

SWAN VALLEY PLANNING BILL 2020

Second Reading

Resumed from 15 September.

HON TJORN SIBMA (North Metropolitan) [5.12 pm]: I am the lead speaker for the Liberal Party on the Swan Valley Planning Bill 2020. I will commence my introductory remarks by reflecting on a characteristic of legislating throughout this fortieth Parliament, and certainly throughout the course of the COVID-19 pandemic. Bills can be introduced, we can be briefed on them extensively and we can exercise and discharge our due diligence by consulting with affected stakeholders and likely affected stakeholders, but it might be many months before the bill in question rises to the top of the government's proposed business program. I find myself in the position of having to reappraise myself with the content of the bill and make an effective and constructive contribution, notwithstanding the constraints of time, which obviously are not imposed upon us as a consequence of the invocation of temporary standing orders because of COVID-19, but simply because this is, at least for the moment, the last sitting week of the year and for the term of the fortieth Parliament. I say that because although the bill itself is not technically complex, the implications that it gives rise to are. It effectively does a number of things, including the legitimisation of a new planning scheme for the Swan Valley. If this debate had come upon us in June, August or even September, I think it would have been to the credit of this chamber if we had given ourselves at least a day or two of contemplation, debate and reflection in a way that I think would have probably materially improved the quality of the product that we are here to discuss, and to also make observations and sound some warnings, potentially, about the draft scheme that is being contemplated.

The Liberal Party has indicated that it supports the legislation. I have some issues around timing and I will reflect on the history of deconflicting land uses in the Swan Valley. I will also reflect on the kinds of expectations that have been driven up, I suppose, by the way that the government has prosecuted its argument and undertaken its consultation for the bill. But I intend to mainly reflect on the instrument that the bill attempts to give rise to or legitimise—that is, the draft Swan Valley Planning Scheme. Attentive members of the chamber may have noticed that this afternoon I quite deliberately asked a question about that planning scheme. In not only this chamber, but also the course of public debate, planning schemes seem to give rise to a great degree of public anxiety and worry. Frankly, the consultation process that we have traditionally embarked upon in this jurisdiction is manifestly inadequate and does not meet public expectations on explanations and timeliness, nor does it give a genuine sense of engagement with community members—talking honestly with them about the prospects for their community in social terms, in terms of the built form, and for economic growth.

I note that earlier this year we dealt with a series of amendments that will extensively remodel the Planning and Development Act. Again, out of necessity, that debate was truncated. It was truncated because it was given the appellation, “a COVID-19 economic recovery bill.” As such, debate was time-limited and focused on a very narrow subset of amendments to the act, particularly provisions concerning the so-called significant development approval pathway. I feel that we did not give adequate scrutiny to some 100 or more clauses contained within that bill, but these are the circumstances of the time. I reflect on that bill and debate because the government was very clear that that bill was the first of two major planning reform bills that we could expect to come to this chamber by the end of this parliamentary year. Obviously, that is not the case, because this is not the bill that was referred to. The second bill was to be aimed at vastly improving community consultation in the planning process. I think it is a shameful missed opportunity that the government did not seek to prioritise that, because I think faith in the planning system has been eroded, perhaps unnecessarily, by a lack of due attention to the public–community interface. I say that by way of preamble.

As to the specifics of this bill, in essence it attempts to deal with the fragmentation of land use in the Swan Valley, particularly the creep of what is considered to be inappropriate land use. For some decades, different approaches have been taken to grappling with the Swan Valley—how we provide certain protections and a certain emphasis on historical land uses, particularly as they pertain to agriculture and related activities, while also recognising that we are in the twenty-first century and there is a need to accommodate residential populations as well as cater to a series of other and ancillary land uses. This has been the case since at least 1995, when the Swan Valley Planning Act came into effect. That act was certainly well-intentioned and it operated with some measure of success until time moved on. I will reflect on the Barnett government's attempt to grapple with the competing land use issue. My colleague Hon Donna Faragher, who sits in front of me, introduced the Swan Valley Protection Bill in 2016, which effectively sought the same strategic outcomes that the Swan Valley Planning Bill 2020 seeks. It proposed to do so via a different instrument and it had a differentiated governance structure around it, but effectively its objects were the same. A reasonable person might ask why has it taken four years to essentially arrive at the same place, albeit in the last three sitting days of this Parliament. I think that is a reasonable question to ask.

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It is here that I look to the historical record of debate that is normally relayed to us through media statements and the like. I do this not necessarily to score any cheap political points, but to identify the fact that four years ago, we had a solution to the issues that this bill proposes to fix and the criticisms that were made about that bill can be equally applied to this bill, and equally applied to the instrument that this bill seeks to legitimise and bring certainty to.

I draw upon a 5 September 2016 article from *The Advocate*, the title of which is “Swan Valley planning change feared”, from journalist Montana Ardon. I will read into *Hansard* a number of quotes from Ms Saffioti, the member for West Swan—yes, it is West Swan, not Swan Hills. The article refers to the bill that Hon Donna Faragher introduced, and it states —

... while she welcomed the focus on maintaining the rural character of the Swan Valley, there were a number of concerns regarding the content of the Bill.

Ms Saffioti said in a direct quote, referring to Hon Donna Faragher —

“The minister is asking for the Parliament to support legislation without the details of the development plan being finalised,” she said. “In a sense, she is asking Parliament to sign a blank cheque.”

A reasonable person might be moved to make a very similar observation about the way that this bill has been managed because, again—if I have not bored members to death—I mentioned at the outset that this bill has been on the notice paper for some months. When it was introduced, it referred to the scheme that I will turn to in a later stage of this contribution. It was at least some three months after the bill was introduced that anybody saw a copy of the Swan Valley Planning Scheme draft. That is the first issue. The second issue is that, and I quote —

However, Ms Saffioti said the Protection Bill had taken away residents’ voices.

The minister’s direct quote is this —

“The abolition of the Swan Valley Planning Committee, with no real replacement, will mean that the many different voices of the valley will have no real place to be heard ...

She goes on to say —

“The valley will just be treated like any other part of the metropolitan area, without its own voice.”

This bill proposes to disestablish the Swan Valley Planning Committee and replace it with two committees: the Swan Valley Statutory Planning Committee, which is effectively a subordinate committee of the Western Australian planning committee, and the Swan Valley Strategic Leadership Group, whose representation is largely determined by Ms Saffioti as the minister. But one might say that that would not necessarily satisfy or represent the many different voices of the Swan Valley. I do not think that is true.

I might also refer to—we reflect upon it in the course of not only the planning debates, but also the other debates here—the conduit that local government authorities play as a voice for their residents and ratepayers. This bill is a form of local government reform by stealth because, effectively, the City of Swan now has absolutely no meaningful role in planning decisions in the Swan Valley. That is true. It is staggering to me that that determination seems to have been wilfully adopted by the City of Swan itself, at least at the level of its highest executive. I will read in an email from the soon-to-be retiring CEO of the City of Swan.

The third issue that the now minister identified as being deficient about the draft bill that was introduced four years ago was this. I quote —

Ms Saffioti was also concerned that the draft plan and legislation did not address many of the obstructions for agriculture in the valley, such as land tax, water supply and right to farm issues.

Directly, the minister says —

“The Bill and Plan do not provide any practical support to address many of the challenges in undertaking agricultural pursuits in the valley, in particular viticulture,” she said.

“There is no ‘right to farm’ element, there is nothing to address the water shortages and water allocation issues and they have not addressed the cost challenges to leasing properties such as land tax.

“There is little planned investment for the area, including no supporting funding to improve road and public transport to services the region.”

According to the current Minister for Planning—a person who is very familiar with the Swan Valley—the problem with the Barnett government’s bill was that it did not address land tax, water supply, water allocation, infrastructure, associated tax issues and right to farm. Those issues seem to be the appropriate benchmarks or KPIs that we would seek to apply to this bill, because those were the issues that—I think fairly, to some degree—agitated the minister and compelled her when she became the Minister for Planning to not adopt even the barest contours of the preceding bill that was introduced by Hon Donna Faragher in 2016. What we saw subsequently was, on the face of it, quite an

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extensive community consultation phase around Swan Valley issues—not merely planning issues, but Swan Valley issues—that was undertaken by the late Hon John Kobelke, but many of his recommendations are not reflected in the bill either.

Over the last four years, we have effectively done a full circle in policy and planning terms, of course to end up in the same position as when we started. However, we are now encouraged, with some measure of urgency, to pass this bill because these issues demand some resolution. I concur; I think the people and the businesses that are within the Swan Valley do demand and should expect a measure of improved certainty.

I will not prosecute the first of my many questions in my ordinary manner in clause 1 debates, effectively delaying the passage of the legislation because I am attempting, helpfully, to ask questions at the appropriate clause. I will just ask them up-front now, because I think that might be more profitable. The first questions that spring to my mind are: What kinds of nonconforming or undesirable land uses or built form structures have been approved in the last four years that would be expressly disallowed under this new planning scheme? Would they have been disallowed under the previous development plan, which would have found, as its statutory foundation, the original bill? I have referred to the original bill countless times, if I have not made that point clear by now. I think that is an important issue.

I want to speak briefly to consultation. There was an extensive consultation phase about the Swan Valley, but there was not necessarily extensive consultation about the specifics of this legislation, and I want to seek some additional clarification about the kinds of issues that were raised as part of the four-week public comments phase, which applied to the publication of the Swan Valley Planning Scheme. I will put it to the government and members here that there was nothing in the way of extensive consultation concerning the structure of this bill. I will read out effectively what this bill does to contextualise this matter. This bill repeals the Swan Valley Planning Act 1995. It creates a head of power for the creation of the new scheme, which I have referred to repeatedly. It does so in a way to replace two instruments. The first one is the City of Swan local planning scheme 17—that is not an insignificant thing—and the second is the metropolitan region scheme. It establishes two groups, which I have referred to: the Swan Valley Statutory Planning Committee and the Swan Valley Strategic Leadership Group. This is where I will jump back to what I think was a deficient consultation process.

