PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

Committee

Resumed from 18 June. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 4: Parts 17 and 18 inserted —

Progress was reported on the following amendment moved by Hon Alison Xamon —

Page 6, lines 23 to 25 — To delete the lines.

Hon STEPHEN DAWSON: I indicate that the government is not supportive of this amendment. It seems to be aimed at deleting any potential broadening of the criteria for significant development through regulations. I think that a couple of key points are relevant here. The power for regulations to prescribe classes of development to include proposed section 269(1)(c) on page 6 at lines 22 to 25 needs to be read in conjunction with the power for regulations to prescribe classes of development to exclude, found at proposed section 269(2)(a) and (b) on page 7 at lines 10 to 19. The honourable member is seeking to delete one proposed section but to leave the other. As I have already stated, the government does not plan to create any regulations for part 17, and the pathway has been designed without the need for them. However, these regulation-making powers have been added as something of a safeguard in case it later becomes apparent that certain types of development should be either included or excluded from the part 17 pathway. Of course, any such new regulations would be subject to oversight and potential disallowance by both houses of Parliament. But the point is that the regulations provide this added flexibility, so we will not be supportive of the amendment.

Hon TJORN SIBMA: I can appreciate the spirit with which Hon Alison Xamon has moved the amendment. I just think that in terms of where we ended last Thursday, we have been sufficiently pragmatic enough to extend the applicability of the part 17 streamlined provisions to incorporate those projects with an estimated value of $20 million and above. I think that, to some degree, has struck the right balance and broadens the applicability of this regimen, but in a way that might obviate the lower monetary value propositions for which there might be uncertain frameworks or criteria. I think, as well, that in these circumstances, we might come down on the side of the balance of flexibility, which the inclusion of those lines currently provides. I also identify that perhaps if Hon Alison Xamon is unsuccessful in moving this motion, she will probably be more inclined to get very strongly behind the other amendment that she has proposed at 26/4, which, presumably, is a little more prescriptive in terms of demanding that some criteria be established that would apply to this sort of class of projects that I think she is referring to. But I will let her make that argument at that time. For what it is worth, the opposition will not be supporting this amendment.

Amendment put and negatived.

Hon STEPHEN DAWSON: Before I turn to the amendment on the supplementary notice paper, I want to answer a question asked by Hon Tjorn Sibma on Thursday, 18 June. The honourable member requested that I table the times and dates of the three briefings with the Western Australian Local Government Association. I am advised that the briefings took place on 1 May 2020, from 3.30 pm to 4.30 pm; on 7 May 2020, from 3.30 pm to 4.30 pm; and on 8 May, from 10.00 am to 12.00 pm.

I now move the amendment standing in my name on the supplementary notice paper at 16/4 —

Page 7, line 3 — To delete "***commenced*** — the" and substitute —

commenced — has the

I advise that it is an administrative grammatical change that simply inserts the word "has".

Hon NICK GOIRAN: I accept that the amendment currently before the chamber is quite administrative. The minister proposes to amend in clause 4, at page 7, the proposed subdefinition of "substantially commenced". Is it the case that the definition of "substantially commenced" is as set out at page 6, lines 27 to 32, of the bill, but the provision that the minister seeks to amend will give the government the power to change entirely the definition of "substantially commenced" by way of regulation?

Hon STEPHEN DAWSON: I am advised that the definition at paragraph (a) is the default definition. The definition at paragraph (b) allows for some flexibility; it is one of those safeguarding provisions that I spoke about earlier. It is not the government's intention to do so, but if changes were made, for example, in the future, obviously, regulations would need to be tabled before both houses and would be disallowable.

Hon NICK GOIRAN: Is the minister saying to the chamber that the definition of "substantially commenced" at page 6, lines 27 to 32, will be the written law of Western Australia but because of the definition at page 7, lines 1 to 3, we will introduce a Henry VIII clause that will allow the government to modify written law by way of regulation?

Hon STEPHEN DAWSON: It does not allow the executive to unilaterally make a change. Obviously, if a change were to be made in the future, regulations would need to come before the chamber.

Hon NICK GOIRAN: I conclude on this point, Mr Chairman, because I understand there is a desire for members this week to make their point and move on. I make my point that this is a Henry VIII clause. I think it is wrong and I do not think the government has provided a satisfactory explanation of why this chamber should grant it the power, at the stroke of a pen, to change the definition of "substantially commenced" set out on page 6.

Amendment put and passed.

Hon STEPHEN DAWSON: I move the amendment standing in my name at 17/4 on the supplementary notice paper —

Page 8, after line 16 — To insert —

(3) To avoid doubt, this Part is subject to section 5 of the EP Act.

This amendment relates to some amendments earlier made to the bill including that standing in the name of Hon Dr Steve Thomas on the supplementary notice paper. At the time, I spoke at length on that amendment and indicated we supported it. This amendment supports those other changes made to clarify that part 17 does not apply to the Environmental Protection Act and makes clear that section 5 of the EP act continues to apply to part 17.

Amendment put and passed.

Hon NICK GOIRAN: I note the concept of substantially commenced referred to in clause 4 and draw the minister's attention to page 7, proposed section 269(2) and the reference to development being "of a class or kind prescribed by part 17 regulations". What is the class or kind of development proposed to be prescribed under this proposed subsection? Is it different from that at page 6, line 23?

Hon STEPHEN DAWSON: This does the opposite to the inclusion raised in the honourable member's previous line of questioning. This provision would allow for government to exclude a class of development. I am advised that it is not the intention at this stage to exclude any class of development, but this proposed subsection would allow for that to happen.

Hon TJORN SIBMA: I require orientation on where we are at with the amendments. I want clarified whether the minister has been successful in moving the amendment at 17/4. Has that been accomplished yet? It has been; okay.

The CHAIR: Yes.

Hon TJORN SIBMA: All right. Before I move the amendment standing in my name at 4/4 on the supplementary notice paper, I wish to thank the minister for providing the supplementary information that he read in earlier about the dates of consultative meetings with the Western Australian Local Government Association. That assists in understanding precisely who knew what and when about the content of the bill.

I just want to explain very briefly the motivation behind the amendment as it appears, because that will also effectively deal with amendments that I have later on the supplementary notice paper, particularly those at 7/4 and 8/4, dealing with powers under proposed sections 281 and 282. The argument that I am about to put is the same argument that justifies the inclusion of those other amendments I referred to. I want to acknowledge that the government has moved, effectively, a mirroring amendment to mine, but with one substantive and very important consequential difference. My amendment is to effectively introduce a new section 272(7), which would obligate the Premier, within 14 days after a direction is given, to cause a copy of the direction to be published in the *Government Gazette* and, as soon as practicable, to cause a copy of that direction to be laid before each house of Parliament or dealt with under section 268A of the act. The reason I have identified the Premier as the principal agent is that under proposed new part 17 of the act, proposed section 272 is described as —

Development applications that may be referred to Commission by Premier during recovery period.

