. Therefore, small subdividers are not making a contribution. Some of the large subdividers are getting cross with this, because they have to put in their 10 per cent. In a subdivision that involves the house block that is being divided into three, the public open space provision does not apply. If more than two lots are being created and if the 10 per cent to be ceded would not result in a usable piece of land, the local government and the commission can agree that a cash in lieu payment be made to the value of the portion. People cannot just make any figure up; it has to be the value of the land.

Mr J.P.D. EDWARDS: Is the minister saying that it must be cash in lieu?

Ms A.J. MacTIERNAN: No, the commission makes the decision, if the commission has approved a plan.

Mr J.P.D. EDWARDS: Yes, I understand that. It will be in lieu of setting aside a portion to pay to the local government, so it will be actually cash?

Ms A.J. MacTIERNAN: Yes.

Clause put and passed.

Sitting suspended from 4.06 to 7.09 pm

Clause 154: How money received in lieu of open space is to be dealt with -

Mr J.P.D. EDWARDS: I ask the minister about a matter that probably should have been raised during consideration of clause 153. However, I think this clause gives me an opportunity to raise the matter, as we are basically speaking about the same thing - that is, money received in lieu of open space. In relation to the money and the land, presumably there are safeguards in the Bill against taking too much land without proper compensation.

Ms A.J. MacTIERNAN: Yes.

Mr J.P.D. EDWARDS: I am sorry, minister, I have not gone into great detail.

Ms A.J. MacTIERNAN: That is what we discussed in consideration of clause 153. As I explained, the general policy is 10 per cent, and that applies to subdivisions of three or more lots. Generally the subdivision size to which this clause tends to apply will be three to 10 lots, as in smaller lots 10 per cent would not acquire a particularly useable area. This clause focuses on how we deal with the money received. As the member will see, it is similar to the arrangement already in place when a local government receives money: the money is placed in a trust account and approval must be sought to ensure that it is spent on something relevant.

Mrs C.L. EDWARDES: One concern about leaving it to local governments to decide how much cash they take in lieu of public open space is that the cash will not go back to parks, recreation grounds and open space generally. In the areas where infill planning is occurring, such as some parts of Scarborough that I have seen, there would then be a major issue in that parks and areas of land have already been set aside, such as schools that have a considerable number of trees. The CSIRO site at North Beach is another site that is well endowed with trees and, therefore, birds and other flora. A very good environmental assessment has been done of that site. Those are two examples I can think of off the top of my head. When an area of land is removed, it is not just a case of infilling a backyard; it is the removal of an area in which there is considerable open space already and the local government is getting back only 10 per cent. It comes to my mind that we should insist on 10 per cent and if the owner does not want to set aside 10 per cent, he or she should pay for wherever else the open space does go.

Ms A.J. MacTIERNAN: We had that debate during consideration of clause 153. I do not know whether the member for Kingsley was present when we debated that clause, but this is about where the money goes.

Mrs C.L. EDWARDES: Yes, where it goes to.

Ms A.J. MacTIERNAN: That is right, not about whether we will do it; that has already been agreed. We are considering clause 154, which refers to how the money is spent. The money cannot just go into general revenue, as the clause quite clearly points out, and this is not different from what happens currently. The money must go into a trust account and it can be applied only to purposes that are specified in the clause.

Mrs C.L. EDWARDES: If the minister is talking about a particular area or suburb, such as Scarborough, which comes within the city of Stirling, does that money have to go under subclause (2)(a) to Scarborough, or can it go anywhere in the whole of the city of Stirling?

Ms A.J. MacTIERNAN: No, it must go within the locality.

Mrs C.L. EDWARDES: How does the locality apply?

Ms A.J. MacTIERNAN: Currently these applications come to me for approval and generally what we look at is, given the size of the particular space that is applied for, whether it is likely that it would be of use to the area where the money has been accumulated. Generally speaking, it is broadly considered within the neighbourhood. I have said previously that the tension in planning law is always between certainty and flexibility and we must be careful not to over-confine these provisions. Quite frankly, the elected local government is able to collect money in this way and is required to spend it on recreational spaces. This gives good guidance on the sorts of things the local government can spend it on. We are not going to define it, and I do not think anybody could properly define it any more closely than the locality. It is a general sense of what would be reasonably useful to that area.

Mrs C.L. EDWARDES: Again, it may not increase the amount of public open space. Under subclause (2)(c), the money can be used for the improvement of parks and recreation grounds.

Ms A.J. MacTIERNAN: That makes a lot of sense. For example, the 10 per cent of public open space might be provided in one, large subdivision. Some degraded old agricultural land might be surrendered as part of the 10 per cent of open space. Funds acquired can then be used to upgrade that land and make it a quality space. At the end of the day, a lot more recreational benefit is obtained from upgraded areas. I have seen that demonstrated very clearly. Parks that were previously basic large unattended paddocks have been transformed and are now actively used because of that intervention and the expenditure of money. It is about not just quantity but also quality.

Mrs C.L. EDWARDES: With the Network city projects -

Ms A.J. MacTIERNAN: Unlike previous policies, that does not involve just putting up houses in backyards. In fact, that was what was proposed under Mr Kierath's revision of the R codes. We said that we would not do that.

Mrs C.L. EDWARDES: Whatever is being done by way of infilling, whether it is the infilling of verges on the edges of parks or wherever that will be done - there has to be some infilling, including of backyards - the number of people in the inner city area or any particular location will increase. To just upgrade a local park will diminish the level of public open space. Although this may be a policy that is just being repeated and is one that the Government is very comfortable with, I am becoming increasingly concerned that serious attention is not being given to the fact that the 10 per cent of public open space should not be diminished. We will find that when there is an extra 20 000 people in a particular area, the amount of public open space that has been provided will be seriously diminished. It is a big public policy issue that all Governments will have to face in the future in areas in which communities infill, if we do not stick to the 10 per cent allocation. I am happy for money to be paid and for it to go into new parks, but I am not happy for it to be used to just maintain and/or upgrade existing parks. Quality is important. I would love a couple of the parks in my area to be better utilised. At present some areas may be regarded as paddocks, but those paddocks have trees, animal and bird life and beautiful flora. As such, they are still areas to which young families can go to throw a ball. Even if they get prickles in their balls and the balls go flat, they are still able to kick their ball and enjoy themselves. I do not have a problem with upgrading those areas, but I do have a problem with diminishing the 10 per cent of public open space.

Ms A.J. MacTIERNAN: Some areas have different requirements. Some areas are blessed with very large swathes of public open space because of where they are in relation to a regional open space. At the end of the day it is up to councils to exercise some judgment. I want to correct something the member said, because we have again heard an inaccurate remark. A suggestion was made that is simply not true. The suggestion was that local governments could use this money to maintain local parks. That is not the case. The subclause talks about upgrading and developing those spaces. It will be up to democratically elected local governments to decide whether it is in the best interests of their communities to use the money to purchase other space or whether they assess that they have lots of space - that can happen - and that it would be better to use that money to provide a

quality upgrade. I have seen many instances of previously unutilised land being turned into quality recreational space through the investment of funds in lieu. It is about not just volume but also quality.

I also want to correct a myth that I notice has come into some of the member's analysis of such things as Network city. Over a period of 30 or 40 years there has been a decline in the population of inner city suburbs. That has started to be reversed only in the past five to 10 years. Densities have been going down. If we are to get back to historic densities, we need to look at reconfiguring. We have to accept that family sizes and formations have changed. The number of single parent households has changed. The average number of children in a home has changed. I live in a house that is 100 years old. The people who used to live there probably had about 10 kids. What is considered appropriate for communities does change. We cannot say that this is how something was 100 years ago and that we must keep it like that now and forever. We have had massive social change. What we are trying to do in some respects is to bring back some of those densities to what they were before.

Mrs C.L. EDWARDES: Can I continue, Mr Acting Speaker?

The ACTING SPEAKER (Mr A.D. McRae): The member can, but I will draw her attention to something. This is the first time I have sat as the Chair of this committee. I understand from reports from other members who have participated in the committee that some substantial debate has occurred around some of the underlying assumptions and principles of this Bill. We are dealing with clause 154. We are not dealing with the allocation of 10 per cent of land as public open space as part of a broad policy provision. I want us to focus on the task before us. I ask the member to direct her comments to that.

Mrs C.L. EDWARDES: Mr Acting Speaker, I refer to subclause (2)(c). I am speaking about the allocation of funds and in particular where those funds can be spent. I am directly on the point.

The ACTING SPEAKER: I understand that, but you are raising questions about the 10 per cent of public open space, which I do not think is material.

Mrs C.L. EDWARDES: If 10 per cent of public open space is not provided, money is provided. With respect, I think I am on the point. By all means, pull me up if I stray.