The scheme takes decision-making for development in the Swan Valley out of the City of Swan’s hands completely. At a departmental briefing, we asked the obvious question: “What does the City of Swan have to say about this?” The officers responsible for the construction of this bill told us that the City of Swan was relieved or supported it. In my brief time here, I have never encountered a local government authority that was particularly relaxed or sanguine about powers or decision-making authority being taken away from it. Nevertheless, that was the proposition put to us. In an act of due diligence, I wrote to the chief executive officer of the City of Swan, Mr Michael Foley, to ask him what his views were, because they were the state government’s views of his views and I thought I should give him an appropriate hearing. This exchange took place around 8 September, so, again, three months ago. I am reading myself back into this bill and attempting to do a decent job of it; this is just part of the problem with legislative management that we have all encountered in one way or another.

Mr Foley’s response to my initial inquiry was thus —

To the best of my knowledge, the City and therefore the Council —

This is important to listen to —

have not been consulted on the actual Swan Valley Planning Bill.

The City was however consulted on the Swan Valley Planning Review Report by John Kobelke JP in 2018. In this regard the Council on 29 August 2018 resolved as follows:

Effectively, what followed was a list of 15 points outlining the contours of its support. I will highlight a few of them for the edification of the chamber. The second point was that the council, at its 29 August 2018 meeting, supported —

... a new Swan Valley Planning Act only where the proposed creation of a Swan Valley Statutory Planning Committee as a single planning authority and creation of a Swan Valley Leadership Group are provided by the State with their own resources, including staffing.

This seems to get to the gist of why a council might support this—because it does not have to pay to support it. But whether those two groups, particularly the inclusion of a leadership group, are strictly necessary in discharging what should reasonably be dispassionate determinations on planning applications is another point. The council was explicit at the eighth point that it would —

Support the principle of a “Right to farm” provision being incorporated into any new Swan Valley Planning Act.

It further noted —

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On the specific question of the City's visibility of/involvement in —
This is the clincher for me —

the preparation of forthcoming **Swan Valley Planning Scheme**, I confirm that we have not been consulted and have not received a copy of a draft version thereof.

Do members remember that one of the litany of issues with the 2016 Liberal bill was that it bypassed adequate consultation? Here, I have proof that when this bill was introduced, the council was not appropriately consulted on the legislation, nor had it seen the merest outline of the draft planning scheme that the legislation will enable. Frankly, I do not consider that to be anywhere near good enough; it is just not.

There are many and varied avenues that I would have enjoyed to go down, but time will not permit it, so I will concentrate on two aspects. I turn to the two core documents. Whether one looks at the long title of the bill or its stated objects, or one goes to the explanatory memorandum, which for some strange reason is almost as long as the bill itself—I have reflected on this previously; I start to think that it indicates some problem with legislative drafting, but that is another issue—there is no provision in the bill that enshrines a right to farm. There is not. No new statutory right is created. One might talk about preferring or giving priority to certain specific land uses that are predominantly rural or deal predominantly with the perpetuation of viticulture or horticulture or even include various equestrian pursuits, but that is not the creation of a right to farm. That is a misleading statement, and that misleading statement appears in the second reading speech and media statements prepared by the minister. This bill and the scheme it gives rise to fails the standard set by Hon Rita Saffioti not only four years ago when she was in opposition and was talking about the previous Liberal bill, but now. There is no right to farm enshrined in the bill, I think, largely because it would be impossible to do so, but that is how the bill has been sold.

A related issue is that in the government's attempt, nevertheless, to give effect to that spirit—to prioritise rural land uses, to avoid the fragmentation of lots, to thwart the encroachment of residential development, and to preserve the history and the character of the district—a very blunt approach, potentially, has been taken to this scheme. The scheme is an extensive document. Anybody who is familiar with schemes of this nature will be familiar with things such as zoning of use, zone-use tables, plus what is known as the land use permissibility table. I might reflect, if I can, on a couple of issues that arise from this. It will be some time before the minister can get up and respond—but, if not, we will find an appropriate point—because this is not embedded in the bill; it is implied by the bill, and this document, not yet signed off by the government, nor gazetted, will be enabled by this bill.

I draw members' attention—if they have this document to hand—to the “Draft for Public Consultation: Swan Valley Planning Scheme No. 1”. Members will see on page 12, under the heading “Part 4 — Zones and the Use of Land”, “Table 2 — Zone objectives”. The first zone's name is “Priority Agriculture”. The second zone is “Swan Valley Rural”. A series of objectives apply to those land uses. The priority agricultural land use is effectively the land either side of the Swan River. The objectives are not extensive, but probably too long to note, but I will reflect on objective 2 as it relates to priority agriculture. Objective 2 states —

To provide for long-term agricultural production in the Swan Valley by preventing further subdivision of land and protecting good quality soils from non-agricultural use and development.

Objective 3, I think, is particularly problematic for the economy of the Swan Valley, for job creation, for tourism and the like. It states —

To limit hospitality and tourism development and land use to where it is incidental and complements agricultural production and does not detract from the rural character and amenity of the area.

I will make an observation about that. I can understand why a statutory planner would write such a thing. But if we seriously consider the economic, agricultural and productive capacity of the Swan Valley and measure that against the growing of table grapes, for example, I suggest that the economics of that kind of production are in longer term decline. That is probably also true of wine grapes because limited acreages are under harvest. It might therefore be desirable and in keeping with the presentation of the Swan Valley, and facilitate its agricultural and rural heritage, nature and amenity, if we could be somewhat sensible about future hospitality and tourism developments within that priority agriculture zone. I am certainly not talking about caravan parks or the like. We need to be reasonably sophisticated about the way we market our geographic regions in Western Australia. We need to look at what South Australia and Victoria are capable of.

On indulgence, I will reflect on a personal experience, which I am normally loathe to do because that is the province of the other place, not this place. Two weeks before the shutters came down with the COVID-19 pandemic, I attended a family wedding in the Swan Valley. It was the wedding of a close relative of my wife—a near and dear relative. We wanted to celebrate that wedding in the appropriate fashion. We have two kids and we wanted to take everybody there and stay overnight, if possible, on the site of this old winery, in the homestead. It is impossible to do that in

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the Swan Valley. We can do that in Margaret River, which is good, or the Yarra Valley or the Barossa Valley but we cannot really do that in the Swan Valley.

We are on the cusp of legitimising a scheme that is well intentioned but it will sterilise economic potential, send a chill through investment, avoid development and have land that does not fulfil its full economic, social or, dare I say it, environmental potential. I think this is a very, very blunt instrument. In practical effect, under objective 3 of the priority agriculture zone—this is where the big wineries are—a 10, 15 or 20-room bespoke accommodation complex could not be built. Potentially, that is not permitted under this scheme. If it is, that would be wonderful. I think we need to be very, very wary of blunt instruments like this, which are absolutely well intentioned and will be given some legitimisation as a consequence of the passage of this bill in a very rushed way. I think the fundamental economics need to be well considered. By nature, I am not necessarily a pedantic person—I leave that to others—but I will be determinedly pedantic about this. The reason I went to some lengths to identify the wide-scale consultation deficiencies as they apply to the construction of the bill that we are debating and the drafting of this planning scheme is that I think they have been drafted by people without any skin in the game, without any risk, who have never made a significant investment in their lives nor constructed a development of any scale. They are people doing their job, and they are doing it professionally. I urge this chamber, as I urge this Parliament and the community, to not take the planners' view of the world as the only appropriate view of the world.

Hon Colin Tincknell interjected.

Hon TJORN SIBMA: If the member would not mind, I think he might have that opportunity if he wants to make a contribution to the bill, and the gentleman representing the minister will, no doubt, be very gracious in his consideration of that suggestion.

Hon Stephen Dawson: You have to call me the honourable gentleman!

Hon TJORN SIBMA: The honourable gentleman, sorry. Did I call the minister that? If I did, I did well; if I did not, I was remiss and will correct that unreservedly and immediately.

I want to say this. Today, I asked a question quite deliberately about whether this scheme would be amended. I strongly encourage the minister responsible and her department to talk seriously with businesses that operate within that priority agriculture zone and get some understanding of their economic imperatives and their development prospects, because I think some of them are quite exciting and things that we would want to facilitate.

When I go to the Swan Valley, I see its potential. I see that in Perth and generally in Western Australia. I think that generally we live in a time of potential unfulfilled. I would adopt that view of the Swan Valley, too. There is a lot that we can be doing. We should be in a position in which we can capture a slice of the tourism market once it flourishes back to life again, which it will, both domestically and internationally. I would like people to stay in the Swan Valley overnight. Wineries and food and beverage producers of scale can provide something interesting and compelling to the market so that people do not just come in, fill up their chocky bag at the Margaret River Chocolate Company, or buy a case of wine from the old Houghton's winery, for example, and then shuffle off down south or back to the CBD. If we want to grow the Swan Valley and its economic and social potential, this is a place to start, but certainly not end. We should not end there.

There is a great opportunity to make this planning scheme far more effective and far more friendly. At the moment, I would fear its impact. Therefore, it is with some reservation that I acknowledge the consequences of supporting the Swan Valley Planning Bill. However, we are where we are. I want to end on that constructive note. We have an opportunity to get this scheme right. Nothing should rush the Minister for Planning into signing off on this draft planning scheme as it exists. Without any sense of trying to be gratuitous or facetious, the minister has not shown that level of urgency over the last four years; therefore, there is absolutely no need to do so now. If I had more time available, I would look at the various governance features of this bill, particularly the interaction between the creation of a new statutory subcommittee and the leadership group. We have some questions there. I notice that Hon Tim Clifford has put some amendments on the supplementary notice paper that address the governance concerns, albeit—I am foreshadowing—in an abbreviated way. With that, I will sit down and look forward to an edifying clause 1 debate, with a view that we will pass this bill, as we have been committed to do for the last three or four months and are still committed to do.

HON TIM CLIFFORD (East Metropolitan) [5.53 pm]: I rise tonight to speak on the Swan Valley Planning Bill 2020. I am the lead speaker for the Greens on this bill. We support the bill; however, much like the previous speaker, we have a few concerns. We acknowledge the fact that this bill is quite significant. As has been highlighted in this place and other places, the Swan Valley is a place of significance for the state of WA. It is quite a large area; the Swan Valley spans from Guildford to Upper Swan at the foot of the Darling Range and is home to approximately 7 000 people. It is also a place of Aboriginal significance and has a 200-plus year history of agriculture, viticulture and tourism. Prior to COVID-19 it attracted more than two million visitors each year, so it is a significant tourism destination. That is only part of the story of the Swan Valley, and it goes to the heart of why the Greens are

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supporting the Swan Valley Planning Bill 2020, because we need to protect this area and legislation like this comes with challenges.