I emphasise the word "Premier". It then goes on to explain the circumstances in which a Premier might refer a development application that is effectively outside the new significant development definition—which we have agreed to previously—to the Western Australian Planning Commission for consideration. Under this legislation, the Premier will do that on advice provided to him by the Minister for Planning, but it is essentially the Premier's call as to whether he agrees with the advice put to him by the Minister for Planning and actively implements that advice. I am curious whether the government wishes to put an argument that effectively lets the Premier off the transparency hook and gives it to the minister instead, because to me that does not appear to make much sense at all and seems to actually compromise the intent behind this transparency amendment.

Hon STEPHEN DAWSON: I indicate first of all that, leaving aside the Premier and the minister, there is a slight wording change between what I have proposed and what the member has proposed. I am advised that this amendment was drafted by the Parliamentary Counsel's Office, and it is apparently standard drafting procedure to use the words that have been drafted in my amendment. I just want to indicate that to members.

On whether it should be the Premier or the minister, I am advised that the honest and simple answer is that these are the words that the PCO chose. The instructions from the PCO were not specific on this point. The PCO was given a list of the amendments that are opposed by the opposition and was asked to check and, if needed, draft alternative wording. I am informed that there was no policy instruction with the aim of specifically favouring the minister over the Premier in the obligation to publish in the *Government Gazette* and inform Parliament. However, I am also advised that, essentially, the information would be prepared by the minister, the minister's office and the minister's department rather than the Premier's office or, indeed, the Premier's department, so it was felt more appropriate that the minister be included here. That is simply the reasoning for it.

Hon TJORN SIBMA: I anticipated some line of argument along the lines that, effectively, the origin of the advice is with the minister or the minister's department. Nevertheless, proposed section 272 of this bill is quite specific about the Premier's role in the decision-making process. It might lead me to ask—I am not intending to delay the process of the contemplation of this bill—if it is the Minister for Planning who bears all responsibility for decision-making, as the minister has just suggested, even in this new expedited development approvals assessment framework, why introduce the Premier into the matrix at all? I just do not understand. If that is the case, why not delete the reference to the Premier and have it all as the Minister for Planning?

Hon STEPHEN DAWSON: Obviously, proposed section 272 says that the Premier will do something on the recommendation of the minister. The conflict resolution directions, which appear later under proposed sections 281 and 282, state that it will be the minister with the agreement of the Premier. I am quite relaxed about this. There was no plan behind it; quite simply, it was the advice from the Parliamentary Counsel's Office that this would be the best way forward.

Hon TJORN SIBMA: I understand that within the parameters of strict drafting practices, that would probably be an acceptable compromise amendment that would sort of anticipate the spirit of the amendment moved by yours truly. However, there are issues of policy and accountability that go quite beyond the technical focus of the PCO. This is an amendment bill that introduces an opportunity for intervention, albeit limited, in the planning decision framework by the Premier. Premiers get involved in different portfolios in all manner of ways, but this bill provides an obvious avenue for the Premier's direct involvement. The Premier will be the agent here; despite he or she—whoever it might be over the course of the 18 months ahead of us—acting on the basis of the information provided by the Minister for Planning, it will still be the Premier who is the actor. Therefore, although I respect the spirit in which the minister has provided his response, I still intend to move the amendment standing in my name at 4/4 on the supplementary notice paper. I will let the minister respond.

Hon STEPHEN DAWSON: This is not a die-in-a-ditch issue for the government, so if the honourable member is insistent on using the word "Premier", might I ask that he does not move his amendment but moves an amendment to my amendment that stands at 18/4, and simply include "Premier" in place of "Minister". That way, we use the drafting provisions suggested by the PCO with the words "within 14 days after the day" et cetera, but the member substitutes "Premier" for "Minister". That will hopefully be a happy compromise; that gives the member what he needs but is also properly drafted.

Hon TJORN SIBMA: I am happy to accept that as a compromise and a way forward for the expedition of this bill. I think it is important that the Premier is the agent identified here. Frankly, I do see a superior form of words to my own work—I am always happy to concede that, because I do not have the resources—insofar as it makes specific reference to those recommendations or actions by the Premier under proposed section 272(5). Discretion is the better part of valour. I will accept the minister's recommendation and not move the amendment standing in my name, but will instead allow the minister to amend his amendment.

The CHAIR: I note that Hon Tjorn Sibma will not be proceeding with amendment 4/4. I invite the minister to move his alternate amendment, perhaps incorporating the change that he has already indicated.

Hon STEPHEN DAWSON: I would prefer Hon Tjorn Sibma to move his amendment to my amendment, if that is okay. I move —

> Page 10, after line 6 — To insert —
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> (7) The Minister, within 14 days after the day on which a direction is given under subsection (5), must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

I note that Hon Tjorn Sibma will move an amendment to my amendment to delete the word "minister" and insert the word "Premier". I am happy to give an undertaking that the government will support that amendment.

Hon TJORN SIBMA: To carry through with this process, obviously the opposition accepts almost the entirety of the minister's amendment, with the exception that the word "minister" be struck through and replaced with the word "Premier". If I need to undertake any brief administrative work to give effect to that amendment to the amendment, I would love to be advised of that.

The CHAIR: Let us not overburden ourselves with any unnecessary bureaucracy.

Hon TJORN SIBMA: I will amend the amendment. I move —

To delete "Minister" and substitute —

Premier

Amendment on the amendment put and passed.

Amendment, as amended, put and passed.

Hon ALISON XAMON: I have an amendment in my name on the supplementary notice paper that pertains to the same provision that we have just amended. As presented, my amendment would not be able to proceed because the numbering of proposed section 272 has now been changed. I want to talk about the substance of the amendments. The three amendments that we have been debating have been trying to address the transparency of the decision-making when an application is taken from the current development approval pathway to the Western Australian Planning Commission or COVID pathway. I am very strongly of the view that the Greens amendment on the supplementary notice paper is the one that provides the greatest transparency to this process, and I think that is critically important. My amendment seeks to increase transparency and address the concern that has been raised with me that the mechanism has the potential to be used by the government to effectively pick and choose favourites in that decision-making process. This amendment would allow developers and the public to know which projects might or might not make it to the proposed section 274 pathway. Ultimately, it would have the effect of reducing the workload of all parties by providing a clear outline of what would and would not be considered. I am aware that to be able to move this amendment, it would need an amendment on my part to renumber it. Before I do that, I am keen to hear the government's response to the concerns I am raising.

Hon STEPHEN DAWSON: I indicate that the government is not supportive of the amendment. I am advised that it seems unnecessary. The Minister for Planning has already stated publicly that the government is developing criteria for when applications might be referred under proposed section 272. The intent is that this information will be published. I am informed that the criteria are likely to be public interest, jobs, investment certainty, constraints, timing, public benefit and local government engagement. The minister has already committed to publishing the government's referral criteria. Therefore, I do not believe that the proposed amendment is necessary.

Hon ALISON XAMON: I note that when we originally had a briefing on the bill, the government did have an intention to give us, prior to debating the bill, the criteria that has just been listed by the minister. I appreciate that the minister has given us some indication of what those criteria are likely to be. Could the minister please clarify when the criteria are expected to be publicly available?

Hon STEPHEN DAWSON: As I have indicated, this is the likely criteria. As I understand it, the Minister for Planning is in discussions with her cabinet colleagues to come to an agreed set of criteria.