The issue is this: when the minister considers these approvals and where the money is to be applied, she must seriously look at densities. The minister has stated that we are getting back to previous density levels. Units and apartments are now homes and have smaller backyards. Although a property might have previously comprised a mum, dad and 10 kids, the minister is changing the social environment; indeed, the community is changing the social environment in any event. Therefore, as homes have smaller backyards, the need for public open space will become even greater. I implore and encourage the minister to not just accept quality, because it can be improved any time in the future. I love local councils dearly; councillors put a lot of personal time and commitment into the job. However, the bottom line will always be the dollar. If they could use some of the money from the trust fund that is referred to in clause 153(1) for the upgrading of parks rather than spending other money, I am sure they would take that opportunity with some glee. That will start to diminish the amount of public open space that is available. As I look at planning applications at the moment, I am becoming increasingly concerned that this will be a trend. If we do not take notice of this issue, I am sure that when we reflect on it in the next 10, 15 or 20 years, we will be sorry.

Ms A.J. MacTIERNAN: I hope that the member for Kingsley can share her wisdom with her colleagues so that when we defend the region schemes, which are designed to ensure those provisions for the future, we can expect at least one opposition member to show that constancy of view. Perhaps there will be two opposition members, because the member for Dawesville has courageously supported us.

Clause put and passed.

Clause 155: How value of portion is determined -

Mr J.P.D. EDWARDS: Clause 155(5) reads -

> If within 90 days, or such longer time as is agreed in writing by the local government, of the date on which the valuation is made the owner of the land has not -
>
> (a) paid the amount of the valuation; or
>
> (b) disputed the valuation under section 156,
>
> the local government may, by written notice to the owner of the land, determine that the valuation is no longer current and that a fresh valuation is required.

How often can that happen?

Ms A.J. MacTIERNAN: The member is asking how we bring this to finality and how we stop a developer.

Mr J.P.D. EDWARDS: Yes.

Ms A.J. MacTIERNAN: The incentive for developers is that they cannot do their subdivisions until they have paid. At face value that could present a problem. However, the in-built incentive is that there is no subdivision until it is paid.

Clause put and passed.

Clause 156 put and passed.

Clause 157: When approval of subdivision is deemed to be approval under planning scheme -

Mr J.P.D. EDWARDS: This is a new clause.

Ms A.J. MacTIERNAN: Not the whole thing; subclause (2) is new. Subclause (1) is a bit broader.

Mr J.P.D. EDWARDS: Will the minister broaden the outline of this clause?

Ms A.J. MacTIERNAN: It is my understanding that when a subdivision was approved it was a grey area. A classic case is Gnarabup. A subdivision would be approved and certain works would be approved. For example, roads and little retaining walls. Then there would be a dispute about the scope of works that a subdivision approval provides. This clause refers to works that are necessary to carry out the subdivision shown on the plan of subdivisions. For example, it may show that a retaining wall is required, so a retaining wall is put in.

Mr J.P.D. EDWARDS: And entry statements and those sorts of things?

Ms A.J. MacTIERNAN: That is right. To ensure that local government is properly looked after in this regard, when approving subdivisions the commissioner may determine that approval is not to be undertaken under subclause (1) to be approved. Although that is the general rule, as I understand it, nevertheless in certain circumstances they have the power to ensure that certain of the subdivisional works will need to get approval under the relevant town planning scheme. If the commission says nothing more, then all the works that are necessary to give effect to the subdivision plan are deemed to be approved automatically under the town planning scheme. However, the commission can decide that although some or all of the works on a plan - an entry statement may be one - may have subdivisional approval, necessarily they will require development approval under the local scheme.

Mr J.P.D. EDWARDS: What about a water feature?

Ms A.J. MacTIERNAN: It could be such a thing.

Mr J.P.D. EDWARDS: Would that mean they would need a separate development in that regard?

Ms A.J. MacTIERNAN: That is right. The commission will look at the degree to which there is discretion. There are not too many variations on how a road or a retaining wall could be built. It would also depend to some extent on the sensitivity of the environment, and the amount of detail wanted.

Mr J.P.D. EDWARDS: I take it that subclause (2) encapsulates my question about the separate development approval.

Ms A.J. MacTIERNAN: Yes. That is right.

Mr J.P.D. EDWARDS: Does that include the flexibility as well?

Ms A.J. MacTIERNAN: That is right. As a general principle, the subdivision approval gives that flexibility, but it is also recognised that as a result of the range of things that constitute a subdivision and the increasing sophistication of subdivisions, as well as the water features and entry statements, one may want to give the local authority that extra control.

Clause put and passed.

Clause 158 put and passed.

Clause 159: Subdivider may recover portion of road costs from subsequent subdivider -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

Page 115, line 13 - To insert after “road” -

to which there is access from the subdivided land

Page 116, line 8 - To insert after “road” -

created under Part IVA of the *Transfer of Land Act 1893* or

These provisions are designed to make it appear that the definition of a road also includes a road that is private at the time of subdivision.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 160 and 161 put and passed.

Clause 162: Development requires approval -

Ms A.J. MacTIERNAN: I move -

Page 117, after line 18 - To insert -

(2) Nothing in this section limits or otherwise affects a right or entitlement under any other written law.

This amendment has arisen from a concern expressed by the Minister for Industry Resources that there might be some unintended consequence of this provision on rights and entitlements of persons under a state agreement Act. The argument was that this may have the effect of making a scheme provision tantamount to full legislation, as opposed to subsidiary legislation. We are not sure that that argument has merit. However, in the spirit of wonderful cooperation and a desire to protect the interests of the important mining sector and the integrity of state agreements, we have devised this provision.

Amendment put and passed.

Mr J.P.D. EDWARDS: Clause 162 is a new provision. In terms of its force under a planning scheme, to use the minister's example of Network city, what effect will this provision have in relation to that development?

Ms A.J. MacTIERNAN: I do not quite understand what the member is saying.

Mr J.P.D. EDWARDS: I refer to land use change and such things.

Ms A.J. MacTIERNAN: We currently talk about development control powers in the region and local schemes and development orders. These are the fundamental guts of planning legislation. It seems, oddly enough, that these things never existed. Even though development approvals and development controls are the absolute guts of planning laws, and are embedded in the region schemes and town planning schemes, they have never been embedded in the Act itself, which is rather strange. Although it is a new provision, it does not change the system at all. It is basically a declaratory provision that recognises that developments require approvals. It is almost like a philosophical statement. In consolidated legislation, we should provide a complete picture of how planning works. If we leave out the essential guts of it, it would make it hard to understand. People often reflect that the Australian Constitution is difficult to understand because it makes no reference to the Prime Minister or any realities of power. It refers to structures that ignore the real guts of the exercise of power. I suppose our planning legislation did the same thing. This provision acknowledges that development requires approval, and that we have development approval. There is no new power.

Mr J.P.D. EDWARDS: I thank the minister.

Clause, as amended, put and passed.

Clause 163: Heritage places -

Mr J.P.D. EDWARDS: Could the minister expand on that clause a little for me regarding heritage places? I guess it is not a new matter. It sets out special provisions governing heritage places. What special provisions are involved?

Ms A.J. MacTIERNAN: This is the flip side of what is already in the Heritage Act. It attempts to provide a complete picture. In the Heritage Act there is a requirement that if a place is subject to a listing or contained in the register, one is required to do these things. We are picking up the same provision from the other point of view to say that it is required. It is replicating.

Mr J.P.D. EDWARDS: It is trying to run in parallel?

Ms A.J. MacTIERNAN: It is saying what is in the Heritage of Western Australia Act. If a person consults it, it will state the same. Given that it is a constraint on planning, we want to ensure that it works together with the planning Act.

Clause put and passed.

Clause 164: Development may be approved after commencement -

Ms A.J. MacTIERNAN: I move -

> Page 118, line 7 - To delete "development" and substitute "planning".

The amendment is to correct a transcription error.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 165: Record of conditions on title -

Mr J.P.D. EDWARDS: I would like the minister to informally cover the question of retrospectivity.

Ms A.J. MacTIERNAN: There is an issue here. I must admit that I had some hesitancy about this particular provision because I know from my time in local government that there are many people who have the view that God helps those who help themselves. They systematically flout planning laws and when they are caught out, they seek retrospective approval. I suppose they are proof that sometimes the meek do not inherit the earth. However, the balance of opinion is that there were cases in which a developer unintentionally does not apply for development approval. There have been some instances when mistakes have been made and properties have been demolished because there has been no opportunity to retrospectively approve them. I must say that I am not 100 per cent comfortable with this because, mostly, these things are not errors. At the end of the day, councils do not have to give retrospective approval. I would urge more of them to exercise more judgment and firmness instead of allowing themselves to be sucked in by every spinmeister who comes up with a supposed hard luck story.

The ACTING SPEAKER: I understand that that is a wrap up of the conditions within division 5, in particular clause 164. That then leaves us the question of clause 165.

Ms A.J. MacTIERNAN: I will just say quickly that this is the sort of thing in which we put in the mosquito provisions, for example.

Clause put and passed.

Clause 166 put and passed.

Clause 167: Easements -

Ms A.J. MacTIERNAN: Yet another set of tedious amendments.

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

> Page 119, line 28 to page 120, line 5 - To delete the lines.
>
> Page 120, lines 7 and 8 - To delete "to which this section applies" and substitute "or a plan lodged for registration under the *Strata Titles Act 1985*".

These amendments are similar to ones we dealt with earlier. We are making it absolutely clear that when we refer to plans we are referring to plans lodged for registration under the Strata Titles Act.

Amendments put and passed.