The intent of the legislation is to protect the Swan Valley. However, I have some concerns about how it will work in practice, given the limited transparency of key components. The previous speaker also alluded to some of those issues. The current Swan Valley Planning Act 1995 acts as additional oversight for the Swan Valley, alongside the City of Swan local planning scheme 17 and the metropolitan region scheme. In common with the previous speaker, I have some concerns about the fact that the local government of that area has been taken out of the equation. I was actually surprised that the City of Swan did not raise too many concerns about being left out of the proposed planning scheme.

The new legislation will create a special Swan Valley Planning Scheme that will effectively replace local planning scheme 17 and the metropolitan region scheme. According to the explanatory memorandum, this has been done to give special protection to the Swan Valley—which I fully support—as a rural and tourism area. Under clause 12, unlike the current act, this bill does not identify planning areas or minimum lot sizes within the Swan Valley, which is of concern. Given that the intent of the bill is to reduce subdivisions to maintain the character of the Swan Valley, perhaps minimum lot sizes should be detailed, so I seek some clarification on that. Would the minister please explain why minimum lot sizes in Swan Valley planning areas will be provided by regulation rather than outlined in the bill?

Clause 13(3) identifies setbacks or the position of buildings on lots as possible mitigation measures. However, there is no mention of buffer zones. I note that this is not prescribed in the current act, but I have been advised by constituents of the East Metropolitan Region that a failure to establish buffer zones between residential and rural land uses in areas within the Swan Valley, such as Henley Brook, has already had detrimental impacts. Will the minister please explain why this bill does not provide for buffer zones between rural and non-rural land use areas?

Aside from a significant part of the bill being wholly introduced via regulations, I also have concerns about consultation requirements for a proposed scheme or amendment. Before submitting a proposed scheme or amendment to the minister, the commission must consult the Swan Valley Strategic Leadership Group and the local government body, and make reasonable endeavours to consult with any public authorities or persons that appear to the commission to have an interest in the proposed scheme or amendment. As the bill stands, there are no explicit requirements for the Swan Valley Strategic Leadership Group to consult with the community, but I will discuss that later in my contribution.

I also note that the bill requires the commission to make reasonable endeavours to consult with persons who appear to have an interest in a proposed scheme or amendment, so I assume this includes effective landowners. If so, can the minister clarify why consultation with effective landowners is not explicit within the bill? Also, as it is not entirely clear in the bill, can the minister explain what community consultation the commission will undertake in preparing a scheme proposal or amendment?

Under clause 21(4) and (5), if the Environmental Protection Authority advises that the review has not been undertaken in accordance with instructions, the commission may redo the review at the request of the Minister for Planning, and meet with the Minister for Environment to agree on whether the review has been carried out according to instructions. If the ministers agree that the review has been conducted as per instructions, the decision is final. This differs slightly from the current framework under the Environmental Protection Act. Although the Environmental Protection Authority is still able to express a view that the review is not as required, and it would take two ministers to overrule the EPA, there are some concerns that this clause provides a greater degree of political control over the assessment.

Sitting suspended from 6.00 to 7.30 pm

Hon TIM CLIFFORD: Before the break, I was referring to clause 23, “Advertising proposed scheme or amendment”. As the proposed Swan Valley Planning Scheme does not sit within traditional planning controls, more information is required on how proposed schemes or amendments will be advertised. Given that relevant local planning scheme regulations will apply under this bill, can the minister please confirm that proposed schemes or amendments for the Swan Valley will be advertised as per the Planning and Development (Local Planning Schemes) Regulations 2015?

Concerning the advisory group, the functions of the Swan Valley leadership group is to essentially advise the minister and comment on the strategic direction of the Swan Valley. The leadership group is not to provide advice, comments or documents about particular applications, development or subdivision approval in the Swan Valley. Given this and that the Swan Valley Strategic Leadership Group will not make recommendations to local government, these are the only major changes to the functions of this advisory body compared with the functions of the body under the current Swan Valley Planning Act. The leadership group will consist of seven members appointed by the minister and will be, essentially, the voice of the Swan Valley, representing diverse interests in this unique

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area. However, I am not convinced the group will be accurately represented in the prerequisites for membership. As stated, each person must have practical knowledge or experience that is relevant to the functions of the group and is an appropriate person to represent the interests of Swan Valley residents and businesses. Under the current act, the Swan Valley Planning Committee must consist of a chairperson with appropriate qualifications, appointed by the minister; the president or acting president of the City of Swan; a City of Swan councillor for a ward; the chairperson or acting chairperson of the planning commission; one person representing each of the Midland and Districts Chamber of Commerce and Industries, the Grape Growers Association of WA, the Swan Valley and Regional Winemakers Association and the Swan Valley Tourism Council; and four other persons appointed by the minister. One is to be a person who is a resident of the Swan Valley; one is to be a person who, in the opinion of the minister, is suitable to represent Aboriginal interests in that area; one is to be a person who, in the opinion of the minister, is suitable to represent equestrian interests in that area; and one is to be a person who, in the opinion of the minister, has expertise on the reduction of nutrient levels in the Swan River or other environmental expertise relevant to the implementation of the act. These requirements clearly ensure adequate local representation for future planning in the Swan Valley.

As stated in the bill, the Swan Valley Strategic Leadership Group will consist of less specific local interest representation, so I am concerned that there might not be the same level of local representation as there is in the current regime. Could the minister please clarify the community consultation requirements of this leadership group that will advise both the minister and the commission?

The other key point to highlight about this group is the constitution, including terms, vacancies and procedures that will be made by regulation. This is a contrast to the current act that details clear reporting transparency and decision-making requirements for its advisory body. Currently, members must disclose conflicts and not be present during discussions or determinations, and members must not make use of any information acquired by virtue of the performance of their functions to gain directly or indirectly an improper advantage for themselves to cause detriment to any person. A quorum for a committee meeting is six members, and accurate minutes have to be kept, as do records of any advice given or reports made in the performance of the committee's functions. These are to be made public. Without legislating key components of the conduct of the Swan Valley's key advisory body, the community voice may not be clearly heard, and that is a concern I have heard not only from a couple of the groups in the region, but also the City of Swan councillors I have spoken to. This is additionally concerning, given that WA still does not have third party appeal rights.

Part 4 of the bill covers the Swan Valley Statutory Planning Committee. This will be a subcommittee of the WA Planning Commission. It will be a separate body from the Swan Valley Strategic Leadership Group, which will be responsible for determining planning and development matters. As members may be aware, nothing in this bill prevents multiple people from sitting on both the leadership group and the statutory planning committee. I recognise that is not the minister's intent for the bill, it is due to the membership prerequisites, which state that the body must consist of a chairman, five other persons who must be members of the statutory planning committee, one person who represents the Swan Valley local government and two people who must represent the interests of Swan Valley residents and businesses. Each person appointed by the commission and approved by the minister must have practical knowledge or experience that is relevant to horticulture, viticulture, cultural heritage, landscape protection, tourism, hospitality, hobby farming or equestrian activities, or is otherwise an appropriate person to represent the interests of Swan Valley residents and businesses. Given the concerns about transparency and explicit community engagement, I will propose amendments to the bill, so it will be interesting to hear the response from the government. That is why I will move the amendments.

The other thing to note about the Swan Valley Statutory Planning Committee is that it will be able to delegate any of the powers or duties bestowed by the commission, as defined by the Planning and Development Act, to a member or associate member; a subcommittee; an officer of the commission or a public authority; or a member, officer or employee of the Swan Valley local government. Through my consultation on this bill, concerns were raised that the Swan Valley local government will be required to conduct work that it has limited involvement in or oversight of, and that local governments are being increasingly sidelined in local planning decisions. I note that the leadership group will consult with local government, but would the minister please outline what other consultation will be done with the local government on the ongoing management of the Swan Valley?

I do not have much left to say, apart from noting that in the Minister for Planning's second reading speech, she acknowledged the Aboriginal culture and heritage of the area. However, there is no mention in the bill that indicates a First Nation cultural connection to the area, so I would like to seek a commitment from the minister that there will be some form of ongoing consultation with elders and traditional custodians in the region, which I think is important for the heritage of the area.

Finally, the act stipulates that a review of the act must be carried out five years after implementation to ensure that it is progressing as intended. I note that the local planning schemes are also required to be reviewed typically every

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five years. Will the minister please provide insight into why a provision for a five-year review is not included in the current incarnation of the bill? Given the scope of this bill, it is important that we have a review clause and that we adopt the amendment that I have put forward on the supplementary notice paper.

Going back to my opening remarks, it is important to note that this legislation has been through a couple of incarnations under both the previous government and the current government, which has basically rebuilt it from the ground up. It is important that we protect the heritage of the area. The intent of the legislation is to protect and preserve the area; to ensure that it remains a prosperous, unique and important place in this state; and to prevent encroaching subdivisions, as we have seen many subdivisions pop up in the metropolitan area.

When I was consulting on this bill, I spoke to locals about their concern that in coming years the Swan Valley could have endless subdivisions, which could, for example, cause grape-growing areas to be under threat. That is why I mentioned buffer zones between rural and residential areas. It will be interesting to hear the government's response to my questions and to see its approach to the amendments. It is important that this bill is scrutinised. As Hon Tjorn Sibma remarked, if this bill had been put forward earlier in the year, we could have spent a bit more time on it. We seem to be pressed for time to get the bill through. I am interested to see what happens during the committee stage, so I look forward to that process.

HON COLIN TINCKNELL (South West) [7.42 pm]: I will speak only briefly on the Swan Valley Planning Bill 2020. I want to talk about many things that some other members have brought up and also some areas of concern raised in our consultation on this bill. I listened to Hon Tjorn Sibma talk about many things, one of which was tourism opportunities. Buffer zones were also mentioned by Hon Tim Clifford. My main area of concern is about local residents and their lack of representation, so I will get into that.

As the bill reads at the moment, distilleries, breweries, cideries and honey, nougat, nuts, coffee, chocolate and ice-cream outlets are some of the businesses that may not be able to open up in the Swan Valley. It says that products that are not made in the Swan Valley will not be able to be promoted or sold and that those types of outlets will not be able to be built in the area. That is an issue. I think Hon Tjorn Sibma mentioned that that could be a lost opportunity. It could also hinder us into the future. Everyone who has lived in Perth for a long time understands what a special area the Swan Valley is, and we want to protect it and keep as much of it as possible. We are not against development or great planning for the area. Some local residents have been there a long time. One of the reasons they moved there is that it is one of the few areas in and around Perth that has a semirural environment and is still very available to the public because there is so much on offer. We do not want unplanned and ill-advised developments opening up either. We want to protect that area and make sure that those developments are controlled to a degree, but not to a degree that it will really tie up our hands and maybe turn it into a place where people will not want to go in the future.