The DEPUTY CHAIR (Hon Dr Steve Thomas): I note that Hon Alison Xamon has not yet moved her amendment.

Hon ALISON XAMON: That is correct, Mr Deputy Chair. I am seeking to amend the amendment on the supplementary notice paper by changing not the content of the amendment but its numbering. That change would take into account the amendment that was previously passed by the chamber.

The DEPUTY CHAIR: The trick will be that if you are going to amend your amendment, you will have to move your amendment first. Alternatively, you can present us with an amendment in full form. Is it possible for you to provide the amendment that you wish to move in full form?

Hon ALISON XAMON: The written copy is coming to you now, Mr Deputy Chair. I would like to move the amendment standing in my name at 26/4, which I will seek to amend.

Hon STEPHEN DAWSON: I thought Hon Alison Xamon indicated in her contribution that she is moving this now because —

Hon Alison Xamon: In addition to.

Hon STEPHEN DAWSON: I thought she was moving it because an earlier amendment had been passed that affected the numbering.

The DEPUTY CHAIR: I suggest that we find out precisely what Hon Alison Xamon is moving before we proceed. I understand that Hon Alison Xamon is moving not the amendment on the supplementary notice paper but the amendment that has now been given to us on a piece of paper.

Hon ALISON XAMON: I move —

Page 10, after line 7 — To insert —

(7) The Minister must —

(a) set criteria that the Minister will apply in deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274; and

(b) apply those criteria whenever deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.

(8) The chief executive officer must ensure that copies of the following are publicly available on a website maintained by, or on behalf of, the department principally assisting in the administration of this Act —

(a) any notification made to the Minister under subsection (1);

(b) if a development application is referred to the Commission under subsection (3) — the referral and the application;

(c) if a direction is given under subsection (5) — the direction and the development application;

(d) the current version of the criteria set under subsection (7)(a).

Hon STEPHEN DAWSON: Are we voting on the amendment to the amendment now?

The DEPUTY CHAIR: No. We are voting on the full amendment. The amendment that has been presented and moved by Hon Alison Xamon is not the amendment on the supplementary notice paper but an amended amendment. She has not moved the amendment on the supplementary notice paper; she has moved the amendment that has been passed out on a separate piece of paper. Does every member understand that?

Hon NICK GOIRAN: Mr Deputy Chairman, I understand what is being proposed here. I want to draw to your attention that I am not sure that it is in order to say that we are going to insert this amendment after line 7. On page 10 of the copy of the bill before me, line 7 is in the middle of the title of proposed section 273. I am pretty confident that nobody wants to insert any words between lines 7 and 8. If we can get that sorted, I am sure that we can make progress.

The DEPUTY CHAIR: My reading of the bill before me, honourable members, is that that is correct. Line 7 is the title of proposed section 273, and that being the case, I would have thought that Hon Alison Xamon's original amendment is the correct one.

Hon Alison Xamon: The numbering is still wrong, but are you saying do not worry?

The DEPUTY CHAIR: No, the amendment will still be inserted after line 6 on page 10. I am sure that the clerks will make sure that the numbering is sorted out as a part of the process. I suggest that the honourable member seek leave to withdraw the amendment as proposed and then move the amendment on the supplementary notice paper.

Hon ALISON XAMON: Thank you, Mr Deputy Chair. With that clarity, I seek to withdraw the amended amendment.

Amendment, by leave, withdrawn.

Hon ALISON XAMON: I move —

Page 10, after line 6 — To insert —

(7) The Minister must —

(a) set criteria that the Minister will apply in deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274; and

(b) apply those criteria whenever deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.

(8) The chief executive officer must ensure that copies of the following are publicly available on a website maintained by, or on behalf of, the department principally assisting in the administration of this Act —

(a) any notification made to the Minister under subsection (1);

(b) if a development application is referred to the Commission under subsection (3) — the referral and the application;

(c) if a direction is given under subsection (5) — the direction and the development application;

(d) the current version of the criteria set under subsection (7)(a).

Hon TJORN SIBMA: Notwithstanding Hon Alison Xamon's rather ironic attempt to establish a mezzanine level into this bill outside the review of provisions, I certainly accept the spirit in which it has been moved and the clarity that the honourable member seeks. Frankly, we have limited opportunities for mischief, insofar as it is practicably foreseeable, in the application of that state and regional significance test by virtue of the more inclusive provisions that Hon Rick Mazza moved last week. I am, to some degree, alert to the commitments provided through the minister representing the minister in this chamber that the substance of that work is being undertaken and that a framework of sorts will be developed through cabinet. I hope that that is provided with some public ventilation before any decisions are made that would apply to this. That is a very optimistic way forward, but considering where we are, this provision and the earlier proposed subsection is probably the least offensive aspect of the bill overall. That was not the case this time last week before we provided a more inclusive opportunity for projects of $20 million value or more. Nevertheless, for that scheme to be in any way useful to industry, in addition to an internal cabinet conversation, I hope that some broader consultation will be held with industry, including those in the tourism industry, whom I have referred to on occasion throughout the course of this debate. I will leave it there. Unfortunately, we are not in a position to support the amendment.

Hon AARON STONEHOUSE: I am not quite as confident as my friend Hon Tjorn Sibma about the bill and that the amendments on which we have agreed to date will go far enough to restrict potential mischief, conflicts or the risk of corruption. It would be useful to have the criteria that the minister or the Premier will apply in granting certain proposals access to this streamlined approvals process. That criteria should be provided publicly and published so that it can receive the scrutiny that it deserves because of the extraordinary powers to be exercised by the minister and the Premier in these instances. I am happy to support the amendment put forward by Hon Alison Xamon.

Amendment put and negatived.

Hon TJORN SIBMA: My amendment on the supplementary notice paper is very straightforward. One might say that this provision creates new and extraordinary powers; indeed, the entire bill creates new powers. However, the definition of "extraordinary" is a relative judgement. What interests me is the intent behind this proposed section of the bill—that is, to provide opportunities for economic development within the 18-month recovery period, which the government, for whatever purpose, has determined is the appropriate length of time required to assist, drive, the Western Australian economy out of the present circumstances. Part 2 of this bill has been heavily caveated around time and the public esteem with which the Western Australian Planning Commission is held as a reasonably independent arbiter.

Before I move the amendment standing in my name, I do not know why the WA Planning Commission thinks that it should not have the encumbrance of having to determine an application within the 18-month recovery period. I seek clarity on another issue also. I would have assumed—perhaps it is a very dangerous assumption to make; it is dangerous to make assumptions at the best of times—that under the bill, for example, it would be foreseeable that a proponent could lodge a development application on the very last day of the 18-month period under which this new scheme is operational. It is, therefore, quite obvious that there will be no way that any determination can be made, whether it is full and conditional approval or an outright rejection, within that 24-hour or less turnaround period. I seek to understand, first of all, what the line of accountability will be if the Western Australian Planning Commission is determined to accept referral and then make a determination. Who is the determinant? Where is that provided for in this bill? Our support for the bill, unless I have been hoodwinked, has been provided on the basis that it is an emergency economic response. I understand that a proponent could lodge a development application on the very last day of this 18-month period as long as that DA is forwarded, potentially, to another organisation, which the bill establishes at clause 5—that is, a special purpose DAP. It has always been my understanding that the new WAPC streamlined approvals process will operate effectively as the advance party for the specialised DAP that might come after. If I have fundamentally misapprehended that intent, please advise me. I am concerned about the legacy projects, which might be approved by an organisation that might only now murkily have the authority to make these kinds of determinations. This is a bit of housekeeping that is not trivial, but is potentially substantial and might provide an opportunity for some unintended consequences for those applications submitted at the tail end of the recovery period.