Mr J.P.D. EDWARDS: Just for my benefit, in terms of "any holder of a licence under a written law for the purpose of the supply of a utility service" are we talking about refuse removal or something else? Is the minister able to provide me with a definition?

Ms A.J. MacTIERNAN: These are easements that relate to water and power. National competition policy principles require that we do not entrench a monopoly in relation to those so we need to write these more broadly so they can refer to any corporatised entity that is supplying these services.

Mr J.P.D. EDWARDS: It is obviously water and power.

Ms A.J. MacTIERNAN: Instead of referring to Western Power, for example, and if there were a change of Government and the conservatives privatised it, it would not be Western Power Corporation. It would be another entity.

Mr J.P.D. EDWARDS: Given a change of Government, that is questionable. I do not think I can go past that comment. The minister wants to keep this debate going. If she wants to throw in something like that, she is

bound to get some sort of response, as the member for Warren-Blackwood said earlier. I have to respond to that. The minister is just passing an opinion.

Ms A.J. MacTIERNAN: It was purely an example.

Mr J.P.D. EDWARDS: I do not think it was a very good example. Clause 167(3) states -

> An easement in favour of a person or authority . . .

What persons are we talking about?

Ms A.J. MacTIERNAN: It could be private companies.

Mr J.P.D. EDWARDS: Mining?

Ms A.J. MacTIERNAN: Anything; possibly a company like Alinta. Alinta may acquire a licence under the Electricity Act to supply electricity and it could be regarded as a "person".

Mr J.P.D. EDWARDS: However, it is not a private person.

Ms A.J. MacTIERNAN: It is in relation to entities that provide public services, but they can be privatised entities. It is any person - that is, a person includes a corporation - who provides the utility services set out in the legislation under the definition of "utility services".

Mr J.P.D. EDWARDS: If I farmed some land and I needed to go across that easement, could I do that?

Ms A.J. MacTIERNAN: No, it must be someone who provides -

Mr J.P.D. EDWARDS: That is the reason I am asking the question. The subclause states "in favour of a person".

Ms A.J. MacTIERNAN: Yes, but a person who provides a utility service as defined.

Mr J.P.D. EDWARDS: Or as prescribed in respect of an easement. I do not think it is very clear, but I will accept the minister's explanation.

Ms A.J. MacTIERNAN: To make it clear, the existing provision specifies the Water Corporation.

Mr J.P.D. EDWARDS: I can understand that.

Ms A.J. MacTIERNAN: The words "Water Corporation" have been removed and the word "licensee" has been inserted, and the words "Western Power" have been deleted and the words "any holder of a licence" have been inserted.

Mr J.P.D. EDWARDS: However, subclause (3) states -

> An easement in favour of a person or authority for any purpose, to which any land is subject by virtue of this section, gives that person or authority such rights, . . .

We are talking about easements.

Ms A.J. MacTIERNAN: This refers to the other provisions, so one of these utility services must be provided.

Mr J.P.D. EDWARDS: With respect, I do not think it is very clear, but I will accept the minister's explanation.

Clause, as amended, put and passed.

Clause 168: Roads -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

> Page 122, line 11 - To insert after "subdivision" -
>
> > or a plan lodged for registration under the *Strata Titles Act 1985*
>
> Page 122, line 17 - To insert after "subdivision" -
>
> > or a plan lodged for registration under the *Strata Titles Act 1985*

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 169 and 170 put and passed.

Clause 171: Only one entitlement to compensation -

Mrs C.L. EDWARDES: Is this a new clause that has never previously been in legislation?

Ms A.J. MacTIERNAN: It reflects section 36AA of the Metropolitan Region Town Planning Scheme Act and section 12(3) of the Town Planning and Development Act.

Mrs C.L. EDWARDES: The clause limits a person to one entitlement to compensation when it is paid under a provision of part 11, "Compensation and acquisition". No further compensation will be paid under any other provision of the Bill. Can the minister identify the sorts of circumstances in which two claims have been attempted to be made?

Ms A.J. MacTIERNAN: My advisers tell me that they do not know of any situation in which it has arisen. I presume that is because the provision has been there. An example might be a person who makes an application and gets a payment for injurious affection and who cannot then seek compensation by way of having his property resumed or seek to sell it. No-one is aware of an issue in which this has been a practical problem.

Clause put and passed.

Clause 172 put and passed.

Clause 173: Entitlement to compensation where land injuriously affected by planning scheme -

Mrs C.L. EDWARDES: One of the circumstances that arises under part 11, which deals compensation and acquisition, is how fairly people feel they have been dealt with. Even though there is an entitlement to compensation, sometimes the amount people receive is not the value of their land. That can occur in numerous circumstances. For instance, they cannot repurchase or resettle in a home in a similar locality for the same amount of money, they feel that they have put a lot into what has been their home for a number of years and have not been adequately compensated, or the home has been in the family for some time. I wonder whether there is a method by which the system could be improved. It would be more labour intensive. It would mean that the department would have to be on the ground more. I will give an example. A property was resumed because Great Eastern Highway was to be widened. It was understood and recognised for a long time and there were no problems. The house was on a corner block and it faced onto Great Eastern Highway. Great Eastern Highway was to be widened to the point at which the front veranda of the home would be taken. Obviously, the owner would no longer have a home. However, it was a long block along Great Eastern Highway. From the side street a whole new subdivision of brand new homes could be seen, which were less than two years old. It was a pity no-one had sat down with that man, who did not want to leave, and told him he had sufficient land to be compensated for the area needed for Great Eastern Highway and if he wished to stay there he could build a new home in the side block facing onto the new street, in keeping with the rest of the new subdivision. Nobody had told him that. He had not thought that that was a possibility.

Given the complaints we often receive as members of Parliament that people feel unfairly dealt with, I wonder whether a far more labour intensive approach could be taken to the resumption of individual's properties rather than a desk-top, wholesale approach. Resumptions are probably the last resort because as occurred in this instance, the gentleman was told by the local council that the Planning Commission was coming in with an SVP. I say SVP but I could be totally wrong; it might have been another planning order. He therefore felt there was nowhere for him to go and he had to sell.

Does this proposed section include changes to the way in which entitlement compensation, injurious affection or anything else under which any other entitlements to compensation are made, or is the legislation just repeating the present system? If that is the case, would the minister look at seeking perhaps a different approach from the department that is a far more labour intensive, hands-on approach to individuals? How many properties, particularly homes, are resumed in a year or put under the threat of resumption?

Ms A.J. MacTIERNAN: It is important to understand that town planning schemes and region schemes are not resumptive schemes. Land is indicated for regional open space under the metropolitan scheme, which still has not been acquired so it is of the owners' choosing. The member for Kingsley raised two substantive issues. In answer to the member's first question about whether there are any changes in this legislation, the only change is that of bringing local schemes into line with region schemes in compensation provisions. At the moment, under a local scheme, there is only six months from the implementation of the scheme changes in which to make a claim for compensation. Under region schemes they can last forever. A claim for injurious affection can be triggered when the land has been sold and the vendor believes it has been sold for less than it would have been worth had it not had that zoning on it, or when an application is made for development and it is refused. As I say, in those cases entitlements will not be lost for some 40 years. The only substantive change is bringing local government schemes into line with region schemes, which is a positive thing.

In terms of an individual, detailed approach, I agree with the member for Kingsley that we need to do that and, in some cases, we have been doing it. From our office we have been doing a lot of poring over maps and looking at where we could slice bits off an area. We have certainly tried to encourage the staff and the WAPC to take a very practical result-oriented approach by getting down on the ground trying to resolve those sorts of issues and offering practical planning solutions rather than being too bureaucratic. That is a work in progress. Often I go in and say, "Why don't you just do that; that would give this guy an opportunity to do X?" Some people are very good at thinking laterally and at problem solving, and others perhaps focus more on process. Our trick is to try to get that problem-solving approach in play. That is not something that requires legislative change. It needs to be a cultural evolvement.

Mr S.R. HILL: I give credit to the land acquisition branch at the department. In my time in the department many of the officers went out on site and I think they still do.

Ms A.J. MacTIERNAN: In relation to some of the new region schemes, the guys have been going out there, walking around and ground truthing in order to clearly see situations. We want to minimise disruption and we are always very keen to cut a deal that provides people with some capacity to move forward.

Mrs C.L. EDWARDES: Some bad examples have occurred that we can point to. I remember the former east Wanneroo planning proposal in the late 1980s. It obviously involved a desk-top exercise because land on which a brand new, super-duper home had been approved, built and established with a swimming pool and tennis court in east Wanneroo was set aside for a school. Obviously, when the map had been looked at on the desk, so to speak, it was previously cleared land yet a home had been subsequently built on it after the map had been looked at.

Ms A.J. MacTIERNAN: Electronic systems are enabling us to get better, more reliable updates of the data sets that have been used by local authorities and commissions. More detail is readily available in electronic form that tells us exactly what is happening with any piece of land.

Clause put and passed.

Clause 174: When land is injuriously affected -

Ms A.J. MacTIERNAN: I move -

Page 127, line 23 - To delete "Act" and substitute "section".

