APPROVALS AND RELATED REFORMS (NO. 4) (PLANNING) BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr J.H.D. Day (Minister for Planning)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.H.D. DAY (Kalamunda — Minister for Planning) [12.26 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to amend the Planning and Development Act 2005 in order to streamline and improve the planning approvals process. The proposed legislative amendments are part of a series of changes to planning, environmental, mining and other legislation which have been steered by the Premier's task force on approvals, development and sustainability.

The Liberal-National government is committed to ensuring that economic growth and activity in Western Australia is not unduly hindered by an unwieldy or unresponsive approvals process. The proposed amendments will create greater efficiency and consistency for state government priority projects, and certainty for investors who are considering new ventures in important economic infrastructure, industrial development and urban land and housing.

The proposed reforms are consistent with the state's undertaking at the Council of Australian Governments to reform Western Australia's planning system. These reforms are also in line with resolutions of the Local Government and Planning Ministers' Council and the advice of the Development Assessment Forum, which is a national body dedicated to research into planning reform. Further information about the forum is available via its website—www.daf.gov.au.

One of the 10 practices outlined in the Development Assessment Forum's leading practice model is that most development applications should be assessed by professionals, with an option to establish expert panels to make determinations. These practices have had bipartisan support by all governments across Australia.

The reforms will provide an opportunity to streamline approvals in strategic areas of the state. For example in Karratha and Port Hedland, the reforms could provide a way for the state to better address the high cost of housing and delays in approvals for key infrastructure. Where local government approvals are required for strategic state infrastructure, these amendments will ensure that approvals will be in accordance with consistent state policies and planning standards.

Existing processes which involve dual approvals—both of the local government and the Western Australian Planning Commission—also need to be rationalised.

This bill also makes it possible for local governments to be directed to amend or update their schemes to be consistent with applicable state planning policies.

The government is committed to ensuring that the approvals system will encourage a mix of housing forms, and there is scope to increase urban densities without adding to the cost of higher density development. The government also needs to ensure there is a good supply of conventional housing in the future. These reforms will provide a sounder legislative foundation for this process. For the metropolitan area, this commitment is guided by the recently released "Directions 2030: Draft Spatial Framework for Perth and Peel", which estimates that by 2031, the Perth and Peel region will need 328 000 more dwellings to accommodate an additional 556 000 residents.

These amendments will ensure Western Australia has timely planning outcomes of a high quality which integrate environmental, social and economic objectives.

This bill introduces significant planning reforms while also including minor and clarifying amendments to the planning act.

The key elements of the bill are to —

establish development assessment panels which will provide more effective and efficient processes than is currently the case for applications to build large-scale urban, industrial and infrastructure developments;

significantly extend the use of existing strategic instruments such as improvement plans to strengthen state and regional planning throughout the state;

provide exemptions from planning approval for projects funded through the nation building and jobs plan stimulus package to facilitate meeting the commonwealth's funding requirements;

enable the state to collect data on local development decisions to monitor the effectiveness of reforms to the approvals process;

provide a mechanism for local planning schemes to be updated to implement state planning policies; and

streamline and clarify existing provisions and processes to improve the efficiency of the approvals process.

The bill has been the subject of targeted consultation with state agencies, local government and industry. In addition, most of the key substantive amendments were in a discussion paper entitled "Building a Better Planning System", which was released by the Department of Planning earlier this year for public consultation. Submissions revealed wide community, industry and other stakeholder support for the proposed amendments, which have been included in the follow-up document released by the Department of Planning entitled "Planning Makes It Happen: a blueprint for planning reform". There are significant benefits to the state government, local governments, stakeholders and the general community arising from the proposed amendments. These are as follows: first, more flexible, transparent and cost-effective mechanisms to implement state and regional planning policy; second, more transparency in decision making on development applications with planning merits based on technical expertise and local representative considerations; and, third, more streamlined and clear legislative provisions to facilitate the approvals process.

I will now turn to the provisions of the bill in more detail. The bill contains five parts.

Part 1—Preliminary: This contains the short title of the act and its commencement, which is to be by proclamation.