Hon STEPHEN DAWSON: I might just say that the COVID-19 response is also a relevant planning consideration under proposed section 275(6)(c). If a DA is put in on the last day, it will be harder for a case to be made for it. However, let me say that the amendment, should the member move it, will inject a significant degree of uncertainty into the process. If the Western Australian Planning Commission has to determine an application before the end of the 18-month recovery period, when will be the last day upon which a developer must submit an application? What date exactly is it? It would make more sense if it referred to the last date an application needed to be submitted and not the last date it has to be determined. It is not clear what will happen to applications that are only part way through the application process when the recovery period suddenly ends. Does an applicant have to start over again, say, through the DAP system? What will the transitional provisions be? How will that work in practice? Towards the end of the 18-month recovery period, the commission will inevitably need to rush its decisions. That will not lead to better planning outcomes; in fact, it risks worse planning outcomes. It could also lead to mischievous behaviour, if I can call it that. Some third parties or referral bodies might try to run down the clock and somehow prevent the commission from making a decision before the end of the 18-month period. Therefore, there are some issues associated with the member's amendment.

I am advised that the commission will aim to make decisions within 90 days. Therefore, after the 18-month period, there will be 90 days in which a decision can be made. But there will be some issues if everything has to be decided by the end of the 18 months, because people—legitimate participants, if I can call them that—will be in the process already and there may well be some issues associated with their applications.

Hon ALISON XAMON: I indicate that the Greens will oppose the amendment by Hon Tjorn Sibma. A number of those reasons have been effectively articulated by the minister. I am concerned that the proposed amendment would not enable the WAPC sufficient time to deal properly with applications that arrive during the last few months of the life of this part of the bill. The Greens have been very clear that we want to ensure that the WAPC is able to undertake its deliberations properly, especially as this process will remain in operation anyway and it does not hand over any elements of the monitoring or enforcement of conditions to any other body. I am afraid that this amendment, were it to be supported, would lessen, not facilitate, good decision-making.

Hon RICK MAZZA: I have a few issues with supporting this amendment. It will greatly inhibit the fast-tracking of applications. In the planning world, 18 months is not a particularly long time. If someone wanted to fast-track an application and they put in an application in six or eight months' time, the clock would run down fairly quickly. The idea is that applications will be fast-tracked within the 18 months. I think we will need the whole 18 months for applications to be considered and the planning commission will need to work as quickly as it can to determine those applications. The amendment would remove "does not have" to determine and substitute "has" to determine. Anyone who put in an application after six or eight months would probably be wasting their time. Unless the member can convince me otherwise, I would struggle to support his amendment.

The DEPUTY CHAIR: Before I give the call to Hon Tjorn Sibma, I indicate that although we have had a reasonable debate, it might be time to either move the motion or do something with it.

Hon TJORN SIBMA: Indeed, I do not intend to move the amendment standing in my name on the supplementary notice paper. However, I want to elicit some information that pertains to the treatment of development applications that will be submitted towards the tail end of the 18-month period, because I think there is a sufficient degree of murkiness. I would welcome some other advice at a subsequent date that provided at least some clarity about the intent or the advice that the WAPC might provide to proponents who seek to avail themselves of this decision-making framework within the 90-day period of its expiry.

Hon ALISON XAMON: I move —

> Page 15, after line 8 — To insert —
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> (7) Despite subsections (3) to (6), the Commission must not grant approval for development if the Commission considers that to do so would substantially undermine the purpose and intent of a legal instrument referred to in subsection (2).

One main concern that the Greens have with this bill is that it permits the Western Australian Planning Commission to override essential public protections that we know have been put in place for good reason by a range of other legislation. Again, although we understand that this is not the intent of how the process will work, this bill, as it is written, explicitly frees the WAPC from other legal instruments and does not provide even due regard for the advice and submissions of agencies that have been tasked with the expertise to hold those other legal instruments. It will also provide the Minister for Planning the power to override those other legal instruments. I am very strongly of the view that that is not the way that anyone wants or, indeed, intends the process to work. To clarify, this bill needs to provide a clear statement that the objectives of the legal instruments will be upheld, even if those legal instruments are ultimately set aside.

Hon STEPHEN DAWSON: I indicate that the government does not support this amendment for two key reasons. The effect of this amendment would undermine the whole purpose and intent of the part 17 system. The wording of the amendment is legally uncertain. It has the potential to broaden that uncertainty in the commission's decision-making. The key questions are: How does one discern whether the commission's decision would undermine the purpose and intent of a legal instrument? At what point would the commission's undermining be considered substantial as opposed to merely substantial? I am advised that this amendment seems to be an invitation for litigation in the Supreme Court. I assure honourable members that the commission will not ignore relevant legal instruments. In fact, the commission cannot simply ignore a legal instrument. It can consider anything a normal decision-maker can consider, and must have due regard to any instrument of information that may be relevant.

To accept this amendment would create a potential inconsistency with the wording in proposed section 275(3), which holds that the commission is not bound by any legal instrument in making a decision. The intent of this amendment seems, indeed, aimed at binding and fettering the commission. A number of checks and balances are already built into part 17, as I think the Minister for Planning has indicated. The commission is not a reckless decision-maker. I appreciate the intent of the member's proposed amendment, but the provision as currently drafted is our preference.

Hon NICK GOIRAN: This picks up on an issue on which I started conversing with the minister during the debate on clause 1. I draw to the minister's attention proposed section 275(6), which starts on page 14 and continues on page 15. Hon Alison Xamon is seeking to insert some lines after proposed subsection (6). However, the lines that the member is seeking to insert intersect with proposed subsections (3) to (6). At this time, I am particularly concerned with the content of proposed subsection (6). Proposed subsection (6) provides that the commission must have due regard to four matters. Those matters are listed in paragraphs (a) to (d). Is the minister in a position to advise the chamber whether the commission is currently required to give due regard to those four matters; or, for any of those four matters, is it currently the case that the commission must apply, rather than have, due regard?

Hon STEPHEN DAWSON: I am finding out that planning is indeed a complicated matter, honourable member. I am advised that it will depend upon the planning scheme. Sometimes it could be yes, or no, and sometimes it could be due regard. Paragraph (c) is a new provision to do with COVID, so that is not relevant currently. Under paragraphs (b) and (d), the commission is required to give due regard. Under paragraph (a), it will depend upon the planning scheme as to whether it is yes, no or maybe. I am told that even when it is yes or no, there is often an inbuilt flexibility, so it is yes. It is quite complicated.