We have had a few of these amendments. We decided to proclaim different parts of the legislation at different times, and this is a consequential provision.

Amendment put and passed.

Mr J.P.D. EDWARDS: A new phenomenon to the State of Western Australia is wind farming and the operation of the windmills. If a person is injuriously affected by the windmills being built on someone's -

Ms A.J. MacTiernan: Being affected in what way?

Mr J.P.D. EDWARDS: I am trying to think of an example. One person might be happy to have a wind farm on his property and, just across the paddock, his neighbour might not because he wishes to run a herd of cattle or sheep. This is not a spurious question. I am trying to seek some guidance. It is just something that is happening in the mid west. I am not sure whether it is injurious land use.

Ms A.J. MacTIERNAN: This really applies to situations in which the zoning on a person's land affects it. The sorts of provisions that the member might be talking about and the sorts of concerns the member is raising would become part of the environmental assessment, and I suppose the planning assessment, as to whether or not it should be approved. For example, say a person is living next door to someone who has a repugnant taste in architecture and who gets planning approval to build a disgustingly ugly building, he has no right of compensation if the next door neighbour gets the right to build something that blocks out his view. However, obviously when making planning decisions people must take into account the amenity of the rest of the neighbourhood. That is not a compensable provision. The member mentioned wind farms. I was wondering if he was about to repeat what Hon Peter Foss once said, which may have some substance, that one of the problems with wind farms is that they gobble up all the wind, so people down wind of the wind farm lose their access to wind! It is a question of whether the use should be approved, which is where zoning or a planning control affects someone's land in a direct sense.

Clause, as amended, put and passed.

Clauses 175 to 180 put and passed.

Clause 181: Responsible authority may recover compensation if reservation revoked or reduced -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

> Page 136, line 20 – To delete "memorial" and substitute "notification".
>
> Page 136, line 23 – To delete "memorial" and substitute "notification".
>
> Page 136, line 27 – To delete "Act" and substitute "section".
>
> Page 137, line 4 – To delete "Act" and substitute "section".
>
> Page 137, line 7 – To delete "Act" and substitute "section".

The first two amendments are to correct an error when the old wording of "memorial" was used instead of the new wording of "notification". The final three are similar to those to which we referred before in which we replaced "Act" with "section", so that different sections of the legislation are able to be proclaimed at different times.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 182 to 210 put and passed.

Clause 211: Minister may give orders to local government -

Ms A.J. MacTIERNAN: Could I perhaps comment on this clause to make it a little easier for the member? This is currently the notorious section 18(2) of the Town Planning and Development Act, which has become the great favourite of any person who is disgruntled with a decision by the council. An increasing number of people write and claim that the council was not properly enforcing its scheme when it made the decision and that, therefore, I should act under section 18(2) and require the council to enforce the scheme. Limitations are placed on this provision. It cannot become a de facto appeal process. As I understand our advice, even if we make a finding that the council was not properly enforcing its scheme or not acting in conformity with its scheme, we cannot through this section quash that decision of the council. Obviously such a finding might provide some basis for going forward and seeking some sort of prerogative writ against the council.

The ACTING SPEAKER: May I seek some guidance? I do not know whether the minister intended to defer to one of her advisers, but she is well able to do that in this committee.

Ms A.J. MacTIERNAN: Thank you, Mr Acting Speaker. It is a slightly problematic provision and will remain a slightly problematic provision, because if there is a finding, all I can do is to order the council to do all things necessary to enforce the observance of the scheme, but the provision does not appear to give me the capacity to quash or alter a decision that has already been made. When we introduced the Town Planning Appeals Tribunal we changed this. When I get these matters, if there appears to be prima facie evidence of a failure on the part of the local authority, I refer it to the tribunal and the tribunal determines whether the council has acted outside its scheme. I can then order the council to observe this. I suppose that ultimately if the council does not mend its ways, we can use the provisions in the Local Government Act or whatever. It is not an entirely satisfactory scheme. The problem is that if we have this strengthened, it becomes a de facto third party appeal process, which is not something that we have decided to embrace at this time.

Mr J.P.D. EDWARDS: I know the minister accused me earlier of upholding the Western Australian Local Government Association role in this, but it is not the case. I have raised issues of concern. I believe that WALGA agrees with the statement the minister has just made, because the position is fairly unclear and undefined. As the minister has said, it could be used as a third party appeal. However I note one sentence that WALGA has written, which is that there could perhaps be some explicit limitation on the matrix of the matters which may be considered.

Ms A.J. MacTIERNAN: We have to get the balance right, and I think other community groups would be very concerned if we did away with this provision because it at least gives some recourse, and, quite frankly, councils have to be overseen. From time to time there are rogue and feral councils. Subclause (4)(a) states that I may order the local government -

> to do all things necessary for enforcing the observance of the scheme or any of the provisions of the scheme . . .

What seems to be a bit odd, though, is the advice that I have been getting from the State Solicitor, which suggests that that does not mean that I can effect the decision; therefore, I am not sure if anyone can effect the decision. I will ask Lee Harvey to clarify what that provision might mean.

Ms HARVEY: My understanding is that this provision is about the effective enforcement of local planning schemes rather than looking to decisions that are made under planning schemes.

Ms A.J. MacTIERNAN: Except the difficulty is in the nature of the complaints that were made, by and large, under the old section 18(2), which are that the council has given a planning approval that is in contradiction with the provisions of its scheme. It may have a residential scheme that allows a hotel to be built but it says that that is not a proper enforcement of the scheme. This is a problematic area, but we are not changing the current provisions, and on that basis -

The ACTING SPEAKER (Mr A.D. McRae): So it is the status quo.

Ms A.J. MacTIERNAN: Yes.

Mr J.P.D. EDWARDS: I am not in disagreement with the minister. The minister probably spelt it out as I would also understand it, but I just needed to raise the suggestion of -

Ms A.J. MacTIERNAN: Of course, local government would like less rather than more scrutiny. We know that local government is of a very uneven quality, as the member for Warren-Blackwood often reminds us. There are some rogue councils in his area that he does not think very highly of.

Clause put and passed.

Clauses 212 to 235 put and passed.

Clause 236: Establishment of Town Planning Appeal Tribunal -

Mrs C.L. EDWARDES: I am really talking about clauses 236 to 246, which deal with the establishment of the appeals process and the tribunal.

Ms A.J. MacTIERNAN: The member will congratulate us on the wonderful job we have done.

Mrs C.L. EDWARDES: I have not had any complaints, so to that extent, it is fantastic. Do these provisions contain any changes?

Ms A.J. MacTIERNAN: I have been concerned about one, which arose out of a few issues such as the McDonald's in Broome and whether it was a restaurant or a fast food outlet. A number of those have been on appeal in which there was an issue regarding the characterisation of use. For example, if the council said that a facility had to be characterised as a fast food facility, and fast food was a permitted use, it would automatically give an approval to that facility. Because it is a permitted use, it is not something on which there is a discretion available to the council, so it is not subject to appeal. However, discretion was applied at an earlier point; that is, in determining how the use would be characterised. I remember there were a number of controversial cases when I was studying the appeals process - as much as I hated doing it, I did learn a lot. For example, in the case of a caryard that was a prohibited use, the council would say that it was not a caryard but a sort of warehouse, which is a discretionary use, and then give it an approval. It was a major area of discretion, but in itself it was not appealable, so we have changed that.

Mrs C.L. EDWARDES: In what provision is that? It is not found among clauses 237 to 246.

Ms A.J. MacTIERNAN: No, it is found in clause 279. It is one of the questions that -

Mrs C.L. EDWARDES: We can get to that one later.

Ms A.J. MacTIERNAN: Yes. That is the only thing we have changed with the appeals tribunal. We are very pleased with how the appeals tribunal has been working. It has been running like clockwork; we have greater transparency, and appeals are being dealt with in a very expeditious way. The tribunal has halved the number of appeals in total. It has weeded out a number of appeals and a lot of speculative appeals. It is clear that about 25 per cent of appeals are self-represented, about 50 per cent of appeals have advocates, and 50 per cent of appeals are dealt with by mediation. Therefore, it has not become, as some people predicted, a jurisdiction dominated by lawyers, and people feel quite comfortable being represented there.

Clause put and passed.

Clause 237 to 246 put and passed.

Clause 247: Appeals to the Tribunal -

Mrs C.L. EDWARDES: Again, the minister has said that there have been no changes from the previous legislation. Can the minister explain how clause 247(2) and (3) interact? Basically, they provide for a right of appeal, irrespective of any provision in the planning scheme that provides for an appeal to be otherwise made.

Ms A.J. MacTIERNAN: Subclause (2) states -

> Where a person is entitled under the provisions of a planning scheme in force under this Act to appeal against the exercise . . . the appeal is to be made to the Tribunal . . .

When we introduced our planning appeals legislation, we introduced this provision that said that instead of there being a choice, the appeal was to be made to the tribunal.

Mrs C.L. EDWARDES: So it is still essentially a transitional provision.

Ms A.J. MacTIERNAN: It is a transitional provision because some of the old schemes still make reference to the minister.

Clause put and passed.

Clauses 248 to 261 put and passed.