Buffer zones are important, as Hon Tim Clifford also mentioned. Buffer zones make sense; otherwise, we will have ongoing issues for many years. Those problems will come up when this government is gone and even the next government is gone. Future governments will say, "That's too hard because that was two governments ago." We need to ensure that those buffer zones are planned and organised for the future so that businesses are protected.

The area I want to cover the most is the consultation with local residents. Forming a strategic leadership group to advise the minister, comprising seven members who are appointed by the minister, with remuneration decided by the minister, has me questioning whether members of this committee would be working for the Swan Valley residents or the minister. That is what a lot of people who live in the Swan Valley are thinking and saying; that is what they have told me. They do not believe that there is enough community or resident input. Their concerns are not being clearly heard.

The bill proposes the formation of a Swan Valley Statutory Planning Committee. Again, it will have no input from local residents but, rather, its members will be chosen by the Western Australian Planning Commission and approved by the minister. It will make decisions about development in the Swan Valley. Bear in mind that the Western Australian Planning Commission board is nominated by the minister. Members can understand why residents feel that way. They feel as though they will be left out of the conversation and their concerns will not be heard. The planning committee appears to remove the rights of the local council and residents with regard to planning issues, with no accountability for their decisions. When people from the Swan Valley are consulted, these are the things they are talking about.

I now turn to subdivision 3 in part 2 of the bill. I will read out some of the concerns that were sent to me. The first states —

Advertising proposed scheme or amendment—is very vague about where proposals will be advertised. We have a situation in Henley Brook currently where a number of residents were not aware that their 5 acre properties were being rezoned to Urban R30–R60 and NONE of the adjoining neighbours were informed.

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That sort of thing is already happening. When something is built, it is not just the people who visit or own that venue who are affected, it is also the neighbours. In that case, they have not been informed.

Another concern relating to subdivision 3 in part 2 of the bill states —

Advertising proposed scheme or amendment—states public submissions will be considered, however in the current Henley Brook development, public submissions have been completely dismissed. There is no measure of accountability to prove how public submissions are dealt with and if they are in fact considered.

These are the queries that keep popping up. When the minister stands to wind up the second reading discussion, I would like to hear some of the answers to those questions. I have mentioned the buffer zones, so I will not go through that again.

Another concern states —

In 2017, Mr Kobelke's report stated that the greatest concern the Swan Valley residents expressed was regarding development causing loss of rural character and amenity. Whilst developers have free reign to develop thousands of small (90m²–300m²) blocks around the Swan Valley and abutting the Swan Valley, the loss of character and amenity is inevitable.

That is the major concern for those people, summed up in one paragraph.

Good planning policy should focus on ways to inform the community of impending amendments; how to improve community consultation, which can be difficult in areas with ageing populations or residents who have a language difficulty; guidelines for how public submissions will be dealt with; and providing measures to ensure developers adhere to the approved plans and are accountable if they do not adhere. They are the things that have been mentioned to me in my consultations.

I want to finish by saying that those who ultimately pay the price are the residents who either live there with the effects of bad planning or who move away from the area that they love and are connected with. At this stage, we do not believe that the consultation with the residents and the community itself has been right. It may be that there remains much concern and that a lot of really difficult issues still need to be resolved and the people feel that they are getting steamrolled and are not being listened to.

HON CHARLES SMITH (East Metropolitan) [7.50 pm]: I rise this evening to make a brief contribution to the Swan Valley Planning Bill 2020. I struggle to see how this new Swan Valley Planning Bill offers any protection to the existing landowners within the Swan Valley or those adjoining the Swan Valley. In general, it will remove the people and the local governments from the decision-making process around planning and replace them with unelected bureaucrats. It is for that reason that the Western Australia Party will not support this bill.

Let us have a brief examination of the strategic leadership group. I understand that this will be a group of citizens with knowledge, skill and experience of the Swan Valley and matters of, and I quote —

... marketing of horticulture, viticulture, tourism, hospitality, hobby farming and equestrian activities in the Swan Valley and the enhancement and protection of the cultural heritage, built heritage, recreation and landscape values of the Swan Valley ...

These members are to be appointed by the minister of the day, which, of course, leads one to the inevitable question: Who do these people actually work for? Do they work for the community or the minister? Realistically, I expect this will result in appointed yes-men agreeing with everything that the minister wishes.

Hon Michael Mischin: Or yes-women.

Hon CHARLES SMITH: *Yes Minister.*

One struggles to see the purpose of this group, given the very small niche space it would occupy and its complete lack of any real power. All I am seeing is yet another example of a group of unelected, unaccountable people with zero transparency making decisions on behalf of people because they know better.

Hon Tjorn Sibma: Or they know the minister.

Hon CHARLES SMITH: Quite. *Yes Minister.*

During the briefing on this bill, which was some time ago now, I asked: what can a resident do if they object to a project in the area? The best answer I got was that they could let the strategic leadership group know what their concerns were. At best, a person can tell a group of appointed yes-men that they do not like something and those people may pass it on to another committee or the minister to then completely ignore, much like what happens now. In order to restore some democracy to this process, I will, yet again, propose a third party appeal right process so that people have access to the State Administrative Tribunal and can know what is happening with this planning procedure.

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I understand that the Swan Valley Statutory Planning Committee, again, has no input from local residents; rather, members are chosen by the Western Australian Planning Commission and, of course, approved by the minister, and it will make decisions on development in the Swan Valley. Although I appreciate the attempt to remove issues concerning planning and surrounding local councils and the Planning Commission, this legislation will largely remove the community from the decision-making process. The Swan Valley Statutory Planning Committee is another unelected, unaccountable, zero-transparency, bureaucratic group.

I will move on to clause 18 and the consultation requirements. A proposed scheme or amendment will require some consultation with the local government. When I looked at the bill, I was rather curious about what is meant by “consult”. It could be essentially to inform the local government about what is going to happen. Even if the local government were to oppose a matter, it would be okay because consultation had in fact occurred. Would this satisfy the legislation? I do not know. That is a question for the minister to answer. Personally, I would like to see direct community consultation on this matter. We all know and recognise that the Swan Valley is, indeed, a gem of Western Australia. It is also home to many people who, through this legislation, will be largely left out of any planning process. I mentioned the token input from the local council. That is all it is. The Swan Valley is hardly represented on the local council, but I guess hardly represented is better than not represented at all.

I want to jump to part 2, division 3 and clause 23. This provision does not state where proposals will be advertised. For me, that is a cause of some concern. Yet again, I am looking to rectify that situation with my amendments. For example, as we heard from the previous speaker, Hon Colin Tincknell, a large number of residents of Henley Brook were not aware that their properties were being rezoned. None of the adjoining neighbours were informed either. The planning policy is so vague that there is no requirement to give written advice to affected adjoining or neighbouring landowners. Furthermore, it has been noticed in recent developments in Henley Brook that street signage advising of proposed schemes or amendments has been placed in areas that are not clearly visible to passing traffic or on unused or limited-traffic streets.

Although I, like many others in this place, want to see the Swan Valley protected and preserved in all its splendour for future generations, I feel that this bill, although noble in effort, fails to deliver on those key aspects. Finally, I think the government has yet again missed a golden opportunity to sow the seeds of third party appeal rights in Western Australia. They could have been localised to this area as a test for the state. What a great opportunity! However, as we have learnt from the motion we debated a few weeks ago, it seems that this government is not interested in meaningful community consultation and the rights of those affected by developments and other matters.

The Western Australia Party will not be supporting the bill and I will again try to introduce some democratic principles to the planning procedure in Western Australia.

HON DONNA FARAGHER (East Metropolitan) [7.59 pm]: I also rise to say a few words about the Swan Valley Planning Bill 2020. Like other members, I do not intend to go through the bill at length right now. Hon Tjorn Sibma, our shadow spokesperson, outlined a number of matters, including some concerns, as have other members who made a contribution. Obviously, the committee stage provides further opportunity to canvass some of those issues in greater detail, and I certainly will be asking a couple of questions if they have not already been asked by other members.

Like Hon Tjorn Sibma, I want to record my disappointment that this bill has taken so long to appear in this house, particularly given the carry-on by the Minister for Planning when she was in opposition about the progress of our legislation and the framework that we intended to take. I know that the minister could not possibly bear to reintroduce the same bill—that certainly would be too much to ask—but it really did not need to take four years before this house could deal with this bill at the end of this Parliament.

Like other members, I say at the outset that the Swan Valley—I have said this a number of times in other debates in this place—is a very special part of the East Metropolitan Region. It is Western Australia’s oldest winemaking region, which is a fact that is not often reflected on, with the first vines planted in around 1829. It is a drawcard for local visitors and, certainly before the COVID-19 pandemic—I think Hon Tim Clifford mentioned this—it was a drawcard for both international and interstate visitors alike. It is a very important tourism precinct for our city and our state. As has been mentioned by other members, the Swan Valley has many award-winning wineries that produce high-quality premium wines, as well as cafes, restaurants, galleries, art and craft studios, and many other local attractions.

In recognising the importance of the valley, successive governments have sought to ensure that it is protected. That started in 1995 under the Court Liberal government and since then the legislation has been amended, albeit the basic tenet has remained—that is, that the valley be protected from the encroachment of urban development and maintained as an area primarily for the purposes of viticulture, agriculture and tourism. The former Barnett government undertook a lengthy process, including significant consultation, which was undertaken primarily by a former planning minister, Hon John Day, and by me in the final year when I took on the role of planning minister

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and introduced legislation into this place. As the Minister for Planning has probably found out, there are often different views and perspectives in the Swan Valley, but what we can all agree on is that although the current legislative framework has assisted in protecting the agricultural character of the valley, there have been major criticisms over the years of the, at times, apparent inconsistent interpretation of the legislation, particularly as it relates to planning and development proposals. As a result, we have seen examples of development and land use activities that it could be argued, quite rightly, are incompatible with the objectives of the Swan Valley Planning Act.