Hon NICK GOIRAN: I thank the minister for that clarification. I make this observation. We are being asked to agree to the insertion of the words proposed by Hon Alison Xamon. However, that is linked to proposed subsection (6), which provides that the commission will no longer need to apply the planning scheme in every instance; it will only have to give due regard to that. According to the advice from the minister—which is consistent with the advice I have received from external stakeholders—in certain circumstances, the commission must apply the planning scheme. It does not have the luxury—as we are about to give it now—of being able to simply say, "We gave due regard to the planning scheme." It actually has to apply the scheme; and, if it does not, that is a problem. I accept what the minister has said about paragraph (c), which is, indeed, a new provision to do with COVID-19. I also accept the advice that the minister has provided about paragraphs (b) and (d)—namely, that the commission only has to give due regard to state planning policies. Therefore, no change is proposed to be made to that. However, we need to be clear about what we are being asked to agree to here. Proposed subsection (6)(a) is new and different from what is the case currently, and members will no doubt make their decision accordingly.

Amendment put and negatived.

The DEPUTY CHAIR: The question before the chamber is still that clause 4, as amended, be agreed.

Hon NICK GOIRAN: I refer to proposed section 275(4). This appears to be a matter in which direction can be made for people to act in a way that is beyond power. Specifically, proposed section 275(4) states in part that the commission may —

> (b) request any person or body to perform … any functions that the person or body would, apart from this Part, have had in relation to the development application under the legal instrument;
>
> …
>
> (d) otherwise apply (with or without modifications), or have regard to, the legal instrument.

It seems an extraordinary provision that the commission can direct people in this way. Is there a justification for this extraordinary provision, minister?

Hon STEPHEN DAWSON: I am advised that it is not a direction; it is a request. This would enable the referral process to be expedited by allowing the commission to ask for an application to be considered more quickly.

I probably alluded to this earlier in the debate, perhaps on clause 1. The Swan River Trust may have a 42-day statutory time frame within which to consider a proposal. I am not saying it does; this is a potential example. This would enable the commission to ask it to make a decision in three or four weeks to expedite the process. It is a request, rather than a direction.

Hon NICK GOIRAN: Proposed section 275(4)(d) states that the commission may —

> otherwise apply (with or without modifications), or have regard to, the legal instrument.

Does that mean that the Western Australian Planning Commission can apply the written law? Earlier, we discussed the definition of "legal instrument". A legal instrument seems to include, basically, the entire statute book of Western Australia. As is found at proposed section 275(4)(c), is the commission here being granted the power to apply the written law, but with modifications? In other words, the commission can decide whether or not it will apply the written law; and, if it is going to apply it, it can apply it in a modified fashion. Can the minister clarify that?

Hon STEPHEN DAWSON: I am told that this is not about overriding other approval processes. The first limb of the Newbury test, which is a planning test, is that planning decision-makers stick to planning. This provision allows the Western Australian Planning Commission to consider non-planning issues up-front. For example, if the commission knew that there would be an issue with Main Roads Western Australia down the track, the commission could have a conversation with Main Roads at the beginning of the process and get the work started so that by the time the Main Roads issue was dealt with later on, the commission would already have a fix for it. This provision allows that conversation to happen up-front with those types of other agencies.

Hon ALISON XAMON: I move —

> Page 15, lines 14 to 20 — To delete the lines.

I will advise members what I intend to do with this amendment. The amendment removes the line that the minister "must" be provided with an opportunity to make a submission to the Western Australian Planning Commission regarding applications on the WAPC pathway. As we know, the WAPC is already sufficiently expert enough in planning matters to determine planning applications without the advice or recommendation of the minister. I think there is a clear and quite consistent concern within the community that the minister's input regarding these types of development applications will put pressure on decision-makers, ultimately, to conform with the minister's request. I also think this has been recognised by the government itself in its decision to support the publication of the Premier's decision to send a development application down the proposed section 274 pathway but not to publish those reasons because the government has recognised that there is a concern about wanting to ensure that the decision-makers' processes will not be prejudiced. If the WAPC feels that the minister's advice would be helpful in determining the application, the WAPC would still be able to seek that advice under proposed section 276(6), but I would ask the minister to give an undertaking to not provide input into the development application process unless explicitly requested to do so by the WAPC for precisely the reasons that I have articulated, which is to ensure that there is not a perception—actual or otherwise—of unduly influencing the final decision.

Hon TJORN SIBMA: On the back of the honourable member's amendment, I am seeking clarification from the government on the circumstances it would envision the minister needing to be consulted and who, presumably, would be gifted the opportunity of preparing the minister's submission. I infer here a circular reasoning, potentially, and I seek clarification around that. If the Western Australian Planning Commission—the 16 or 17-member constituent body plus its secretariat—invites the minister to provide a submission, I hope that that submission will be prepared by the Department of Planning, Lands and Heritage or will, at least, be segmented or siloed from the WAPC.

Hon STEPHEN DAWSON: There are a couple of things here. I am advised that submissions are included in the planning reports, which are made public, and therefore the minister's submission would be publicised. I do not have an example of that because it is a new power.

While I am on my feet, if I can say that we are not supportive of the amendment. The minister has indicated that she will say something to the commission only sparingly, if at all, and that, in most instances, the minister is likely to say nothing. This provision exists for much the same reason that the minister must consult the local council; that is, the minister can bring to the commission's attention further matters in the public interest that might not otherwise be before the commission. Also, this provision is not new to the planning system. It largely reflects existing provisions in section 245 of the act whereby the minister has the right to make a submission to the State Administrative Tribunal with respect to SAT applications. It is also worth emphasising that in other jurisdictions, ministers for planning make these sorts of significant development decisions. In Western Australia, ministers in other areas, such as mining, get to be decision-makers. The Minister for Planning in this state, under part 17, will have no such decision-making power. Therefore, what is being proposed in part 17 is far more measured and restrained in comparison with other states. All that is being proposed is that the Minister for Planning will have a say in the proposal if she wants to make a submission. It is fair and reasonable to suggest that the Minister for Planning, the person ultimately responsible

for the entire planning system, should have a say and should not be silenced when one considers that local councils, the general public and various referral agencies get to have a say. Finally, it is worth remembering that the commission will not be bound or fettered by any such submission by the minister. Although given due regard, the minister's submissions will have no more weight than the views of any relevant local council, member of the public or any other referral agency.

Amendment put and negatived.

Hon STEPHEN DAWSON: I move —

Page 15, line 22 — To delete the line and substitute —

(a) consult the CEO (as defined in the *Contaminated Sites Act 2003* section 3(1)) if the development is of land referred to in section 58(1)(a)(i) of that Act in respect of which a memorial is registered under section 58 of that Act; and

The current wording of proposed section 276(3)(a) requires the commission to consult with the Environmental Protection Authority on every development application under part 17. This requirement is, in fact, more onerous than what is currently required under the EP act, which requires that only significant proposals be referred. Significant proposals are proposals pursuant to section 37B(1) of the act, if the EP act is implemented, and are likely to have a significant effect on the environment. The reason that proposed section 276(3)(a) imposes such an onerous obligation—more onerous than the current system under the EP act—is that the EP act is listed as a legal instrument. However, given the further amendments to carve out the EP act in the same way as the Mining Act and state agreements, there is now no rationale for retaining such an onerous obligation. It would serve only as an additional administrative step, with little to no improvement to environmental outcomes. If an application requires referral to the EPA, it will be referred in the normal way under the EP act. Nonetheless, given that the mandatory referral to the Environmental Protection Authority was also designed to cover the Contaminated Sites Act and not merely the Environmental Protection Act, that aspect of the mandatory referral obligations should remain. However, upon further internal consultation, it was considered that the CEO of the Department of Water and Environmental Regulation is a more appropriate person for the purposes of consultation on matters relating to contaminated sites.

