

METROPOLITAN REDEVELOPMENT AUTHORITY BILL 2011

Consideration in Detail

Resumed from 10 August.

Clause 8: Functions in areas contiguous to redevelopment areas —

Debate was adjourned after the clause had been partly considered.

The ACTING SPEAKER (Ms L.L. Baker): Members, just while the minister is getting his advisors seated, I will, just for your information, let you know that there is an error in your paperwork. Clause 3, printed at the top of page 11 of the *Notices and Orders of the Day*, has already been dealt with, so you can delete that.

Mr J.N. HYDE: Minister, what is the extent to which these functions are going to be contiguous? I have had the City of Perth raise concerns with me about the lack of consultation that it has had on this bill, being the local government authority that is probably going to be most affected by the Metropolitan Redevelopment Authority Bill 2011. This clause does seem to be incredibly broad on the functions that will be exercised over the contiguous areas. There is a requirement in clause 4 that, under the terms of agreement, the nature of the services to be provided have to be specified, but I would like to know from the minister what sorts of services and functions he thinks will be operating in contiguous areas.

Mr J.H.D. DAY: In relation to the member's suggestion that the effect of this clause is very broad, I point out that it is in fact either essentially the same or exactly the same as is currently provided in section 18A of the East Perth Redevelopment Act, which is the one that affects the City of Perth, so there is no change in the situation as far as the City of Perth is concerned. In relation to the sort of works that may be undertaken under this provision, what is contemplated are roadworks, footpath constructions and similar sorts of activities, so that the effect of a redevelopment does not necessarily simply stop exactly at the boundary of the redevelopment area. It makes sense for some additional work to be undertaken in the adjoining area so that public benefit can be provided through roadworks being undertaken, or footpath construction or other public works.

Mr J.N. HYDE: Minister, I think it is important to point out that it is not the same situation as the East Perth Redevelopment Act provides for, because currently, under that legislation, two City of Perth councillors have to sit as part of the decision-making body on EPRA. Under this legislation, particularly when we later come to clause 80, the minister could end up, for these areas in the City of Perth, appointing somebody who is not only not a councillor of the City of Perth, but also may not be an elected member in Western Australia or may not be somebody with a direct connection with the community—the ratepayers—in the City of Perth. That is why it is important that the provisions in this bill do not simply mirror the functions of EPRA, because the Metropolitan Redevelopment Authority is going to be a very, very different creature to EPRA.

Mr J.H.D. DAY: The functions are the same. The provision of this power, which is based on commonsense, really, is the same as those in the current East Perth Redevelopment Act. In relation to the composition of the land redevelopment committees that will be established, we will discuss that at a later stage of the bill. I know the member has an amendment to clause 80, and I foreshadow that I also will be moving an amendment in relation to that particular issue. If we want to have a debate about the composition of land redevelopment committees, I think the time to do that is later on.

Clause put and passed.

Clause 9: Delegated functions —

Ms J.M. FREEMAN: Can the minister give me an outline of how far the authority will be able to delegate; will it be able to delegate outside the authority? Will it enable the authority to, effectively, employ private contractors or to privatise functions, including administrative functions of the authority's operations? What is the intention within the scope of the delegation? What areas are anticipated to be delegated? Does the delegation refer to just normal routine delegation of CEO functions or is it a much more expanded delegation of duties? I suppose at the end of the day, given the purpose of this bill is to consolidate existing development authorities into one authority, it would be somewhat concerning if the whole authority could be delegated to a separate company such as Serco or a development company to run a redevelopment operation in a certain area. I would appreciate clarification of that.

Mr J.H.D. DAY: The intention is that the Western Australian Planning Commission will be able to delegate responsibilities, particularly under the contemplated improvement schemes and the implementation of improvement schemes, development controls and so on, to the Metropolitan Redevelopment Authority, which could then subdelegate that responsibility for a particular area to the land redevelopment committee. Essentially, it is contemplated that it apply to the implementation of improvement schemes, the primary responsibility for which will be held by the Planning Commission, but some of the powers under those schemes could be delegated

to the Metropolitan Redevelopment Authority, as I said. The member raised, I think, a slightly spurious issue of potential privatisation of administrative functions. I think she is trying to widen the debate somewhat. There have not been any discussions with Serco or any other private organisation in relation to the administrative functions of the proposed Metropolitan Redevelopment Authority, nor do I expect there will be.

Ms J.M. FREEMAN: That is excellent news, minister; I am pleased to hear that. But I would like to know whether this gives the capacity for privatisation, not whether those discussions have occurred.

Mr J.H.D. Day: The answer is no.