In terms of the legislation prepared by our government, we intended to make the process clearer for landowners and potential developers by normalising planning and development decision-making under the City of Swan's local planning scheme and the metropolitan region scheme. As part of this, our bill proposed that a Swan Valley development plan be created to underpin the local scheme and the MRS. This would provide the framework for the strategic planning of the valley and the settings that would sit around it. The legislation that is currently before us takes a slightly different approach, but there are some important differentiations. These differentiations have perhaps in part caused some concern about the matters that Hon Charles Smith and Hon Colin Tincknell raised with regard to consultation and the City of Swan, and are, I think, worthy of some further discussion.

This legislation intends to replace the two separate planning schemes with the introduction of a new Swan Valley Planning Scheme. The Swan Valley Planning Committee will be replaced by two separate bodies, the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee, with the latter becoming the primary decision-maker. As I have mentioned, and as other members have raised, that particular aspect has raised some concerns from local residents who believe that they may be ignored with regard to future proposals, particularly if the scheme is taken away from a model that includes the primary involvement of the City of Swan. I will be very much interested in the minister's response concerning these matters that have been raised by others.

Importantly though, when we are talking about the scheme that is the key part of this legislation, I reflect again on the former government's proposed legislation in which we had the Swan Valley development plan. One issue that I want to raise is that the former government released a draft Swan Valley development plan for public comment well before the introduction of the bill that I introduced into this place—I think it was back in 2015. Notwithstanding this, the Minister for Planning, in her usual response to things when she was in opposition, criticised the government. Hon Tjorn Sibma referred to a 2016 article in *The Advocate*, when she said, referring to me —

“The minister is asking for the Parliament to support legislation without the details of the development plan being finalised,” she said. “In a sense, she is asking Parliament to sign a blank cheque.”

That is what the now minister said about me when she was in opposition. I simply say to the Minister for Planning: unlike the previous government that released a draft plan well before the introduction of a bill in this place, this government, despite the carry-on of the minister when she was in opposition, has done the exact opposite. I absolutely concur with what Hon Tjorn Sibma has said regarding this minister; she can carry on all she likes and say that she is fantastic and wonderful and she is doing this and something else, but the fact is that after having a go at me when she introduced this legislation in the other place, was that draft scheme put out for public comment? No, it was not! Do not come into this place and carry on and say, “Oh, we've got it all right now. You don't need to be consulted. That doesn't matter!” That is the exact thing that she had a go at me about! She clearly did not learn.

As I said, the bill was introduced without the draft scheme. I want to be very clear on this. The draft scheme was released only on 14 October, some one month after the bill had been introduced into this house and after it had passed the lower house. So much for consultation! Had it not been through questioning by Hon Tjorn Sibma and perhaps through questions to the minister via her office—I cannot speak for that, but I can only imagine that questions were asked—I wonder whether it would have even been released before the passage of this bill. The minister was specifically asked by Hon Tjorn Sibma whether she would table the draft scheme. I think that question was asked in September. I looked at *Hansard* and the minister's response was —

... the minister will consider making later drafts of the document public.

Even back in September, she did not give an indication that she would table the document—she would consider tabling it.

I suggest that that was a most inadequate response back then, but I will move forward. I want to conclude my comments, because I think it is important that we go into the Committee of the Whole to ask a couple of questions regarding the legislation. As Hon Tjorn Sibma said, the Liberal Party supports the legislation. However, there are concerns that have been raised, particularly related to the draft scheme—perhaps more so than the bill itself. That has been raised by other members. As I said, I have a couple of questions to ask in the committee stage. There are also some concerns around consultation, particularly with local residents and the like. We will deal with that when we get into the committee stage. Again, I will make the point that it has taken a very long time for us to be dealing with this legislation. The minister can no longer blame the former government—no doubt she will probably try to—

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because she has had an entire term of government to introduce this legislation. Despite assurances that she would, in her words back in May 2017, “prioritise” a solution and, in answer to one of my questions from April 2019, she said “Any legislative change required will be progressed as soon as practicable”, this minister has dithered and delayed, and continued to create unnecessary uncertainty within the valley.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [8.11 pm] — in reply: At the outset, I thank those honourable members who made a contribution to the debate this evening on the Swan Valley Planning Bill 2020. I thank Hon Tjorn Sibma for his indication of support for the bill on behalf of the opposition. I thank Hon Donna Faragher for her comments. I also thank Hon Tim Clifford for his support for the bill. I am not quite sure what Hon Colin Tincknell is doing after his comment.

Hon Colin Tincknell: I’m not quite sure at this stage.

Hon STEPHEN DAWSON: Right, okay; we are on the same page. I also acknowledge the contribution by Hon Charles Smith, who has indicated he is not supporting the bill, which is fair enough.

I would like to try to address the various issues that were raised with me during the debate, noting of course that we are going into Committee of the Whole, so there will be an opportunity for honourable members to raise issues that they do not think I have addressed to their satisfaction. If I can start with how the bill compares with the previous bill, in short, the Swan Valley Protection Bill 2016 was introduced into Parliament by the former government. It principally proposed a development plan for the Swan Valley region, the removal of the Swan Valley Planning Committee and the introduction of an improvement plan for the Swan Valley. This new bill proposes the creation of a new, community-based strategic leadership group and a bespoke scheme that recognises that the area is regionally significant and special, and therefore assists in the protection of the agricultural activities in the valley and reduces land use conflict.

I note Hon Tim Clifford acknowledged the importance of the area in his contribution. The new bill proposes to create a subcommittee of the Western Australian Planning Commission, being the Swan Valley Statutory Planning Committee, to make planning decisions in the Swan Valley. It proposes to make a single-layer planning framework for the valley to simplify the current, multilayered decision-making matrix for the region.

There was a question about the role of the City of Swan. I am advised that the City of Swan supports the outcomes recommended in the Swan Valley planning review. Through its input, it remains supportive of deferring its usual planning responsibilities to the state. The City of Swan and the Swan Valley Planning Committee contribute to multiple layers in Swan Valley planning, which has led to inconsistent planning decisions and delays in the approval process. The new planning framework will enable a consistent process that ensures a single decision-maker for Swan Valley proposals, which will also cut red tape.

In terms of the consultation, there were questions about when and for how long the City of Swan was consulted. My advice is, in short—continuously. The City of Swan has consistently been informed of the advancement of the bill and the planning scheme throughout the entire process undertaken by the minister and the government. It provided written confirmation of its support for the recommendations of the Swan Valley planning review.

There was a question about the draft planning scheme. In September 2020, the City of Swan was provided with a copy of the draft scheme for comment and input. I think the Department of Planning, Lands and Heritage is still awaiting a formal response on the draft scheme. I note, however, that on 18 November 2020, the council resolved to support the draft scheme subject to four modifications. Of course, we are not here tonight to debate the scheme, but I make those points.

There was a question about the right to farm. The right to farm is a statewide issue that is best addressed by the agricultural portfolio in a consistent and coordinated manner that is applied across the entire state.

Hon Donna Faragher: That is not what the minister said in opposition.

Hon STEPHEN DAWSON: I am sure the honourable member would realise and appreciate that I am representing the minister tonight. I am providing answers to the questions that have been raised with me. I will start that again. The right to farm is a statewide issue that is best addressed by the agricultural portfolio —

Several members interjected.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Order, members! I am listening intently to the Minister for Environment.

Hon STEPHEN DAWSON: The right to farm is a statewide issue that is best addressed by the agricultural portfolio in a consistent and coordinated manner that is applied across the entire state. The Department of Primary Industries and Regional Development, through the office of Agriculture and Food, is better placed to do this, with

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its core purpose, legislation and policy suite having a focus on farming matters. I note that the former government repealed the Agriculture Protection Board Act 1950 in 2010.

Why are right-to-farm measures included in the Swan Valley Planning Scheme? The Parliamentary Counsel's Office encouraged that right-to-farm measures be included in the Swan Valley Planning Scheme rather than the Swan Valley Planning Bill 2020. How are right-to-farm measures provided for in the Swan Valley Planning Scheme? In the Swan Valley planning framework emphasis is placed on new development demonstrating that it will not impact existing or potential agricultural use of rural land. The scheme proposes measures that place the emphasis on new non-rural uses, especially tourism and hospitality, ensuring that they will not impact rural use of other rural land.

New proposals must consider and, where necessary, include measures such as design, scale and siting that minimise the impacts of the new non-rural uses on other rural land. Management plans may be required for non-rural development of rural land to demonstrate that the new use is unlikely to impact both existing and potential rural use of rural land, identify potential issues for remediation and provide for mitigation within the plan. A new non-rural use has the responsibility to fit in with principally rural-zoned uses, for which the Swan Valley land is primarily zoned. If compatibility cannot be demonstrated, the non-rural use may not be suitable to the rural zone, thus resulting in a recommendation to refuse the proposal.

There was a question about water rights. Water licensing measures were not detailed in the Swan Valley Planning Bill 2020 to avoid interference with existing water legislation. The Department of Water and Environmental Regulation is considering new water licensing policies for the Swan Valley under the existing Rights in Water and Irrigation Act 1914. I am advised that these will be released as part of a draft Gngangara groundwater allocation plan, which is currently under development.

There was a question about nonconforming uses. It is not unusual for development applications to be inconsistent with planning scheme provisions, whether in the Swan Valley or any local government area. An applicant is free to lodge an application for any proposal, whether or not it complies with a planning scheme. However, if, upon assessment, the proposal is likely to lead to a refusal based on current planning provisions, this situation is addressed through the assessment of proposals, with outcomes varying depending on the detail. A proposal may be refused if it significantly varies from scheme provisions, or it may be approved with conditions that address the inconsistencies if they are reasonably minor and can be modified for the design or proposal to become compliant with the relevant provisions. One thing I should emphasise is that once a proposal has approval, the approval remains valid even if planning provisions change, provided that it continues to satisfy any conditions of approval and does not cease to operate for a certain period. This type of development is most often referred to as "nonconforming use", and for the approval to remain valid in the Swan Valley, it must not cease for a period of more than six months. Once the time limit has passed, the use will no longer have approval and a fresh application that satisfies the provisions of the new scheme must be applied for and approved for the use to recommence.