Hon TJORN SIBMA: To clarify, we might need to insert the words. I am happy to delete them, but we have to insert them.

The DEPUTY CHAIR (Hon Robin Chapple): The honourable member is correct. We have agreed on the words to deleted, so the words to be inserted are to be agreed on too.

Amendment put and passed.

Hon ALISON XAMON: I move —

Page 16, after line 13 — To insert —

(d) have due regard to any submission made, or advice given, to the Commission in the course of a consultation under paragraph (a), (b) or (c).

By way of explanation to the chamber, currently the legislation does not clearly state that the advice and the submissions of these bodies be given due regard. I remind members that these bodies are experts in their areas and charged by the people of Western Australia to protect our natural and built heritage. The Western Australian Planning Commission should give that advice due regard, and, for clarification, I believe this should be stated in the legislation.

Hon STEPHEN DAWSON: I indicate that the government does not oppose this amendment and will support it. The amendment is probably not strictly necessary. Any information provided by these referral authorities is likely to be captured as part of the criteria the commission must already consider under proposed section 275(6). In contrast, part of the reason that other persons or bodies will be given due regard is something of a surety, given that these are persons or bodies that might provide broader information in the public interest. However, this amendment probably puts that beyond doubt and so we can support it. I thank Hon Alison Xamon for bringing forward the amendment.

Hon TJORN SIBMA: I am pleasantly astonished at that outcome. I only hope that the commission will be in a position to demonstrate very clearly its capacity and that undertaking to give due consideration to all submissions provided to it. I think that is very difficult to prove and might not be able to be proven to everybody's satisfaction; nevertheless, it is one step forward for consultation. Hear, hear!

Amendment put and passed.

Hon CHARLES SMITH: I move —

Page 16, after line 27 — To insert —

(5A) The Commission must —

(a) in the manner the Commission considers appropriate, advertise the development application, inviting members of the public to make submissions to the Commission within the period specified in the invitation; and

(b) have due regard to any submissions made by members of the public within that period in response to the invitation.

(5B) The period specified in the invitation under subsection (5A) must be a period of not less than 28 days after the day on which the development application is first advertised.

This amendment is about third party appeal rights. By way of brief explanation, I remind members of what I said in my contribution to the second reading debate —

> We seem to be drifting towards some sort of Soviet-style central planning dystopian disaster, where democratic processes are diluted and private property rights diminished.

We can save this bill by introducing third party appeal rights. We can save Western Australia from turning into the real estate equivalent of a narco-state by introducing third party appeal rights. I am fully aware of the arguments against third party appeal rights—for example, that they add delays to the planning system, add to the cost of developments and may be a deterrent to investment into the local economy. I understand those arguments; however, the evidence available shows that the right to appeal on the part of third parties has not opened those floodgates. I would argue that the prospect of an appeal, therefore, would not deter investment in quality projects.

Hon TJORN SIBMA: I fully respect the passion with which the honourable member makes his argument; however, I am a little discombobulated because I think he has provided the argument for the amendment he anticipates moving at 13/4 rather than the amendment at 9/4, which is the one we should be concentrating on. I seek clarity from the member on what he intends to do and perhaps the Deputy Chair's guidance as well.

Hon ALISON XAMON: Picking up on the point that was just made, my understanding of the amendment in front of us is that it is about issues of consultation, not specifically third party rights of appeal. I point out to members that the amendments at 30/4, which I will move, and at 20/4, which the minister will move, immediately follow this amendment on the supplementary notice paper. I draw members' attention to those amendments because all three amendments effectively address concerns about public consultation and that due regard for public consultation is seen as optional in the bill at the moment. All three amendments, in different ways, seek to address that issue. I note, because it is significant to this debate, that the amendment I am yet to move that is standing in my name on the supplementary notice paper at 30/4 is for a minimum 21-day advertising period on a central website and however else the Western Australian Planning Commission determines to advertise. The amendment we are debating is for a minimum 28-day advertising period, whereas the government's amendment is simply to ensure that the basics will be covered, and proposed subsection (6A) is effectively the old 6(c) restated.

I will take the Deputy Chair's guidance on how we will proceed, but I foreshadow that two other amendments on the supplementary notice paper also effectively seek to address the issue of public consultation and it is a matter of determining which amendment is fit for purpose.

Hon STEPHEN DAWSON: I think Hon Tjorn Sibma's point is very good and he was trying to be helpful to Hon Charles Smith. He was correct that Hon Charles Smith spoke about third party appeal rights, and that is, of course, in the later amendment. I wonder whether the member needed the opportunity to speak to his views on the amendment that he is seeking to move at 9/4 on the supplementary notice paper, which is the amendment that seeks to introduce a period of "not less than 28 days", as Hon Alison Xamon has just raised. If not, I am very happy to outline the reason the government will not be supporting it, but if the member had some notes prepared and wanted to give us some reasons, it is an appropriate opportunity to do so.

Hon CHARLES SMITH: I think we are trying to split hairs. Advertising invitations and submissions are around appeal rights. That is how I interpret this amendment, and that is basically what it is going to be, members.

Hon STEPHEN DAWSON: I was not trying to be rude; I was trying to give the member the opportunity to speak to the amendment before us.

I indicate that the government does not support the amendment standing in Hon Charles Smith's name that has been moved. We have two main concerns with this amendment. The member is requiring a minimum 28-day consultation period. That is longer than the current minimum, which is only 14 days under clause 64(3) of the deemed provisions pursuant to the local planning schemes regulations; that is to say, essentially, public advertising under the proposed new part 17 would take longer than the current development assessment panel system under which these same developments would and could otherwise be determined. Hon Charles Smith's amendment would mean more, and not less, red tape, and that does not seem to be in the spirit of what new part 17 is meant to be all about.

Further, the member seems to be removing the reference to a class or group of members of the public and requiring all advertising to be aimed at members of the public generally. The rationale for that sort of makes sense, but I am advised that it is unlikely to result in better planning outcomes. The honourable member's wording would suggest that the Western Australian Planning Commission is just as obligated to consult residents in Kununurra about a proposed development in Applecross as it is residents in Applecross. It may also have the unintended consequence of suggesting that in the manner of its advertising, the commission has to invite all members of the public equally. As an example, the commission might produce a generic advertisement inviting all members of the public to comment, but it might also have done additional targeted advertising by sending a personal letter to all nearby residents. The honourable member's change might suggest that, for example, the commission cannot send personal letters to residents unless it sends the letter to every household in Western Australia. There may in fact be unintended legal consequences within that. These will not be secret proposals; they are likely to be well publicised.