Clause 262: Submissions from persons who are not parties -

Mrs C.L. EDWARDES: The minister mentioned earlier her reluctance to accept third-party appeals. Under this clause, how many submissions would be received from a person who is not a party to the appeal? Is the characterisation of use proposal contained in clause 279 also an area in which these third parties, so to speak, who do not have the right to appeal, will have the right to make a submission?

Ms A.J. MacTIERNAN: It is important to understand that third parties cannot initiate an appeal, but if an appeal is initiated, they have an opportunity under this provision to be heard. Basically, wherever people have sought to be heard, the tribunal allows them to be heard. As I have said, we have been rocketing through the cases, in getting them decided. There has been no suggestion that this has created any difficulty. This was the practice even under the old tribunal, but we have given it some more legislative force.

Mr P.D. OMODEI: How the hell does the minister justify hearing a submission from a third party who is not a party to the appeal?

Ms A.J. MacTIERNAN: There are some third parties -

Mr P.D. OMODEI: Such as the Environmental Defender?

Ms A.J. MacTIERNAN: It could be the Environmental Defender's Office. Say, for example, one of the member's logging mates put in an application to build a starter castle on his block.

Mr P.D. OMODEI: He cannot afford a block.

Mrs C.L. EDWARDES: What is that use characterised as?

Ms A.J. MacTIERNAN: This is when he digs up those golden potatoes. So he makes application to build his starter castle, and these greenies on the council, who will remain nameless, knock him back. He wants to make an appeal, and obviously his neighbours may be concerned about the size of this building to be put up and that it could perhaps impact on them. They have the opportunity to go to the tribunal and ask to make a submission. I will give a more practical and sensible example.

Mr P.D. OMODEI: Try to be reasonable.

Ms A.J. MacTIERNAN: There was an example in the member's electorate, or was it in Albany? There was an actual situation like this of a particular proposal in the middle of a residential area to demolish three or four houses and to truly build a starter castle. It was a three-storey number that was to have retaining walls built right up and it would have absolutely dominated the rest of the landscape. The council refused that application. It came on appeal to me, but now it would go on appeal to the tribunal. The neighbours obviously had an interest in that, and they wanted to put their point of view in that planning process. That is how we justify it. The people involved, be they the council, the planning commission or the proponents, are not the only people who have an interest in this. Quite often neighbours and other people in the community will feel affected by a decision - a proposal perhaps to have an industrial use that emits pollutants near a residential area. The people in that residential area would want an opportunity to be heard if that decision was being appealed. A council, for example, might knock back such a proposal, and then it is appealed by the proponent. The council will respond, but often the neighbours, who are also affected, want an opportunity to be heard as well.

Mr P.D. OMODEI: I will not trivialise this. It is an important part of the legislation. It is open to misuse. I would expect that the concerns of those people the minister mentioned as being neighbours to a place where a development is taking place would be covered by the tribunal.

Ms A.J. MacTIERNAN: How would those concerns be covered?

Mr P.D. OMODEI: Obviously, the tribunal is conversant enough with planning law to be able to make a sensible decision on its own. It does not need a third party to tell it how to do its job. I suspect that this clause is

included because of people who want to frustrate orderly development. In the end, time is money for the proponent, whether it is a major or a minor development. This really panders to people who are anti-development.

Ms A.J. MacTIERNAN: I find that extraordinary. This is the most modest and mild clause. It does not give the right to initiate planning appeals, but it does confer a right to be heard. It also recognises the reality for those of us who have been on local councils, that sometimes local councils do a hospital handpass. Rather than make a hard decision themselves, they just refuse an application and allow it to go on to the tribunal. This may have happened in some councils with which the member for Warren-Blackwood has been conversant.

Mr P.D. OMODEI: Is that not one of the reasons I dissolved the City of Perth?

Ms A.J. MacTIERNAN: They play dead. The City of Perth did it on a number of occasions. I agree, and I was very much opposed to it.

Mr P.D. OMODEI: Was the minister sorry that she was in that position?

Ms A.J. MacTIERNAN: I knew it had more to do with ensuring that the Perth City Council was not in the clutches of Labor forces. Reg Withers could not handle the fact that there was a Labor majority on the council.

Mr P.D. OMODEI: I almost had Jack Marks voting for the Liberal Party at one stage.

Ms A.J. MacTIERNAN: I was a good friend of Peter Nattrass, so anything is possible.

Mr P.D. OMODEI: I prefer Jack.

Ms A.J. MacTIERNAN: We obviously support different Liberal Party factions. I am in the "Anyone But Colin" group.

Mr P.D. OMODEI: Has the state appeals tribunal been set up yet?

Ms A.J. MacTIERNAN: No.

Mr P.D. OMODEI: I did not think so. As an aside, how is the current tribunal handling appeals?

Ms A.J. MacTIERNAN: The member missed my act of boastfulness earlier. I was trying to extract some congratulations from the member for Kingsley. She has admitted that she has received no complaints. The tribunal is hunky-dory. It is processing applications with record speed. It has halved the total number of appeals that have been made and it has got rid of all the speculative appeals. Some 25 per cent of applicants representing a person -

Mr P.D. OMODEI: What is the backlog at the moment? Is it 500?

Ms A.J. MacTIERNAN: It is very small. The number of appeals has dropped by half.

Mr P.D. OMODEI: They have given up. That is why.

Ms A.J. MacTIERNAN: It is interesting tracking the number of appeals. When a Liberal Government is in power, they skyrocket.

Mrs C.L. EDWARDES: We are more consultative.

Ms A.J. MacTIERNAN: No, the Liberal Party is more in the pocket - there was a tradition of Liberal ministers having very close relationships with developers.

The DEPUTY SPEAKER: A member has a serious question. That is not to say that the member for Warren-Blackwood's question was not serious.

Mr R.N. SWEETMAN: I am following on from the excellent probing by my colleague the member for Warren-Blackwood. I refer to third parties. I take it from the way the minister answered the question and how clause 262 is couched that third parties or other parties can make a submission on an appeal only if an appeal is already in the system.

Ms A.J. MacTIERNAN: That is correct.

Mr R.N. SWEETMAN: Therefore, there is still no right of appeal from other parties.

Ms A.J. MacTIERNAN: Members have seen the reaction of the member for Warren-Blackwood on just having this modest number under this scheme.

Mr P.D. OMODEI: It was not there before.

Ms A.J. MacTIERNAN: According to the member it is the end of civilisation as we know it.

Mr P.D. OMODEI: It gives every lefty, hairy-armpitted environmental defenders group a chance to frustrate developers.

Ms M.M. QUIRK: That is just the blokes!

Ms A.J. MacTIERNAN: The giant ogres of Warren-Blackwood! The National Environmental Defenders Office and its secret weapon - the statement of planning.

Mr R.N. SWEETMAN: If someone wanted to build a three-storey monstrosity in the middle of Margaret River or wherever and the council approved it and had the power to do so under the town planning scheme, is there little else the community or objectors could do?

Ms A.J. MacTIERNAN: That is correct.

Mr R.N. SWEETMAN: That is why I got stuck with those units on the North West Cape. The member for Kingsley was the planning minister at the time. When those developments began, they could not be stopped. They are a blight. Members must have seen them.

Mrs C.L. EDWARDES: They are all in a row on the hill.

Ms A.J. MacTIERNAN: Where is that?

Mr R.N. SWEETMAN: At Exmouth on the North West Cape.

Mrs C.L. EDWARDES: They are all the same colour.

Mr R.N. SWEETMAN: As the minister said, the shire had the power under the scheme to permit that development; neither the minister nor anyone else could do anything to stop it. It is a disaster.

Ms A.J. MacTIERNAN: No doubt the member for Ningaloo will support the Government's interim development order over that area.

Mr R.N. SWEETMAN: If it stops that type of development, I will, but doubtless it will stop good developments also.

Clause put and passed.

Clauses 263 to 278 put and passed.

Clause 279: Appeal against exercise of discretionary power under a planning scheme -

Mrs C.L. EDWARDES: This is the clause that the minister referred to earlier with regard to the characterisation of use. Subclause (2) indicates that an applicant may appeal under this part against a responsible authority's decision under a local planning scheme as to the classification or the use or the permissibility of the use etc. The minister referred to the example of the development of a McDonalds store in Broome. I take it that it was not the applicant who was opposing the - I do not know the circumstances -

Ms A.J. MacTIERNAN: I cannot recall the precise details of who was having to appeal. The issue was whether the development could be approved as of right. It turned on the characterisation of the use. I cannot remember which way the council was leaning towards, but it was a classic example. If it had been classified as a fast food establishment, the development could have been considered to fall within the scheme, and if it were considered a restaurant, for example, it would be outside the scheme, or vice versa. That is the type of characterisation issue that arose. It might be that a restaurant was classified as a P use and a fast food was an X use or a restaurant was classified as a P use and a fast food establishment was permissible with the exercise of discretion.

Mrs C.L. EDWARDES: If the council wanted to stop a particular proposal -

Ms A.J. MacTIERNAN: It could do two things. Firstly, it could characterise the establishment as an X use and then block an appeal against it without this provision. Alternatively, it could characterise the establishment as a use for which the council had the capacity to knock back the development; in other words, it was not permitted as of right but it was a discretionary use. In that case, the council could knock back the development under the exercise of discretion and the matter would then have been appealed.