The Swan Valley Planning Bill 2020 provides clear guidance on the transition of existing planning provisions to the new Swan Valley Planning Scheme provisions. When the new scheme takes effect, any development or subdivision application that has not been resolved under the former scheme—that is, was lodged before the new scheme came into effect and a decision was not made before the new scheme came into effect—is to be assessed under the new provisions. I am told that through consultation on the bill, the State Administrative Tribunal supports this approach.

There was a question about consultation. I am advised that extensive consultation has occurred with ministers, state agencies and the community. Public consultation occurred on the Swan Valley planning review—the Kobelke report—and its recommendations, and that liaison with relevant ministers on cross-portfolio matters occurred.

Parliamentary Counsel's Office recommended that consultation take place with various agencies. That occurred. As part of the Swan Valley planning review, key groups and individuals were identified and consulted. They included the Minister for Agriculture and Food; the Minister for Emergency Services; the Minister for Tourism; the Minister for Water; the Department of Biodiversity, Conservation and Attractions; the Department of Communities; the Department of Primary Industries and Regional Development; the Department of Water and Environmental Regulation; Racing and Wagering Western Australia; Tourism WA; Perth Airport; the City of Swan; community groups; businesses; landowners and residents. I have been told that this process assisted the advancement of the bill and the draft scheme.

I turn now to the buffer. A number of members talked about the buffer, but I might leave that until the Committee of the Whole stage. The advisers may have to talk me through that.

I will now touch on zoning. All properties that are zoned rural residential located to the west of West Swan Road and within the Swan Valley Planning Act 1995 boundary have been zoned as rural residential since the gazettal of

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the City of Swan's local planning scheme 17 that came into effect in February 2008. Prior to that, rural residential was commonly called "special rural", which is no longer the preferred nomenclature.

Hon Tim Clifford wanted an indication of what we thought of his amendments. I am happy to state that now. Honourable members will see that there are a number of amendments on the supplementary notice paper. One is in the name of Hon Michael Mischin at 10/2. I can indicate that the government will support that amendment. Hon Tim Clifford wants to move an amendment to clause 3. We are supportive of that. Hon Charles Smith wants to move an amendment to clause 10 and insert new clause 13A. That is not supported. He will not be surprised by that. Hon Tim Clifford seeks to move amendments to clauses 28 and 33. We will oppose those amendments. However, he also has an amendment for a new clause 41A in relation to the five-year review process. We are happy to support that amendment.

I think I have answered most questions. If I have not answered them to members' satisfaction, they will, of course, get an opportunity to quiz me again in the committee.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

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

The DEPUTY CHAIR: We are dealing with the Swan Valley Planning Bill 2020. I bring to members' attention supplementary notice paper 204, issue 4.

Clause 1: Short title —

Hon TJORN SIBMA: I appreciate that the Minister for Environment is again representing the minister in the other place and, obviously, significantly relies on the advice provided by the Minister for Planning, her staff and officials. I was paying attention to the answers that the minister provided to a range of questions and issues raised throughout members' speeches during the second reading debate, particularly those concerning the status of the so-called right-to-farm provision. I think we have now received an answer confirming that no such right is enshrined in the bill, despite the fact that the bill has been sold to the Swan Valley community and to the general public in those terms and that the appropriate agency and the appropriate vote of statutes dealing with matters such as that should be strictly within the preserve of the agriculture portfolio and the Department of Primary Industries and Regional Development. I think that underscores some of the disingenuous communication and attention that this issue has garnered, and it has been promulgated by the minister herself. I also note for the record the responses concerning the broader issue of consultation and that the minister's response to those issues that have been raised by not only me, but also other speakers have focused predominantly on the Swan Valley review process that was undertaken by the late and respected Hon John Kobelke. That is a completely different issue from consultation on the composition of this bill and on the scheme.

I provided extensive notes for the benefit of *Hansard* after I made my contribution to the second reading. The minister's contribution relating to consultation on both the bill and the scheme is absolutely and definitively contradicted by the City of Swan. I need to understand very clearly, and I think the chamber needs to understand very clearly, who is telling the truth here. Is it the City of Swan, which in an email to me on or around 8 September quite explicitly said that it had not been consulted on the bill and had not seen a copy of the draft? Is that correct or is that not correct?

Hon STEPHEN DAWSON: I am told that the City of Swan has been consulted, absolutely, at an officer level throughout the process, on the bill as well as the scheme.

Hon TJORN SIBMA: Would the minister kindly advise the dates and times upon which that consultation occurred?

Hon STEPHEN DAWSON: I do not have that information at hand, honourable member.

Hon TJORN SIBMA: Is the minister in a position to elicit that information before 9.45 this evening?

Hon STEPHEN DAWSON: I am not.

Hon TJORN SIBMA: This is not a question, but a statement. That is completely unacceptable. The minister has been definitive in his answers, representing the Minister for Planning, and relying upon the advice of her advisers and officials. There is a serious conjecture of facts. I received an explicit email from the City of Swan dated 8 September, which said that it had not been consulted on the bill and that it had not seen a copy of the draft

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scheme. If the minister is to advise me and this chamber that those two statements of position from the City of Swan are incorrect, would the minister please provide this chamber with the evidence that contradicts that position? These are easy questions of fact to answer. I would have anticipated—indeed, I would expect—that that information would be readily at hand.

The DEPUTY CHAIR: I think the minister has already answered that question.

Hon STEPHEN DAWSON: With the greatest respect, honourable member, in dealing with a bill before the chamber, it is not normal practice to ask for every single bit of correspondence or every interaction that the state might have had with an agency. Obviously, I am not sure whom the member is referring to in terms of that correspondence that he has from the City of Swan. The City of Swan is a big organisation. Certainly, the advice from my advisers and from those in the minister's office who are here with me is that consultation did take place with officers at the City of Swan. If somebody in the food chain was not aware, certainly other people were. That is the point I make. Consultation did occur. That is my advice.

Hon TJORN SIBMA: Minister, as far as I am concerned, I am not likely to make acceptable progress without eliciting a satisfactory answer on that particular issue. Suffice to say that I find it enormously concerning that at this late stage of the parliamentary term, and taking a charitable view of the legislative priorities that the government intends to bring before this chamber, appropriate preparation or anticipation of very basic questions has certainly not been undertaken. That is the case particularly when the current Minister for Planning, when opposition spokesperson on these portfolio matters, and to the degree that she has reflected upon her previous statements while in her present role, has made almost a virtue of the necessity for consultation.

I am asking two very basic questions: the time and the date of consultation between the department and the City of Swan on the construction of this bill and the presentation of the draft scheme. I have read in from the most senior administrative level of that local government authority a declarative statement that it was not consulted, yet in the minister's second reading reply, he has said that it was consulted. I am not doubting what the minister has said; I am just inviting him to provide evidence to substantiate his claim, because the City of Swan has provided me with evidence that substantiates its position, and I can provide a time and date for the correspondence that occurred three months ago. That is all I am asking for. Is the minister seriously advising me that it is not within his gift to provide me with that fundamental information?

The DEPUTY CHAIR: That is the same question that was asked previously. If the minister chooses not to answer it, I will end questions of that particular nature and seek other questions on clause 1.

Hon TJORN SIBMA: I will ask a related but different question, and perhaps the minister is in a position to answer it. Can the minister advise the chamber of the nature of that consultation?

Hon STEPHEN DAWSON: I am told that officers from the department presented the information to the Swan Valley Statutory Planning Committee, but also to officers of the City of Swan, over the past six months. I am further advised, in relation to the draft scheme, that information was sent to a director at the City of Swan on 7 September—so around the same date as the information that the member has to say that people were not told about this stuff.

Hon DONNA FARAGHER: I would like some clarification, because this is the first time we have heard that information was provided to the Swan Valley Statutory Planning Committee, which is not the City of Swan. I want to get some clarification. We previously heard that extensive consultation occurred with the City of Swan, and now I hear that something might have been sent to an officer of the city. I am not suggesting that that has not occurred, but I think we need some absolute clarity, because we are now brought into the remit of the consultation being with the Swan Valley Statutory Planning Committee.

Hon STEPHEN DAWSON: Just to confirm, I said two things; obviously the member was not listening. I said officers at the City of Swan have been briefed over the past eight months; further, I said that briefing had taken place at the Swan Valley Statutory Planning Committee, which officers of the City of Swan attend. I further spoke about the draft scheme being emailed to appropriate directors at the City of Swan on 7 September. I have seen evidence of that email being sent to a director at the City of Swan, so although I do not have a list of every bit of consultation or, indeed, conversation that has happened between the department and the City of Swan over the past few months, I can provide that information.

Hon TJORN SIBMA: I asked a question of fact relating to consultation, and I will just express, firstly, my surprise, and, secondly, my concern that lip-service seems to have been paid to consultation even in respect of the devising of this bill; I will leave the scheme aside for a moment. When we ask some reasonably straightforward questions about consultation, with the greatest of respect, the issue has been given lip-service. When I think about consultation, everybody has their own construction of the term. If I am to understand the minister's advice to this chamber, it is effectively that unnamed administrative staff, quite aside from people on the Swan Valley Planning Committee—

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we will deal with the administrative staff at the City of Swan—received a copy of the Swan Valley Planning Bill on 7 September —

Hon Stephen Dawson: By way of interjection, I said a copy of the draft scheme on 7 September.

Hon TJORN SIBMA: Sorry, minister; thank you. When did they receive a copy of the bill?

Hon STEPHEN DAWSON: I am going to finish this line of questioning now. I told the member that I do not have those dates or that information before us, and I am not likely to have it this evening. It would take an inordinate amount of time to go through the records. We can get into this he-said, she-said, but I have cited evidence of the draft scheme being sent to an officer on 7 September. The member has a view about consultation and says that it is not enough. I think the member has put it on the record; that is fine. My advisers tell me consultation happened, and I think that is probably the last time I will deal with that issue.

Hon TJORN SIBMA: Potentially, does the minister have or has he seen evidence of the City of Swan being consulted about the bill through whatever means of transmittal or correspondence, and can he advise when that occurred?

The DEPUTY CHAIR: I think the minister has already answered that question and said no.

Hon Stephen Dawson: I have answered that. I told the member I have not seen it. It is not available.

The DEPUTY CHAIR: I might do that, minister, so you do not need to. I give the call to Hon Michael Mischin. The minister has answered that same question now several times. I have heard the question answered not in the way perhaps members want, but it has been answered all the same.