Hon Alison Xamon is correct that there are three amendments on the supplementary notice paper dealing with the same issue, so while I am on my feet, I am going to take the liberty of speaking to Hon Alison Xamon's amendment and the one that I have foreshadowed on the supplementary notice paper. Hon Alison Xamon's amendment seems aimed at broadening the prescribed requirements for public consultation. The government does not oppose the general intent, but it does oppose the specific amendment, for similar reasons that it opposes the proposed wording of Hon Charles Smith's amendment. However, I acknowledge the fact that she has put it on the supplementary notice paper. She mentions a 21-day period and, of course, that is different from the existing regulations.

I turn now to the proposed amendment in my name at 20/4 on the supplementary notice paper. That proposed amendment addresses a proposal that was first put forward by the opposition, but has been slightly reworked by the Parliamentary Counsel's Office. The proposed amendment replaces proposed section 276(6) with a new proposed subsection that deals with consultation for a development application assessed under new part 17. The essence of the amendment is to change the words "may advertise" to "must advertise", plus a few minor tidy-ups by the PCO. To be clear, the Minister for Planning has already publicly stated that the intent is for the commission to publicly advertise every application made under new part 17. The commission, assisted by the department, is already in the process of establishing a procedure for how it will go about doing this. The reason the current provision uses the word "may" was to emphasise the commission's discretion about how it carries out this advertising; it was never to suggest that the commission would not do any public advertising, but the new wording helps put that beyond doubt.

I indicate again that the government will not be supporting Hon Charles Smith's amendment, nor Hon Alison Xamon's amendment, but we prefer the one that stands in my name.

Amendment put and negatived.

Hon ALISON XAMON: We have already had the substantive debate. I move —

Page 16, after line 27 — To insert —

(5A) The Commission must —

(a) on a website maintained by, or on behalf of, the Commission and in any other manner the Commission considers appropriate —

(i) advertise the development application, inviting members of the public to make submissions to the Commission within the period specified in the invitation; and

(ii) make the development application and other relevant documents publicly available throughout the specified period for the purpose of enabling submissions to be made by members of the public;

and

(b) have due regard to any submissions made by members of the public within the specified period in response to the invitation.

(5B) The specified period under subsection (5A)(a)(i) must be a period of not less than 21 days after the day on which the development application is first advertised on the website.

(5C) For the purposes of subsection (5A)(a) —

(a) the advertisement must be maintained on the website throughout the specified period; and

(b) the advertisement, and the development application and other relevant documents, must be maintained on a part of the website that is specifically dedicated to advertising development applications under subsection (5A)(a).

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

Hon TIM CLIFFORD: I want to speak on the amendment put forward by Hon Alison Xamon. I think that extending the consultation time frame goes to the heart of things. I know the minister pointed out that the existing provisions allow for a 14-day consultation period, but there have been concerns raised in the community about the 18-month time frame and the amount of power that the minister will have to make decisions within that period and to circumvent some of the existing processes, as well as a lot of concerns that have been raised for a long time on the reform process that has addressed some of the broader planning issues within the community. That comes back to trust. Given that a lot of questions have been raised about this process and why this has been put forward in the way that it has, I think having more time to consult with the community rather than less will go some way to alleviating some of the fears that have been raised with me directly by not only everyday people within the community, but also the councils that are going to be directly affected by this.

Amendment put and negatived.

Hon STEPHEN DAWSON: I move —

Page 16, line 28 to page 17, line 7 — To delete the lines and substitute —

(6) The Commission must —

(a) consult any person or body not referred to in subsections (2) to (5) whom the Commission considers it appropriate to consult; and

(b) in the manner the Commission considers appropriate, advertise the development application, inviting submissions from members of the public generally or from a class or group of members of the public that the Commission considers appropriate; and

(c) have due regard to any submissions made by members of the public in response to the invitation under paragraph (b).

(6A) The Commission may do anything else that is not covered by subsections (2) to (6) and that the Commission considers it appropriate to do in order to obtain a document, information, an opinion or any other contribution from any person or body.

Hon NICK GOIRAN: I ask the minister to look at the words in his amendment for proposed subsection (6)(a) and confirm whether he is satisfied that they make sense. Proposed subsection (6) reads —

The Commission must —

(a) consult any person … whom the Commission considers it appropriate to consult;

How can it be mandatory for the commission to consult with people whom it considers to be appropriate? A plain English reading of that makes it seem a little nonsensical. It would make more sense to me if proposed subsection (6)(a) stated that the commission "may" consult any person whom the Commission considers appropriate. Paragraph (b) might then say that the commission "must" advertise the development application, and paragraph (c) might say that the commission "must" have due regard to any submissions. The wording of the amendment seems a little peculiar. I seek the minister's confirmation that he is entirely satisfied that proposed paragraph (a) should be preceded by the word "must".

Hon STEPHEN DAWSON: This amendment was drafted by lawyers, honourable member. I am advised that if the commission knows of somebody who should be consulted, it must consult them. Obviously, paragraphs (a), (b) and (c) need to be read in order—there is an "and" in there. It is simply that if the commission knows that somebody should be consulted, they must be consulted as part of this process.

Hon NICK GOIRAN: I make this point: it is an unenforceable provision. The mandatory requirement for the commission to advertise the development application can be enforced: has it advertised—yes or no? If it has not, it will obviously be in breach of this provision. Has it had due regard to any submissions? That could be considered and potentially litigated. However, I do not see how anyone could ever enforce a provision that says that if, in the mind of the commission, it thinks it is appropriate to consult somebody—we do not know who it is—then it has to consult them. I just think this is poorly drafted. With the greatest of respect to those who have drafted this amendment, I think it would have been better had paragraph (a) included the word "may" and paragraphs (b) and (c) included the word "must". Nevertheless, if the government is satisfied, let us progress.

Amendment put and passed.

The DEPUTY CHAIR (Hon Robin Chapple): The next two amendments fall away. That takes us to amendment 21/4.

Hon STEPHEN DAWSON: I move —

Page 17, lines 8 and 9 — To delete "referred to in subsection (6)(a), (b) or (c)," and substitute —

under subsection (6)(a) or (b) or (6A),

I indicate that this amendment is an administrative change that is necessary as a consequence of the amendment to proposed section 276(6).

Amendment put and passed.

Hon ALISON XAMON: I wish to indicate that I am moving on to amendment 34/4, because the other amendments standing in my name and, I note, also in the name of Hon Charles Smith are consequential amendments that related to the defeated amendments that we discussed previously. I move —

Page 18, line 21 — To delete "Divisions 3 and 4." and substitute —

Division 4.

Amendments 34/4 and 35/4 are consequential amendments that are subject to the passage of the substantive amendment, which is in my name at 38/4. With your permission, Mr Deputy Chair, rather than waiting until we get to amendment 38/4, I would prefer to have the substantive debate now so that we can determine whether we will proceed with these amendments.

The DEPUTY CHAIR: There are no objections.