Part 2—Improvement plans and schemes: This part sets out an amendment to enable the Western Australian Planning Commission—WAPC—to more effectively use improvement plans as a tool for strategic regional planning. This will be achieved by removing the restriction in the current section 119 of the Planning and Development Act 2005, which limits the use of such instruments to areas in respect of which the WAPC has resolved to prepare a region planning scheme. The importance of regional planning was first recognised in Western Australia in the early 1950s when the population of metropolitan Perth had grown to about 370 000 and the state government appointed Professor Gordon Stephenson and J. Alistair Hepburn to prepare a master plan for the Perth metropolitan region. The master plan approach to regional planning was in line with the approach of other jurisdictions post-World War II, such as the United Kingdom. The Stephenson-Hepburn plan and the subsequent metropolitan region scheme aspired to establish a long-term strategic framework for metropolitan growth and development. Since then, region planning schemes have been prepared only for metropolitan areas to manage growth and transport corridors in the Perth, Peel and greater Bunbury areas. There is a continuing need for effective planning at the regional level, which extends beyond metropolitan areas. Targeted regional-based policies are needed for issues such as population growth and urban expansion, coastal planning, planning for regional transport and infrastructure, water resource management and so on. Regional planning is important to implement state policy and assists more detailed planning at the local level. Regional planning has become a key focus of the planning systems in other states and countries, with the primary purpose being to decide the general distribution of new activities and developments.

Given the cost and time involved in preparing regional planning schemes, the department and the Planning Commission now consider that frameworks and strategies in the regions, combined with state instruments such as improvement plans and planning control areas, will be more effective in achieving desired outcomes for state and regional land-use planning. It provides an alternative measure for implementing state and regional strategies to the use of ad hoc redevelopment legislation or ministerial call-in powers. The need to improve regional planning was highlighted in the discussion paper "Building a Better Planning System", and the subsequent blueprint document expressly referred to the option of extending the use of improvement plans. This option has also previously been the subject of consultation in the preparation of a synopsis undertaken by MacroPlan in 2007 and 2008.

The amendments regarding improvement plans do not give the state any more power than it currently has under the existing legislation. Currently, the state government may declare a redevelopment scheme anywhere in the state for any purpose. Such redevelopment schemes may be created in a vacuum from regional and local planning frameworks. Unlike redevelopment schemes made under separate legislation, WAPC improvement schemes will be declared only when there are clear state and regional planning imperatives to do so, and will be implemented having regard to local, regional and state planning objectives. Improvement plans may be used, for example, to implement regional strategies such as the Cockburn coast strategy, to facilitate industrial use of

appropriate land such as in Kwinana, and to ensure that land use surrounding major infrastructure or resource projects is consistent with state objectives. In order to declare an improvement plan, the WAPC must still certify to the Minister for Planning in writing that for the purpose of advancing the planning, development and use of any land within the state, the land should be made the subject of an improvement plan, and if the minister accepts the recommendation, it must be forwarded to the Governor for acceptance. Such instruments will be used only when considered necessary to meet clear state and/or regional planning needs, after careful consideration of local issues in consultation with local governments. This part of the bill also includes provisions to enable an improvement plan to provide for an "improvement scheme" to be prepared to the extent necessary to implement the objectives of an improvement plan. An improvement scheme will have statutory effect and will override the provisions of any local planning scheme or regional planning scheme that might otherwise have applied to the area.

Historically, there has been some confusion as to the priority of improvement plans in areas where local planning schemes and region planning schemes also apply. In order to clarify that the provisions of an improvement plan prevail over the provisions of improvement schemes with respect to development and subdivision control, the mechanism of an improvement scheme, which will have statutory effect, has been recommended. The preparation of improvement schemes will follow the same transparent process as the preparation of local planning schemes and be subject to the same consultation and advertising requirements. For the duration of an improvement scheme, any region planning scheme and/or local planning scheme that otherwise would have applied to the area, ceases to apply. Upon the expiration of an improvement scheme, the local and region planning schemes will immediately come back into effect, as amended to be consistent with the improvement scheme objectives. To date, examples of improvement plans include the Kwinana industrial area, the Cockburn coast precinct and the Northbridge urban renewal strategy area. Improvement plans have often been revoked or not fully implemented, partly because of difficulties in implementing the objectives without the available statutory tools. In the case of industrial areas at Kewdale or Canning Vale, for example, or the East Perth redevelopment area, new and separate legislation was required to implement the strategic plans, which also required the establishment of additional authorities. In other cases, attempts have been made to implement the improvement plan through amendments to the local planning scheme and region planning scheme, such as in Port Coogee and Huntingdale. Improvement schemes will allow the WAPC, as the expert planning authority, to carry through an improvement plan to implementation, having regard to the local, regional and state planning frameworks.