Hon MICHAEL MISCHIN: I seek some clarity on this because my idea of consultation involves an exchange of ideas and saying, “I’d like to have your input on something”, and to receive that input. The minister said consultation has occurred at some undefined officer level at the City of Swan. Has formal correspondence been sent to the mayor, for example, of the city saying, “This is what we plan to do. Can we have the city’s view on this?”

The DEPUTY CHAIR: I think we are in the realms of the same question again. Honourable members, we are going to have to get to a point where the minister has given the response that he has given. You may want to do a member’s statement later on and rail against it, but at this point, it will need to be a new line of questioning.

Hon DONNA FARAGHER: I will raise one matter. I appreciate that we want to move forward and that right now the minister’s advisers who are with him will, quite clearly, not be able to go back and check their records because they are here in the chamber and not in their offices. Is the minister willing to undertake to provide members here, even after the bill has been debated, the date on which the bill was provided to the City of Swan? That is a simple request for him to give that undertaking, and then I think we might be able to move forward. It is a fair question. I appreciate that he will not be able to provide it right now. But at a later date, when his officers have had an opportunity to review their emails, could he provide that to the chamber? I know the minister has undertaken to do that on other bills.

The DEPUTY CHAIR: That is a different question. I will allow that one.

Hon STEPHEN DAWSON: As the member knows, I aim to please. I am happy to ask the minister whether it is possible for that exercise to take place and for me to be able to provide it, if not before we rise on Thursday, certainly behind the Chair and out of this process. I am happy to make that request.

Hon Donna Faragher: Thank you very much.

Hon COLIN TINCKNELL: Can the minister understand Swan Valley residents’ concerns about the way the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee have been formed and what input the residents had in making that group? I am trying to say that they have some concerns because they have not been consulted and they have not been involved in the process. Can the minister understand why I keep bringing that up? What is the answer to that?

Hon STEPHEN DAWSON: First of all, it is not appropriate asking my opinion, view or whether I understand what the community is feeling. It is not my issue. Those groups have not been formed. The bill before us allows a head power to enable that strategic leadership group and statutory planning committee to form. They have not been formed yet. Obviously, if this bill passes, further work needs to take place before such groups are formed.

Hon COLIN TINCKNELL: The planning and structure of those groups has been formed.

Hon Stephen Dawson: No, they have not. If this bill passes this place, it will allow them to be formed, but they have not been formed yet. It is still an idea, a concept, until the bill passes this place.

Hon COLIN TINCKNELL: The problem we face with that is that the minister says people will be consulted after the bill is passed. That is why I was not sure whether I would support this bill. Consultation should be done beforehand.

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The DEPUTY CHAIR: Is there a question in that, honourable member?

Hon COLIN TINCKNELL: I am asking the minister why the consultation was not done beforehand. Why wait until the bill is passed and then consult?

The DEPUTY CHAIR: I think the minister has answered that question, member.

Hon DONNA FARAGHER: I apologise if the minister referred to this issue in his summing up of the second reading debate, but I will ask the question again. I sought advice about this issue from his advisers prior to the debate on the bill. It relates to a particular section of Henley Brook. I know we may be straying a little bit, but I seek some clarification about whether there has been a change in zoning for a particular section of Henley Brook. It has been put to me, and I seek some clarity, that there has been a change from special rural zoning to rural residential. From my checking, that has perhaps not been the case since local planning scheme 17 has been in place, but there has been some concern raised in the community about this issue, so I would appreciate the minister's clear advice.

Hon STEPHEN DAWSON: I did actually refer to this in my summing up.

Hon Donna Faragher: I apologise.

Hon STEPHEN DAWSON: That is okay; I am happy to say it again. The member's understanding is correct. All the properties zoned rural residential are located to the west of West Swan Road, and under the Swan Valley Act 1995 boundary they have been zoned as rural residential since the gazettal of the City of Swan's local planning scheme 17, which came into effect in February 2008. Prior to this, rural residential zoning was commonly called "special rural", which I am advised is no longer the preferred nomenclature.

Hon DONNA FARAGHER: I appreciate that. I have a copy of a rates notice that mentions "special rural", but it precedes 2008, so I appreciate the minister's clarification on that point.

Hon TJORN SIBMA: Again, I seek an understanding of the genesis of the bill. This is the kind of question about which government members sometimes feel charitable and tell me dates and sometimes they do not, but I am going to chance my arm, because that is my job. With respect to the drafting of this bill, when did cabinet give permission to print? Around what date did that occur?

Hon STEPHEN DAWSON: I can advise that, according to my notes, cabinet approved the printing of the bill on 10 August 2020.

Hon TJORN SIBMA: That pretty much exhausts my questions on the timing of and engagement on the construction of the bill before the chamber. My questions on clause 1, because I think that is the most appropriate position for them, concern aspects of the scheme. I certainly acknowledge that the content of the scheme obviously cannot be included within the content of the draft bill before us. The purpose of this bill is, by and large, to create and provide a head of power for the creation of the scheme. My first fundamental question about this scheme, which I reinforce currently has a draft status and has not been either approved by the minister or gazetted, is: was any analysis of the economic impact of this scheme undertaken; and, if so, who undertook that assessment and when?

Hon STEPHEN DAWSON: Not that I am aware of.

Hon TJORN SIBMA: Would the government be in a position to make an informed observation about whether this scheme, particularly as it pertains to the implementation of specific zonings and the attendant permissible land uses, will have the effect of either improving or undermining existing land values within the Swan Valley or whether there will be a net neutral effect? I think that these are material concerns about the practical implications of the gazettal of this scheme. Is the minister in any position to advise on those particular issues; and, if he is not able to provide a view on the whole scheme area, would he be able to put to this chamber the impacts of this scheme on the land values of those lots included in the proposed priority agriculture area?

Hon STEPHEN DAWSON: I just reiterate that the scheme is, in fact, a draft scheme at the moment. It is out for consultation at the moment, so we are not in a position to say what the effects of it may or may not be. Presumably, if concerns are raised during the consultation process about those issues that the honourable member has raised, they will be addressed as part of the consultation process.

Hon TJORN SIBMA: For the record, I think that that consultation process has officially closed, and it closed on 14 November, but I might get to the implications and the likely flow-ons subsequent to that. I will ask a technical question about the scheme. I acknowledge the minister's generosity in answering questions about this particular instrument, which is actually not a feature of the bill itself but will be empowered and given legitimacy by the prospective passage of this bill. I want to understand what ground assessment, economic assessment or justification there is to differentiate priority agriculture zonings from Swan Valley rural zonings. I do not understand how that particular determination has been made. I think that a particular set of peculiar material effects will be given life to as a consequence of that differentiation.

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Hon STEPHEN DAWSON: I am told that the priority agriculture areas have been identified as a result of mapping by the Department of Primary Industries and Regional Development, which I understand took place in 2014. It is essentially those areas that already have viticulture and the like happening now.

Hon TJORN SIBMA: The dated nature of the application of the scheme might prove problematic, but that is an observation and certainly not a question. I intend to ask only one more question about the application of the permissible uses table attendant to the scheme, if the minister has that to hand. I would like to understand very basically this scenario: if I owned a winery within the priority agriculture zone, would I be able to develop a bespoke accommodation development on my site and undertake some specialty retail of a food or beverage nature as well, or would I be prohibited from undertaking that kind of development under the auspices of this proposed scheme?

Hon STEPHEN DAWSON: The short answer is yes, they could do those things.

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: My only contribution to the debate on clause 2 is to move the amendment standing in my name. I move —

Page 3, after line 7 — To insert —

- (3) However, if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

The purpose of the amendment is to be consistent with other amendments made by this chamber on the licence given to the executive, as it were, for the passage of the bill, and if the bill does not come into operation within 10 years of receiving royal assent, the bill will stand repealed. The provisions at clause 2(1) and 2(2) all turn on different parts of the act coming into operation before or after a date fixed by proclamation. On my understanding of it, a clause of this character, if accepted by the chamber, will mean that if no date is fixed for the proclamation of the bill within 10 years, the entire act will stand repealed. I note that in clause 2(1)(e), apart from certain previous provisions, it is not a question of different parts of the act coming into operation on different proclamation dates, but of the balance of the act coming into operation on a particular day fixed by proclamation. I understand from discussions behind the Chair that the minister has agreed that he is not averse to the inclusion of this amendment.

Hon STEPHEN DAWSON: As indicated by Hon Michael Mischin, we will support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: Terms used —

Hon TIM CLIFFORD: As I indicated earlier, I have an amendment on the supplementary notice paper at 4/3. From what I understand, the minister has indicated that the government will support the amendment. I move —

Page 5, after line 4 — To insert —

Swan Valley Statutory Planning Committee means the committee established under section 33(1);

Hon STEPHEN DAWSON: As indicated by Hon Tim Clifford, we are supportive of this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4 put and passed.

Clause 5: Objects of Act —

Hon TJORN SIBMA: I have a broad question concerning the objects of the act as outlined at clause 5(1)(a)–(k) relating to a question that I put during the second reading debate. I do not think the minister was in a position to provide an answer when he gave his second reading reply. Have any developments been approved to proceed in the last four years within the area of land contemplated by the Swan Valley Planning Bill and subsequent draft planning scheme that would be inconsistent with any of the objects of the bill outlined at clause 5(1)(a) to (k); and, if so, could the minister please provide details?

Hon STEPHEN DAWSON: Honourable member, we do not know. I am told it is not possible to provide an answer to that. Some of the approvals might have been given by the City of Swan, and so we do not, frankly, know.

Clause put and passed.

Clauses 6 to 9 put and passed.

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Clause 10: Contents of scheme —

Hon CHARLES SMITH: This clause depends upon new clause 13A, so if the chamber finds it acceptable, we will return to it after we debate new clause 13A.

The DEPUTY CHAIR (Hon Adele Farina): Is the member asking to defer consideration of clause 10 to after consideration of new clause 13A?

Hon Charles Smith: Correct.

Further consideration of the clause postponed until after consideration of new clause 13A, on motion by Hon Charles Smith.

[See page 8228.]

Clauses 11 to 13 put and passed.

New clause 13A —

Hon CHARLES SMITH: I have previously tried to introduce a certain level of third party rights to development applications and approvals. That is exactly what I am trying to do with this new clause that details how and where projects are advertised to the general public. In addition, the new clause details how third party rights can be followed through the State Administrative Tribunal for review and so on. Members will recall that we recently debated a motion on third party appeal rights. I do not propose to go through all those details once again, because everyone is aware of how that system operates. I move —

Page 11, after line 28 — To insert —

13A. Third party rights in relation to development applications and approvals

(1) In this section —

development application means an application for approval of development.