Mrs C.L. EDWARDES: The council might characterise it as a use that was permitted, even though the establishment would be located near a car saleyard, or whatever, and even though the local residents might not be very happy about the establishment being located in that area because it was, for instance, on the edge of Yellagonga Regional Park. A warehouse is located next door to where McDonalds has presently made a proposal. If a car yard proposed to develop an establishment there and it was characterised as a permissible use but the local residents were not particularly happy with it, the applicant and the council would be very pleased to let it go through, but would nobody else be able to appeal that?

Ms A.J. MacTIERNAN: That is correct. It is not a third party appeal right. However, it broadens the scope of the appeal. In the fullness of time we will have to consider third party appeal rights. It may not be next year. I have said that I am prepared to look at it next year. We would have to bring all the stakeholders together to do that. A problem with third party appeals is that sometimes problems arise when developments are held up and sometimes developers fund action groups to block their commercial rivals. Looking down the track, I think third party appeal rights will be legislated for. That is the direction in which things are going. They are in place in the other States. We want to learn from other States what works and what does not work, and what has created problems and how to solve those problems. However, it must be done collaboratively. The friends of the member for Warren-Blackwood, the National Environmental Defenders Office, local government and developers would have to get together to work out a reasonable compromise.

My assessment is that there will be either an increasing expectation for some mechanisms in this Bill or for more direct involvement and decision making by local councils.

Mr P.D. OMODEI: Do third party appeal rights exist in other States?

Ms A.J. MacTIERNAN: Yes.

Mr P.D. OMODEI: Most States have greater control at the local level over planning powers than Western Australia has.

Ms A.J. MacTIERNAN: No, it is the reverse; WA probably has the most centralised system.

Mr P.D. OMODEI: That is what I am saying; in other words, the eastern States have more powers at the local level over planning decisions than we do.

Ms A.J. MacTIERNAN: Yes.

Mr P.D. OMODEI: I think our system is much better.

Ms A.J. MacTIERNAN: We have greater coordination of how the schemes all fit together because of the metropolitan region scheme and now these new region schemes. Actual decision-making on development approvals within those schemes is probably at par with the eastern States. I understand that there were concerns, particularly in New South Wales, that the floodgates would open, but that has not been the experience.

Mr P.D. OMODEI: Local governments do not have much control over planning in their area under our system. If you think about the impositions of the state Town Planning and Development Act, that is one statement of planning policy.

Ms A.J. MacTIERNAN: I would expect the member for Warren-Blackwood to stop complaining then about the Shire of Augusta-Margaret River!

Mr P.D. OMODEI: I expect there is a good reason the minister should move in there and take over its planning section. She might have to do that.

Ms A.J. MacTIERNAN: The reality is that although we have a fair measure of involvement in the schemes, at the end of the day no state government agency will be able to oversee every individual development application and the processes developed by those councils. Councils will, therefore, continue to have a fair amount of power and, as I said, I think that is something about which the member will probably find some growing pressure over the years

Mr J.P.D. EDWARDS: We are on clause 279, are we?

The DEPUTY SPEAKER: Yes, clause 279.

Mr J.P.D. EDWARDS: I apologise, I must have gone to sleep; I thought we were still on clause 278. I think I can raise my concern under clause 279, but I ask the minister for a bit of latitude. I probably should have picked up this matter somewhere in part 9. However, in referring to wind farms my mind was moving onto another couple of issues in the mid west region. One is that a couple of councils in the State have become nuclear-free zones. I know there was some discussion about the declaration of nuclear-free zones and I guess I could raise it under this clause, "Appeal against exercise of discretionary power under a planning scheme", as the declaration was part of a planning scheme. If the minister will give me that latitude, what sort of comment would she make on that?

Ms A.J. MacTIERNAN: The member for Greenough has been spruiking the Western Australian Local Government Association cause. Give us the WALGA line on it.

Mr J.P.D. EDWARDS: No, I do not have a WALGA line on it. It is unfair of the minister to say I have been spruiking the WALGA line. I have not been spruiking the WALGA line all evening. I have expressed some concerns of WALGA's but I have expressed others as well.

Ms A.J. MacTIERNAN: WALGA was extremely concerned at the conduct of the previous planning minister when the Shire of Chapman Valley sought to advertise an amendment to its planning scheme to prohibit -

Mr J.P.D. EDWARDS: I was actually involved at that time, too.

Ms A.J. MacTIERNAN: The then minister had previously decided that councils would not be required to seek ministerial consent to advertise town planning schemes. The Shire of Chapman Valley thought, "Goody, we will advertise that we are going to be a nuclear-free zone." The minister then reversed his decision because he did not support that notion that a local authority could make such a prohibition in its town planning scheme. We made it clear that we did not have the same ideological problem, but we needed to make sure that what was done was practical and would work. We recognised that practically every day low-level waste was being transported or incidental activity was coming from other actions in many of these areas. We therefore worked assiduously with the local authorities and came up with a clause that we believe is workable and will not have unintended consequences in terms of incidental production or transportation of material that may have some degree of radioactivity.

Mr P.D. OMODEI: On a similar line, can a council declare an area a genetically modified food free zone?

Ms A.J. MacTIERNAN: That is something I suppose we could contemplate. It is not a proposition that has been put to us, but I suppose it is something we could consider. I think the Minister for Agriculture, Forestry and Fisheries quite clearly has been concerned about the impact of GM products on markets.

Mr P.D. OMODEI: What if that is not in the best interests of industry or the community?

Ms A.J. MacTIERNAN: We would not support it if it was not in their best interests. We take the view that participation in the nuclear-fuel cycle is not in the best interests of the community, so it comes down to a value judgment that we make that allows us to feel comfortable about these decisions by local government.

Mr P.D. OMODEI: That is not an ideological view.

Ms A.J. MacTIERNAN: Hold on; it depends on whether it is ideologically driven. We believe in democracy. Is that ideologically driven? I do not see that a statement of a fundamental value is something from which one should resile.

Mr J.P.D. EDWARDS: That would come under, presumably, a discretionary power within a planning control area.

Ms A.J. MacTIERNAN: No, I do not think it relates to that.

Mr J.P.D. EDWARDS: No, I am seeking the minister's advice on that. When would that step be taken?

Ms A.J. MacTIERNAN: This is just basic sort of -

Mr J.P.D. EDWARDS: Yes, this is about appeals against the exercise of discretionary power. That is why I asked for some latitude in asking the question. It probably should have been asked during consideration of the last clause.

Ms A.J. MacTIERNAN: Basically if a town planning scheme includes provision for a person to apply to build three units on a block of land under the council's particular zoning, and it is not an as-of-right use or a prohibited use, but falls in the middle range, the council will therefore have the discretion to approve it. If the council decides not to approve it, the applicant will have the right to appeal that decision. I suppose in a way this clause entrenches the view that appeal rights are for appeals against discretionary decisions, not appeals against decisions in which the council has no discretion. If the member made an application for something that was prohibited under the scheme and the council therefore told him that he could not do it, he would not have a right of appeal because it would not have been a discretionary decision.

Clause put and passed.

Clauses 280 to 294 put and passed.

Clause 295: Review of Act -

Ms A.J. MacTIERNAN: I move -

> Page 209, line 4 - To delete "Act" and substitute "section".

Again, this amendment enables us to proclaim the legislation in sections rather than as a whole.

Amendment put and passed.

Clause, as amended, put and passed.

Mr P.D. OMODEI: Did I miss the provision under which the minister can intervene in local government and take over its planning? What a shame!

Ms A.J. MacTIERNAN: The member can raise it as a grievance.

Schedule 1: Constitution and proceedings of the board -

Mr J.P.D. EDWARDS: I refer to clause 4(1)(c), which states -

> in the case of a member appointed under section 10(1)(b)(i) or (ii) who holds office on the council of a local government at the time of appointment, the member ceases to hold office on the council of the local government;

Does that position then become vacant?

Ms A.J. MacTIERNAN: Correct.

Mr J.P.D. EDWARDS: And there is no deputy?

Ms A.J. MacTIERNAN: The person has a deputy, but that person is appointed as deputy and does not automatically move up to that position. For example, if someone were appointed for two years and in the interim that person was turfed out, we would then need to go back to the Western Australian Local Government Association for some more nominations and select someone from those nominations. The nominations might include someone who is currently a deputy, but that is not automatic.

Mr J.P.D. EDWARDS: The deputy would continue.

Ms A.J. MacTIERNAN: The deputy would not automatically become the full member.

Mr J.P.D. EDWARDS: So nobody would sit in that position until such time as WALGA nominated an appropriate person.

Ms A.J. MacTIERNAN: And we appoint that person.

Schedule put and passed.

Schedule 2: Committees -

Mrs C.L. EDWARDES: The Infrastructure Coordinating Committee is a very important committee. It has been put to me, particularly by the Housing Industry Association, that given the need for affordable housing and infrastructure, which is inextricably linked to the achievement of sustainable urban development, a representative who has some form of expertise in housing and/or the chief executive officer of the Department of Housing and Works should be made a member of that committee. One wonders why such a person has been excluded. That seems to be a quite valuable appointment.