Part 3—Development assessment panels: This part introduces new provisions into the Planning and Development Act to provide the heads of power for the establishment of development assessment panels—DAPs—in Western Australia. Regulations will contain details on trigger thresholds for DAP assessment, sitting fees for panel members, and other administrative and operational details. Development assessment panels are panels comprising a mix of technical experts and local government representatives with the power to determine applications for development approvals in place of the relevant decision-making authority. The Minister for Planning will create a panel for each local government area, and these panels will determine development applications made under local and region planning schemes. They will be required to make decisions in accordance with the existing planning framework, and take into account any local or state planning policy or other matter that the responsible authority would ordinarily be required to take into account.

The introduction of development assessment panels is one of the fundamental principles of the national Development Assessment Forum's leading practice model for development assessment. Leading practice model 8, professional determination for most applications, promotes the principle of development assessments being determined by professional staff or private sector experts against known policies, objectives and rules. In addition, leading practice model 5, single point of assessment, promotes a single point of assessment for applications using consistent policy, objectives and rules. This model also promotes limiting referrals to agencies with a relevant role for advice only, avoiding the need for separate approval processes. South Australia and New South Wales have already introduced development assessment panels into their planning systems in accordance with the DAF model. Victoria has also recently passed legislation to implement development assessment commissions to perform the role of development assessment panels.

In Western Australia two types of development assessment panels will be created—local development assessment panels and joint development assessment panels. The two different types of panels are proposed to best cater for the varying degrees of development within local governments in this state. Local development assessment panels will be created to determine applications made in one local government area. As such, these panels will be created only for high-growth local governments. Joint development assessment panels will be created to determine development applications made in two or more local government areas. The majority of panels created will be joint panels, as they will support small metropolitan councils and regional local governments. The classes of applications that will be determined by these panels will be prescribed in new

regulations made under this part. Consultation with local governments is currently being undertaken to determine the appropriate level of development that should be determined by these panels.

The introduction of development assessment panels in Western Australia will have significant benefits for local governments, the development industry, landowners, the general community and other stakeholders. They aim to help to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications. As regulations prepared under this part will clearly identify what classes of development applications are to be determined by development assessment panels, applicants will be well aware of who will be determining their application. The determination of complex applications will also be improved by the involvement of experts with technical knowledge on the panel. The involvement of independent experts will also help to strike an appropriate balance between local representation and professional advice in decision making by ensuring that decisions made by the panel are based on the planning merits of an application. Finally, the use of development assessment panels will help to address issues with dual approvals by making the relevant panel the single decision-making authority under both local and region planning schemes.

An example of a project that demonstrates the benefits that DAPs will contribute to the approvals process is the Binningup desalination plant development. With the desalinisation plant, under a DAP process, the development application stage would have been streamlined, as only one decision would be required by a DAP, as opposed to separate dual approvals under both the Shire of Harvey local planning scheme and the greater Bunbury region scheme. This was a large, complex and technical matter that would have benefited from the input of appropriate experts. Given the sensitivity of local politics, a more transparent process than internal council processes and delegations would be appropriate to inform stakeholders of factors being considered in the decision; that is, proper planning merits.

Division 2 of this part of the bill also provides a call-in power for the Minister for Planning in relation to development applications that the minister believes are for "significant development". This call-in power will be used by the minister only in relation to development proposals of key state or regional significance. The criteria to be used by the minister to determine that a development application is for a significant development will be prescribed under new regulations. Any applications that are called in by the minister will be assessed by the relevant development assessment panel, but determined by the minister. The panel will prepare a report containing its advice and recommendations that the minister will take into consideration when determining the application. The decision of the minister is final and there will be no right of appeal. The criteria for current ministerial call-in powers, such as the ability to call in a matter that is before the State Administrative Tribunal for review, are flexible and minimal. For example, the current power allows the minister to call in a planning appeal if the minister is of the view that the application raises issues of state or regional importance. Although the broadness of this power has not led to it being overused, the criteria upon which a minister may call in a matter that would otherwise be determined by a DAP will be more defined and narrow. It will focus on a list of particular impacts to consider. These will include effects on key infrastructure; effects on the natural environment, including areas of state or regional significance; effects on the local or regional economy, including the amount of investment necessary and the employment opportunities that will be provided by the project; the strategic significance of the project to the locality, region or the state; and whether the project will further the regional planning objectives for that part of the state, as set out in published WAPC and local government policy.