Hon ALISON XAMON: I note that the minister indicated that he is happy for us to have the substantive debate on this matter now. I have a number of amendments on the supplementary notice paper that are trying to achieve the same outcome. Effectively, I am attempting to remove the minister's power to resolve conflicts by directing other government bodies or agencies. The Greens are strongly of the view that it is fundamentally inappropriate for a minister to direct other government bodies and agencies to do or not do things that would otherwise not be lawful. I argue that it is inappropriate for a minister to so direct even their own agency, so I think this is a significant overreach of the planning minister's power and authority. If a project reaches a point at which lawful approval from an agency cannot be granted, then, frankly, there are concerns that the project should not go ahead, regardless of whether initial approval was granted by the WAPC. The process that has been described to me should avoid ever needing the use of these powers, so I think granting them in the first place is fundamentally problematic. Effectively, I will seek to delete the lines as outlined in amendment 38/4. I remind members that we are dealing at the moment with amendment 34/4 which, should it be passed, is one of the consequential amendments that would be required to give effect to amendment 38/4.

Hon STEPHEN DAWSON: If it is a complicated issue, just call the minister—I can understand! I appreciate Hon Alison Xamon's indication that this amendment and the next amendment are linked to amendment 38/4, so I will speak to all three. The amendment before us deletes a reference to division 3, which contains the conflict resolution provisions as they apply to other parallel decision-making processes around things such as content under the Aboriginal Heritage Act or liquor licensing. We oppose this amendment as it undermines the intent of the conflict resolution provisions in division 3. As made clear in the explanatory memorandum, and as the Minister for Planning has already indicated publicly, the conflict resolution process would be held by way of a full cabinet referral process; that is what the reference to the Premier means. Moreover, the intent of the conflict resolution provisions is not to ignore important issues about safety, heritage, the environment or any other important issue; it is quite the contrary. The whole point is that these issues will be addressed in a holistic, whole-of-government and up-front way, when currently many of them are dealt with by bureaucrats and other decision-makers in decision-making silos. Similarly, a whole-of-government conflict resolution process already exists between planning and environmental legislation for planning schemes and scheme amendments. These conflict resolution provisions are largely modelled on that system precisely because it is best practice. Although I appreciate what the honourable member is trying to achieve, she appears to have moved an amendment that seems to replicate business as usual. Part 19 is not meant to be business as usual, given its primary purpose is to facilitate planning and development activities in support of economic recovery from the COVID-19 pandemic.

It follows that we will also oppose amendment 34/4 because it undermines the intent of the conflict resolution provisions—I am grateful for the chamber's indulgence. Amendment 38/4 deletes division 3 in its entirety and the conflict resolution provisions. We oppose this amendment as it would undermine a fundamental aspect of this bill.

To risk repeating some of the key points, there are five points worth noting on the question about the conflict resolution provisions. I want to make it clear that the references to Premier means cabinet. My advisers tell me that Parliamentary Counsel's Office will not draft references to cabinet as it is legal fiction under Westminster conventions. This means that there will be a holistic collective decision made by all ministers, supported and scrutinised by all their

departments, which means that all referrals will be reviewed by lawyers in the State Solicitor's Office, for example, as well as officers in every department and agency. It is true that conflict provisions include the power to direct a person or body to do something they would not ordinarily be able to do under their enabling legislation. But in resolving these conflicts, usually between competing government agencies, someone ultimately has to make a decision. Instead of a developer spending months or years being bounced around from one government agency to another or winding up in the State Administrative Tribunal or before the courts, this bill proposes to adopt a whole-of-government approach up-front. The explanatory memorandum also points out that the purpose of this is not to let the government ignore important issues about traffic, environment, heritage or any other matter; it is quite the opposite. The whole point is to ensure that all these matters are dealt with in an up-front, whole-of-government way and not in silos. Currently, a developer can sometimes attract contradictory conditions imposed by two government agencies that do not talk to each other. This is one of the worst examples of red tape, for little real benefit, and part 17 will address that.

What this provision proposes is new and innovative for development approvals, but the concept is not new to planning or environmental legislation. For example, if I make a decision on the new planning schemes and scheme amendments as Minister for Environment that conflicts with a decision of the Minister for Planning, existing conflict resolution provisions are in place. This entails both ministers coming to an agreement. If we cannot agree, the matter goes to government or cabinet.

The fifth reason is that the conflict resolution provisions in part 17 have essentially been copied, in concept, from the conflict resolution provisions set out in environmental legislation. It has been copied because it is best practice. I reiterate that the government is not supportive of amendments 34/4, 35/4 or 38/4.

Hon TJORN SIBMA: Likewise, the opposition will not be supporting this amendment. One might critique the government's content in this bill, but it does have the right to bring legislation to this chamber. The consequences of the amendment moved by the honourable member would significantly undermine this bill's application and, indeed, consolidate or exacerbate pre-existing problems within the approvals network. I am sorry to say it, but if a developer is attempting to do something productive in this state, it is inordinately difficult and a lawful authority is required to direct or construct a resolution. The tales of woe I hear about the development approvals pathways outside of the actual built form are very disconcerting. One might wonder why anyone would put themselves through the struggle of submitting any kind of application for any productive enterprise, considering the byzantine network that we have accumulated and grown over time.

Hon NICK GOIRAN: It is quite right that these three amendments are grouped together—the one that is currently before us and the other two flagged by the honourable member. The third amendment seeks to carve out or delete five and a half pages of the bill, which is a pretty significant amendment by anyone's standards. As Hon Tjorn Sibma has indicated, the opposition will not be supporting that five-and-a-half-page carve-out. However, can I draw to the minister's attention page 24, lines 15 through to 24, which is a portion of this area that is intended to be carved out. Proposed section 281(6) states that a decision-maker must comply with the direction. I draw a distinction between this and what we were discussing earlier when the minister drew to my attention that it was a request from the commission. In this instance, a decision-maker must comply with the direction even if, by doing that, they are doing something that would ordinarily not be permissible under any legal instrument. Let us remember that earlier we defined the legal instrument as basically any written law in Western Australia. Under this provision, a decision-maker will have to comply with a direction basically to ignore the law of Western Australia; that is the potential of proposed section 281(6). I seek the minister's clarification on why that extraordinary provision is necessary.

Hon STEPHEN DAWSON: I make the point that the conflict needs to relate to planning—it cannot be about everything else out in the community. I also make the point that the minister must have the agreement of the Premier on this issue. An example might involve Main Roads Western Australia—I do not like to pick on poor Main Roads, but it does seem to be a villain from time to time. If, for example, Main Roads has refused to give approval to a flyover, cabinet could make a decision and direct Main Roads to give approval for that flyover. That is what this provision will do.

Amendment put and negatived.

Hon ALISON XAMON: As I indicated previously, the subsequent two amendments in my name on the supplementary notice paper were consequential on the passage of the previous one, so I will not move them.

The DEPUTY CHAIR: The amendments on the supplementary notice paper in the name of Hon Alison Xamon will not be dealt with. We can now move to the amendment in the name of the Minister for Environment, who is representing the Minister for Planning.

Hon STEPHEN DAWSON: I think it is worthwhile, given the time, to interrupt the proceedings, so that my advisers can leave the chamber and the President can take the chair.

Committee interrupted, pursuant to standing orders.

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