Ms A.J. MacTIERNAN: In order to address the issue of housing, the CEO of the Department of Housing and Works will be on the full commission. We believe that to be the appropriate position for someone from the Department of Housing and Works. This committee tends to focus on the incidental infrastructure and not the provision of services that are needed to support housing. We recognise the need for that representation. That is why that person will be part of the commission proper.

Mrs C.L. EDWARDES: Under the regional planning committees - I have not added it up - what is the balance of persons brought in from outside against government representatives?

Ms A.J. MacTIERNAN: Only one person is a government officer. It is necessary that only one person be a government servant, and that is under clause 8(2)(b).

Mr P.D. OMODEI: The minister mentioned in answer to the question asked by the member for Kingsley that a person representing the Department of Housing and Works would be on the main commission. Is the minister saying that it is not necessary that the Department of Housing and Works be represented on the Infrastructure Coordinating Committee?

Ms A.J. MacTIERNAN: The Infrastructure Coordinating Committee is already huge.

Mr P.D. OMODEI: I know that it is quite large. Clause 7 on page 219 establishes the Coastal Planning and Coordination Council. It does not quite gel. On the one hand, the minister is saying that a housing person is not needed on the Infrastructure Coordinating Committee because that person is on the commission. There is already a person representing coastal planning on the commission but the minister is still setting up a Coastal Planning and Coordination Council. I ask the minister to explain the rationale behind that.

Ms A.J. MacTIERNAN: The person is on the council because it is the whole concept of the council. It came out of an independent task force report on coastal planning. Coastal planning can be improved by having the chair of this council on the commission.

Mr P.D. OMODEI: It seems to me that the only person who is missing is Nemo; because everybody else is on it.

Mr J.P.D. EDWARDS: I still find it difficult to relate "sustainable" to a transport committee.

Ms A.J. MacTIERNAN: I have explained that.

Mr J.P.D. EDWARDS: I know, but I am saying that I have a problem with it.

Ms A.J. MacTIERNAN: I will tell the sustainable transport body that the member for Greenough needs remedial help.

Schedule put and passed.

Schedule 3: Metropolitan region -

Mrs C.L. EDWARDES: Have the boundaries changed?

Ms A.J. MacTIERNAN: Has there been a secret move? This is the way we could get one vote, one value! I could just change the definition of the metropolitan area! What a fabulous idea. The answer is no.

Schedule put and passed.

Schedules 4 to 6 put and passed.

Schedule 7: Matters which may be dealt with by planning scheme -

Mrs C.L. EDWARDES: Will the minister identify things such as R codes or other standards and measures etc that might be contained in the buildings codes of Australia? They do not appear to be specifically referred to in this schedule. Are they incorporated in some way?

Ms A.J. MacTIERNAN: Development standards are listed and include things like R codes. The member is referring to a problem area, and one to which we will have to give some attention. The separation between planning controls and building controls is becoming increasingly problematic, particularly as we move towards making sustainability assessments. Over the fullness of time, those things will move from separate portfolios into the one area. It is a problem. However, R codes, for example, have a lot of impact not only on building form but also on subdivision form. The R codes and various rules that we are putting in place for subdivision design and livable neighbourhoods must be coordinated with building standards. There are grey areas in between.

Mrs C.L. EDWARDES: Do building standards come into Western Australian law by way of regulations?

Ms A.J. MacTIERNAN: Yes, they do. The previous Minister for Local Government will be able to advise the member for Kingsley. It tended to be administered by local government. There is a split.

Mr P.D. OMODEI: Old section 15 of the Local Government Act controlled the building codes. The building code of Australia was applied to buildings. That has now been shifted across to the Department of Housing and Works.

The minister referred to R codes being controlled by planning, and yet building codes are controlled another department. Is the height of buildings controlled -

Ms A.J. MacTIERNAN: That is a planning issue.

Mr P.D. OMODEI: So R codes and the height of a building and the materials etc are all covered under the building code?

Ms A.J. MacTIERNAN: That is right. However, as we move towards an era of sustainability, that division is becoming increasingly problematic because we might want developments that minimise water and energy use. We cannot do that through subdivision design and R codes. We need to have that integrated with building standards.

Mr P.D. OMODEI: Is that not just a question of planning design by local government?

Ms A.J. MacTIERNAN: I will give an example. One of the things we are working on is a New South Wales model called Basix, which is a way of assessing building standards and their performance in relation to water and energy efficiency. A target is set and buildings have to meet that performance target. We want to work to develop Basix and transform it into a Metrix system to incorporate subdivision design. There are a lot of

overlapping areas. As I say, in time we will find a lot more integration between building standards, R codes and subdivision standards.

Mr P.D. OMODEI: Under a sustainability guideline, if a dual-flush toilet is not put in, there is the death penalty. What are the penalties?

Ms A.J. MacTIERNAN: A person would drown in their own substances!

Mrs C.L. EDWARDES: New South Wales faces problems with development standards. I do not hear the same level of complaint here, although some councils are moving that way. For example, they are trying to make landscapes and the like of every lot or unit the same without allowing flexibility of design. There have been some bad examples in New South Wales in which some developers will not go back into certain local council areas because of the huge input that those councils require.

Ms A.J. MacTIERNAN: I have not seen too much uniformity in Western Australia.

Mrs C.L. EDWARDES: We do not want that.

Ms A.J. MacTIERNAN: I could take the member to certain areas and show her an absolute multitude of styles and the juxtaposition of various architectural monstrosities that do not represent a very attractive scale. The values on individual buildings are derogated as a result of the sheer clash. I have never seen anything quite as nauseous as some of the developments in Victoria, particularly the completely incompatible styles. Next to a starter castle there might be a "goodness gracious me", which is a particular frilly style of over-the-top federation. Next to the "goodness gracious me", there will be a mock warehouse and then a mock Edwardian one-storey cottage. People just think, "Oh, my goodness!" They are highly celebrated. I suppose it depends whether people are attracted to *Pleasantville* and *The Truman Show* and estates like Seaside and Celebration that have an enormous amount of uniformity.

Mrs C.L. EDWARDES: I do not think we want that level of uniformity; we want flexibility and variety.

Ms A.J. MacTIERNAN: One should consider whether one needs such variety in a small area. The first two streets with consistent integrated development in Perth are Moore and Brockman Streets. They can still be seen, I hope, preserved - they were built in 1897. All the houses are the same, apart from two houses at each end of the street that are a little bigger than the rest; there was some hierarchy at that time. It presents a very attractive landscape. In the Ellenbrook development some attempt has been made in this regard. There is the Tuscan quarter, the Charlotte's Vineyard quarter and the Mediterranean style quarter. They are trying to get a theme happening with some integration of style.

Mr P.D. OMODEI: The minister raised an issue that is worthy of exploring; that is, the question of building standards and urban centres of design to try to build out criminal activity. Gosnells is doing that by ensuring cul-de-sacs and proper lighting.

Ms A.J. MacTIERNAN: No cul-de-sacs; they are bad.

Mr P.D. OMODEI: The other matters are water and energy sensitive design. It is the way to go. I think the community is waiting to embark on that course.

Ms A.J. MacTIERNAN: The member could get a job at the Urban Development Institute of Australia next.

Mr P.D. OMODEI: I probably could. This approach extends to planting deciduous trees, as they do in Europe, so leaves fall in winter and shade is provided in summer. Has thought been given, as far as the minister's input is concerned, to those issues? I believe the community is waiting for them.

Ms A.J. MacTIERNAN: Yes. That is being done. It is about sustainable land use and transport planning.

Mr P.D. OMODEI: I cannot see any evidence of it to any great extent.

Ms A.J. MacTIERNAN: We will have to take the member out on a livable neighbourhood tour. I will get the UDIA to give the member a call. Certainly, the member will find that subdivisions in the metropolitan area in the past five years do not have cul-de-sacs and some attempt has been made to interconnect them. At Ellenbrook, the member will see attempts to build town centres and community hubs in a walkable distance. A lot of attention has been given to it. We can continue to lift our game. Western Australia, and Perth in particular, has won a number of awards on livable neighbourhood designs.

Mr P.D. OMODEI: I am aware that such things have been around for a number of years since the time I was minister, now almost four years ago. I refer to energy efficient design, and not only in the way the house is structured and positioned in relation to the sun. People are looking for solar energy, particularly since the lights have been going out on a regular basis.

Ms A.J. MacTIERNAN: They went down more in the past if the member looks at the number of days down.

Mr J.P.D. EDWARDS: Except in Kalbarri.

Mr P.D. OMODEI: In regional Western Australia, the cost of extending powerlines to rural properties, and maintaining what is already there, is prohibitive. More needs to be done in that regard.

Ms A.J. MacTIERNAN: More is being done.

Mr P.D. OMODEI: I have not seen it.