Part 4—State planning policy amendments: This part sets out an amendment to be inserted into the Planning and Development Act to enable the minister to direct a local government to amend its local planning scheme to be consistent with an applicable state planning policy. Under existing legislation, local governments are already required to have due regard to state planning policies in amending their schemes. This amendment will improve the implementation of this requirement. This amendment is to be distinguished from a proposal of the previous government that state planning policies have automatic statutory effect as soon as gazetted. In this proposal, such policies will not override the provisions of a local planning scheme, which will retain its primacy. Rather, only in circumstances in which there is a clear conflict between a state planning policy and a local planning scheme that has not been updated to reflect the provisions of the policy, will the minister direct an amendment. This provision will benefit stakeholders by providing greater efficiency in achieving government policy objectives by strengthening the effectiveness of state planning policies.

Part 5—Other amendments: This part sets out all other amendments to the Planning and Development Act including all minor and clarifying amendments.

Exemption for development funded through the commonwealth stimulus package: In line with amendments taken in other jurisdictions, provisions have been included to exempt developments undertaken through funding from the nation building and jobs plan stimulus package from the requirement to obtain planning approval. The

exemptions will apply only to projects funded by the commonwealth under the NBJP stimulus. In Western Australia the only works that would otherwise have required planning approval are primary school works and social housing. Proponents will still be required to consult the relevant authorities. Although the bulk of the projects have already been facilitated through delegation arrangements with the WAPC, the legislative provisions will ensure all outstanding works proceed in a timely manner.

WAPC gazettal of schemes: To ensure the timely gazettal of scheme amendments approved by the Minister for Planning, section 87 will be amended to transfer back to the WAPC the responsibility for gazetting local planning schemes. The previous government amended the Planning and Development Act to transfer to local government the responsibility for gazetting schemes. Since this amendment came into effect, there have been a number of cases in which gazettal of an approved scheme has been delayed. This amendment will reduce the uncertainty in the approvals process resulting from the delays in gazettal of approved scheme amendments.

Planning control areas: A similar amendment to that for improvement plans is proposed for the use of planning control areas. Planning control areas will now no longer be restricted to those areas for which a region planning scheme has been prepared. As planning control areas are already given clear priority under the current planning act, no further changes have been made in this regard.

Concurrent scheme amendments: A further proposed amendment provides for the concurrent amendment of local planning schemes to be consistent with a region planning scheme amendment. Currently, the Planning and Development Act provides that, where a region planning scheme is inconsistent with a local planning scheme, the region planning scheme prevails to the extent of any inconsistency, and the relevant local government is to take action to redress the inconsistency within 90 days of any amendment to the region planning scheme. Where a region planning scheme amendment will result in the local planning scheme in the relevant area being inconsistent with the region scheme, local governments currently have the discretion to choose that amendment to their scheme occur concurrently with the relevant region planning scheme. This amendment will reduce delays to the development of land in urban areas by effectively facilitating a single amendment process whereby the local planning scheme amendment will occur automatically with the region planning scheme amendment without the need for a separate process to be initiated by the relevant local government or local governments.

Local government reporting: Finally, an amendment is included to enable the state government to collect approvals data from local governments. Several Australian jurisdictions have sought to review the effectiveness of their planning systems by monitoring local government performance. Data is collected regarding the development applications lodged with each local government. The state department responsible for planning analyses this information and prepares a report on the performance of local governments across the states. In Western Australia, there is no centralised collection of information on the administration of the planning systems by local governments. Therefore, the state is impeded in monitoring performance and identifying where inefficiencies need to be improved. This amendment will enable the state to collect data from local governments. This will allow more effective monitoring on the efficacy of the current planning system and identification of areas in need of further reform. This built-in improvement mechanism is also consistent with the leading practices recommended by the national Development Assessment Forum, DAF.

Before I conclude, I commend the officers of the Department of Planning and also my staff who have worked very hard in the development of this bill. I commend this bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.