(2) The Swan Valley Planning Scheme must require the Commission —

- (a) to advertise any development application made under the Scheme, inviting members of the public to make submissions to the Commission within the period specified in the advertisement; and
- (b) to have due regard to any submissions made in response to the advertisement.

(3) For the purposes of subsection (2)(a) —

- (a) the advertisement must be published on the websites of the Commission and the Swan Valley local government throughout the period specified for the making of submissions; and
- (b) the advertisement must also be published in the following ways as often as the Commission considers appropriate for the purpose of drawing the development application to the attention of persons whose interests may be affected by the development —
 - (i) in a local newspaper circulating throughout the Swan Valley (as opposed to a newspaper circulating throughout the State);
 - (ii) in a newspaper circulating throughout the State;
 - (iii) in any other way the Commission considers appropriate for the purpose of drawing the development application to the attention of persons whose interests may be affected by the development;

and

(c) the advertisement must specify the following —

- (i) to whom and how submissions may be made;
- (ii) that submissions may include objections to the development or to any aspect of the development;
- (iii) details of a person's right to apply to the State Administrative Tribunal under subsections (4) and (5);

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and

- (d) the period specified for the making of submissions must be a period of not less than 28 days after the day on which the advertisement is first published.
- (4) A person within subsection (5) may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision under the Swan Valley Planning Scheme to approve development.
- (5) A person is within this subsection if the person —
 - (a) in response to an advertisement that the Commission was required to publish by the Swan Valley Planning Scheme in accordance with subsection (2)(a), made a submission on the development within the period specified for the making of submissions; and
 - (b) in that submission, objected, or in effect objected, to the development or to any aspect of the development.

Hon STEPHEN DAWSON: I indicate that the government is strongly opposed to this amendment. Obviously, we had a similar debate when we dealt with the Planning and Development Act some time ago. The honourable member is seeking to introduce third party appeals rights so that, essentially, a third party could bring an application in the State Administrative Tribunal to challenge a decision of the Swan Valley Planning Committee to approve development under the Swan Valley Planning Scheme.

Third party appeal rights have never been a feature of the WA planning system. There has been a consistent and, indeed, a historic and bipartisan approach to opposing third party appeal rights in the planning system. Planning ministers from both sides have consistently noted the concerns that third party appeal rights would add unnecessary complexity and red tape to the planning framework, and this at a time when state governments are seeking a better and simpler system. There are also concerns about costly and vexatious proceedings. Third party appeals can lead to the very worst type of not-in-my-backyard behaviour. Where third party appeal rights exist in other jurisdictions, there are usually checks and balances in place to prevent costly and vexatious proceedings from occurring. That is not the case in the bill before us. As much as I have sympathy for ensuring that we have community participation in the planning system, the government and I do not support the amendment.

Hon TJORN SIBMA: I acknowledge Hon Charles Smith's consistency with this issue. One might debate the merits of the concept. My view is that this bill is the wrong place for the insertion of that right, and I hold that view for two reasons. First, if it were the will of the chamber to include something like this provision, it would be best placed in the Planning and Development Act 2005 where it would apply to specified classes of development in a way that is understood and well foreshadowed. I have lauded the member's consistency on this issue and I now use this opportunity to laud my own; that is, this bill but the scheme itself does not necessarily deal with specific development proposals but with orderly land use planning in a particularly defined area. Although it has been the government's focus to concentrate on expediting development applications as they pertain specifically to the built form application, and although it has indicated a willingness to rationalise the approvals process as it relates to those, I remain aghast about the lack of reform in rationalising longer leading land use planning approvals processes. This is a significant encumbrance on development and job creation and it does not serve any particular community interest at all. The second reason is that, as I outlined in my second reading contribution, I also remain aghast that the government has not prioritised, at the legislative level, improvements to consultation with the community broadly across the entire planning framework. If we are going to make positive changes, we need to deal with the systemic issues. This amendment is completely understandable. I appreciate it, but this is not the place to do it and, as a consequence, I cannot support it.

New clause put and negatived.

Postponed clause 10: Contents of scheme —

The clause was postponed at an earlier stage of the sitting.

Postponed clause put and passed.

Clauses 14 to 27 put and passed.

Clause 28: Swan Valley Strategic Leadership Group established —

Hon TIM CLIFFORD: Regarding the amendment standing in my name, 5/28 on the supplementary notice paper, I move —

Page 21, after line 15 — To insert —

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- (3A) A person who is a member of the Swan Valley Statutory Planning Committee cannot be appointed under subsection (2).

By way of an explanation, as it stands, the bill allows members to sit on both the minister's advisory body, which is the Swan Valley Strategic Leadership Group, and the development assessment body, which is the Swan Valley Statutory Planning Committee. The Greens believe this poses risks of undue influence and conflicts of interest. To me, it makes sense that we separate the two bodies. To have the same representatives on those two bodies increases the risk for those issues to happen.

Hon STEPHEN DAWSON: I indicate that the government is not supportive of the member's amendment. I will speak to the amendment that stands at 5/28 and the amendment that stands at 6/33. I will speak to both amendments at the same time. We do not support either amendment. The amendment to clause 28 proposes that a person who is a member of the Swan Valley Statutory Planning Committee cannot be appointed as a member of the Swan Valley Strategic Leadership Group. The amendment to clause 33 proposes that a person who is a member of the Swan Valley Strategic Leadership Group cannot be appointed to be a member of the Swan Valley Statutory Planning Committee.

These amendments are not supported because, depending on the nominations received for the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee, it might be advantageous to have one representative on both for continuity, and it may not be expedient to curtail this by simply disallowing it. It should be noted that because of the proposed composition of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee, there will not, in practice, be much duplication of persons appointed to both the leadership group and the statutory planning committee. But, should this happen, it may facilitate the smooth operation of the functions of these bodies. For those reasons, we oppose the amendments.

Hon TJORN SIBMA: First, I want to commend Hon Tim Clifford for identifying this issue of governance. I also want to commend the minister for his clarity of response. Colleagues, I think that Hon Tim Clifford has identified an important issue. The Swan Valley Strategic Leadership Group is dealt with at amendment 6/33 on the supplementary notice paper. Please correct me if I am wrong, minister, but in my reading, the Swan Valley Strategic Leadership Group will receive government support and endorsement. Its role is to speak to the strategic issues facing land uses currently and prospectively within the subject area. The role and function of the Swan Valley Statutory Planning Committee are completely different. I hope that the government would be of a mind to avoid the potential for the appearance or actuality of a conflict of interest in the membership of these composite bodies in which, effectively, we might have a member of the Swan Valley Strategic Leadership Group, who is likely to be a person hand-picked by the minister, advocating for a particular economic, business, sectoral or political advantage within a statutory decision-making body.

I consider that to be an obvious risk and one that should be avoided. I really kick myself for not spotting it before Hon Tim Clifford did, because if he did not put an amendment on the supplementary notice paper, I absolutely, positively guarantee members that I would have! That is the short way of saying that I will support, and as a consequence the Liberal Party will support, the amendment moved by Hon Tim Clifford at 5/28 and the subsequent amendment at 6/33 on the supplementary notice paper.

Division

Amendment put and a division taken, the Deputy Chair (Hon Adele Farina) casting her vote with the noes, with the following result —

Ayes (17)

Hon Ken Baston
Hon Jacqui Boydell
Hon Robin Chapple
Hon Jim Chown
Hon Tim Clifford

Hon Peter Collier
Hon Diane Evers
Hon Donna Faragher
Hon Nick Goiran
Hon Rick Mazza

Hon Michael Mischin
Hon Tjorn Sibma
Hon Charles Smith
Hon Aaron Stonehouse
Hon Dr Steve Thomas

Hon Colin Tincknell
Hon Alison Xamon (*Teller*)

Noes (10)

Hon Stephen Dawson
Hon Sue Ellery
Hon Adele Farina

Hon Alannah MacTiernan
Hon Kyle McGinn
Hon Martin Pritchard

Hon Samantha Rowe
Hon Dr Sally Talbot
Hon Darren West

Hon Pierre Yang (*Teller*)

Pairs

Hon Martin Aldridge
Hon Colin de Grussa

Hon Alanna Clohesy
Hon Matthew Swinbourn

Hon Simon O'Brien

Hon Laurie Graham

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 29 to 32 put and passed.

Clause 33: Swan Valley Statutory Planning Committee established —

Hon TIM CLIFFORD: I move —

Page 24, after line 29 — To insert —

- (4) A person who is a member of the Swan Valley Strategic Leadership Group cannot be appointed under subsection (2)(b), (c) or (d).

By way of explanation, this amendment relates to the previous amendment to clause 28; it is a continuation of it.

Hon STEPHEN DAWSON: As I have indicated, the government will not support this amendment.

Hon TJORN SIBMA: Consistent with my earlier remarks, and axiomatically consistent with the will of the chamber with the passage of amendment 5/28, for consistency's sake we have no option, and it is a good option at that, than to pass amendment 6/33, so we will be supporting it.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 34 to 41 put and passed.

New clause 41A —

Hon TIM CLIFFORD: I move —

Page 30, after line 17 — To insert —

41A. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
 - (a) as soon as practicable after the 5th anniversary of the day on which this section comes into operation; and
 - (b) after that, at intervals of not more than 5 years.
- (2) The review must address the following —
 - (a) the effectiveness of —
 - (i) the operations of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
 - (ii) the Swan Valley Planning Scheme;
 - (b) the need for the continuation of —
 - (i) the functions of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
 - (ii) the Swan Valley Planning Scheme;
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.
- (4) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
- (5) When the report is sent to the Clerk of a House it is taken to have been laid before the House.

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- (6) The laying of the report that is taken to have occurred under subsection (5) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

As I mentioned during my contribution to the second reading debate, it is important that we allow for a review of the legislation. The government has indicated that it will support this new clause.

Hon STEPHEN DAWSON: As I have previously indicated to the honourable member behind the Chair, the government will support this new clause. It seems to be an eminently sensible amendment.

New clause put and passed.

Clauses 42 to 148 put and passed.

Schedule 1 put and passed.

Title put and passed.

Bill reported, with amendments.