Ms A.J. MacTIERNAN: I will put the member on my list of media releases. Quickly, part of the work we are doing with the basics is to do the Basix and Metrix to put in place sustainability indexes. The idea is that people must meet those targets. Also, demonstration models are being set up. For example, all lots in the Harvest Lakes development have been subdivided to maximise solar orientation to encourage solar use. Some private developers are doing the same. The South Beach development south of Fremantle has developed over 70 per cent of its blocks to maximise solar access. That is the level. Basix and the Metrix are developed to do that in a quantifiable way. We are looking at that with the Armadale Redevelopment Authority in relation to the Brookdale development. This 1 000-hectare development will put those policies in place. The Government needs to take the lead to de-risk and show that these things can be done efficiently and effectively.

Mr P.D. OMODEI: The minister mentioned earlier the possibility of the buildings section of the Department of Housing and Works being integrated into the Department for Planning and Infrastructure. Does the minister have any plans in that regard?

Ms A.J. MacTIERNAN: No. I did not say I would necessary go one way or the other. However, it is becoming clear from the work done that a far better integration is needed of planning and building controls because the two are greatly interrelated when delivering sustainability outcomes. When building controls were all about ensuring a house stayed up, people did not worry too much about integration, but building controls are moving into other areas, such as solar and thermal efficiency of the building and its water use.

Schedule put and passed.

Schedule 8: Matters for which local laws may be made by Governor -

Ms A.J. MacTIERNAN: I move -

Page 236, line 28 - To insert after "road" -

created under Part IVA of the *Transfer of Land Act 1893* or

This is another one of those mini-amendments to the definition of "road" to ensure that it takes a fair account and applies to private roads.

Mr P.D. OMODEI: What will it do?

Ms A.J. MacTIERNAN: It will ensure that the definition of private road is covered as it appears in the Transfer of Land Act and the Land Administration Act. This amendment has been passed three or four times tonight already.

Mr P.D. OMODEI: What is a private road under that Act?

Ms A.J. MacTIERNAN: The member refers to part IVA of the Transfer of Land Act of 1893. It is just a description of a private road. The Transfer of Land Act 1893 allows for and recognises the creation of a private road. This is just making sure.

Mr P.D. OMODEI: Not a specification?

Ms A.J. MacTIERNAN: No. This is just recognising that we want to include private roads; not just those included under the Land Administration Act but also the private roads that are included under the Transfer of Land Act 1893.

Amendment put and passed.

Mr P.D. OMODEI: A lot of questions should be asked about the limitations on building. The Government is creating local laws -

Ms A.J. MacTIERNAN: The member can ask those questions.

Mr P.D. OMODEI: "Matters for which local laws may be made by Governor". I presume they are local laws made by the Government.

Ms A.J. MacTIERNAN: Yes. As the member may recall from his time as a minister, the Governor is a shorthand way of referring to Executive Council and therefore to Cabinet. When a law is made by the Governor, it is not Lieutenant-General Sanderson.

Mr P.D. OMODEI: I know who he is but it seems unusual. I am not aware of the Government making local laws. I know that local governments make local laws. I am concerned about who the arbiters of local laws are. There is a standing committee in the Legislative Council to which all local laws are referred for assessment to see whether they are drafted accurately or according to legislation. Clause 2 refers to the limitation of building. It is "limiting the number of buildings, rooms, dwelling units or other accommodation units to the hectare generally or in any particular locality".

Ms A.J. MacTIERNAN: I will explain to make it clear to the member. Before we had town planning schemes we had local by-laws. These are not local laws as made under the Local Government Act. These are about the precursors to town planning schemes. Indeed, when I was on the Perth City Council we had local by-laws. We did not operate under a town planning scheme. This is included because there are still some areas that are regulated not by a town planning scheme but by by-laws. All the things the member read out as being a travesty -

Mr P.D. OMODEI: I did not say they were a travesty.

Ms A.J. MacTIERNAN: These are all the sorts of things that town planning schemes address. We are saying that some areas are still using the by-laws. This is just picking up what is in the existing legislation -

Mr P.D. OMODEI: And referring to it as local law.

Schedule, as amended, put and passed.

Schedule 9: Board of Valuers -

Mr J.P.D. EDWARDS: Clause 3 refers to the constitution of the board. I understand a board is constituted by a chairperson and two other members. The board may meet despite there being a vacancy on the board. What minimum is required before there can be a meeting of the board? Is a minimum of three people required?

Ms A.J. MacTIERNAN: That sounds right.

Mr J.P.D. EDWARDS: Can they meet despite there being a vacancy on the board?

Ms A.J. MacTIERNAN: It is just stating that there can be a meeting although there is a vacancy. It requires the chairman and three other persons.

Mr J.P.D. EDWARDS: Two other persons.

Ms A.J. MacTIERNAN: No. Clause 182 sets out the constitution. It involves a chairperson plus three other members. A meeting of the board can be held with the chair and two others.

Mr J.P.D. EDWARDS: Regardless of a vacancy.

Ms A.J. MacTIERNAN: Yes.

Schedule put and passed.

Schedule 10: The Tribunal -

Mr P.D. OMODEI: I presume that when the State Administrative Tribunal comes into place, it will repeal this schedule.

Ms A.J. MacTIERNAN: When SAT comes in, we have a range of consequential amendments that will take effect.

Schedule put and passed.

Schedule 11 put and passed.

Postponed clause 87: Approval and publication of scheme or amendment -

Resumed from an earlier stage after the clause had been partly considered.

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

Page 60, line 8 - To insert after "to" where it first occurs -

-

(a)

Page 60, after line 9 - To insert -

(b) advertise the scheme or amendment in accordance with the regulations; and

(c) ensure that copies of the scheme or amendment are available to the public.

Mr P.D. OMODEI: This is obviously to gazette it.

Ms A.J. MacTIERNAN: No, it states "in accordance with the regulations". The regulations stipulate that it is to be advertised forthwith in a newspaper that circulates in a district of the town planning scheme.

Mr P.D. OMODEI: Thank you. A victory for commonsense.

Ms A.J. MacTIERNAN: The member's pedantry paid off in one area.

Amendments put and passed.

Clause, as amended, put and passed.

Postponed clause 103: Contents of local interim development orders -

Resumed from an earlier stage after the clause had been partly considered.

Ms A.J. MacTIERNAN: I move -

Page 70, line 22 - To insert after "proceed" -

, without the consent of the Minister,

This amendment addresses the concern of the member for Greenough that this process might be open-ended. It will ensure that the matter can proceed. If the Heritage Council does not come forward with a comment that the local authority is not stymied in its local interim development order, it can proceed with the approval of the minister. It is a good amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

The DEPUTY SPEAKER: The question now is that the committee report the Bill to the Assembly.

Question put and passed.

PLANNING AND DEVELOPMENT (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2004

Clause 1 put and passed.

Clause 2: Commencement -

Ms A.J. MacTIERNAN: I move -

Page 2, lines 6 to 10 - To delete the lines and substitute -

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

The amendment picks up the same provision that was introduced in the other Bill; that is, it will empower us to bring various sections of the Act into operation at different times.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: Interpretation -

Ms A.J. MacTIERNAN: I move -

Page 2, line 13 - To delete "Act" and substitute "section".

Again this is a consequential amendment to the partial proclamation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4 to 13 put and passed.

Clause 14: *Local Government (Miscellaneous Provisions) Act 1960* amended and transitional -

Ms A.J. MacTIERNAN: I move -

Page 6, line 16 - To delete "Act" and substitute "section".

This amendment facilitates the partial proclamation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 15 to 58 put and passed.

Clause 59: Transitional regulations -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

Page 26, line 25 - To insert after "by" -

a provision of

Page 26, line 25 - To insert after "by this Act" -

(the **"amending provision"**)

Page 26, line 27 - To delete "this Act" and substitute

the amending provision

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 60 to 71 put and passed.

Schedule 1 put and passed.

Schedule 2: Consequential amendments -

Leave granted for the following amendments to be moved together.

Ms A.J. MacTIERNAN: I move -

Page 54, lines 24 to 26 - To delete the lines.

Page 59, line 26 - To delete "151(1)" and substitute "147(1)".

Page 59, line 28 - To delete "151(2)" and substitute "147(2)".

Page 71, lines 28 to 31 and page 72, lines 1 to 4 - To delete the lines.

Amendments put and passed.

Schedule, as amended, put and passed.

Title put and passed.

The DEPUTY SPEAKER: The question now is that the committee report the Bill to the Assembly.

Question put and passed.

METROPOLITAN REGION IMPROVEMENT TAX AMENDMENT BILL 2004

Clauses 1 to 3 put and passed.

Clause 4: Section 8 amended -

Mrs C.L. EDWARDES: What effect will the amendment to section 8 under subclause (1) and proposed section 9 under subclause (2) have on the legislation?

Ms A.J. MacTIERNAN: It will not change the actual amount of tax or the incidence of tax. However, it will change the reference to the tax. Previously, the tax was payable under the Metropolitan Region Town Planning Scheme Act. This will change it so that the tax will be payable under the proposed Planning and Development Act 2004. It is a transitional provision to ensure an uninterrupted, smooth change.

Mrs C.L. EDWARDES: That links it back to part 12.

Ms A.J. MacTIERNAN: That is right.

Clause put and passed.

Title put and passed.

The DEPUTY SPEAKER: The question now is that the committee report the Bill to the Assembly.

Question put and passed.

Committee adjourned at 9.54 pm