Ms J.M. FREEMAN: The answer is no? Thank you.

Clause put and passed.

Clause 10 put and passed.

Clause 11: General powers —

Mr J.N. HYDE: The wording in subclause (2) states that the authority “may do all things that are necessary or convenient to be done ...”. What is the minister’s definition of “convenient”; what is the rationale for that; and what are the sorts of things expected to be used under these general powers? Again, the City of Perth has raised with me its great concerns, having not been consulted over this bill, on the lack of interpretation of the powers and the functions this bill will give to the new authority? Perhaps the minister can tell us what would be an “inconvenient” activity!

Mr J.H.D. DAY: I am advised that the wording here is based on a standard drafting provision that presumably applies in a range of other legislation that has been debated in this Parliament, and, therefore, there is nothing extraordinary about the wording. I take the word “convenient” to mean whatever the general use of that word is. There is a dictionary at the back of the chamber; I am sure anyone can look up the word in a dictionary if they are unsure of what “convenient” really means. In relation to the consultation that the member referred to, there has been quite a degree of consultation with the WA Local Government Association in the preparation of this bill. There has not been specific consultation with individual local governments. I certainly agree that the City of Perth has a very important role to play in the development of land within its boundaries, which, of course, includes the capital city. I think the state government and the City of Perth have a good and cooperative working relationship on the extensive development that is occurring.

Mr J.N. HYDE: I appreciate the minister’s advice. I am sure that if in a Supreme Court case in 10 years the court refers back to the minister’s comments to see what was the government’s thinking of the day and his advice is, “There is a dictionary at the back of the room; go and look at it —

Mr J.H.D. Day: I think judges use dictionaries occasionally.

Mr J.N. HYDE: They may well do. My concern is that in other legislation in which clauses such as these are included, there are considerable checks and balances on the powers that that legislation gives. There is also the ability for the Standing Committee on Legislation in the upper house to deal with local laws and other incidents that are exempt under this legislation. We are talking about business arrangements of a new authority that does not have the transparency, openness or accountability that other government departments may have. As we both discussed yesterday, I have been unable to get EPRA into the budget estimates to be considered. Even with EPRA’s greater powers, it has not been subject to the same scrutiny, oversight and transparency as other bodies. Although I welcome the minister’s comment that he does not believe that the authority’s powers could be contracted out to a Serco, I think EPRA has privatised a number of services that, traditionally, a local council may have done in-house. Certainly my interpretation of these general powers is that the new MRA could privatise or outsource virtually any activity. I would love to hear the minister deny that it is possible for Serco to deliver parking services, street services or a whole range of other services that this legislation empowers the new MRA to not only undertake in its own right but also devolve to other bodies.

Mr J.H.D. DAY: It is correct that EPRA and the other redevelopment authorities engage contractors for a range of purposes, particularly for providing specialist planning, architectural advice and legal services and so on. I do not expect that situation to change. This provision will enable the authority to enter into contractual and business arrangements, but I point out that under clause 12 the approval of the minister and Treasurer is required in relation to those arrangements. This will not, therefore, as I think has been suggested to some extent, enable the authority to have some unlimited ability to get involved in a range of activities. The activities it is involved in are outlined in clause 11 and are restricted under clause 12. There is nothing particularly unusual about what is proposed here.

Mr J.N. HYDE: The minister seems to have a lot of confidence in his oversight and that of the Treasurer, but the track record of the government, and perhaps of the former Treasurer, shows that a number of activities and

services have been contracted out. If we are considering a philosophy of government, under the Local Government Act, this government has enabled some councils to contract out approvals. Therefore, just as some local councils can contract out building and planning approvals to the private sector under the Local Government Act, those important oversight roles in the planning responsibilities of the Metropolitan Redevelopment Authority also could be devolved.

Mr J.H.D. DAY: I am advised that planning powers can be delegated by the authority only to the land redevelopment committees or to an approved public sector entity. I think the concerns that the member for Perth is raising are not in fact justified. The constraints that will be put on the authority under this clause, and also under clauses 12 and 13, are entirely sufficient to ensure that there is appropriate conduct by the authority.

Ms J.M. FREEMAN: I thank the minister; his assurances that it is not the intention to privatise are appreciated.

I want to clarify something that the minister said to the member for Perth about the power that will be given to the authority to do all things that are necessary or convenient. As a member of the Joint Standing Committee on Delegated Legislation, that is always a concern, because these are broader powers than usual. Usually, acts provide that an authority may do certain things and then it lists the issues, as has been done in clause 11(3). In this subclause, the minister is effectively saying that the authority can do anything that is necessary or convenient. The minister is giving the executive the power to do those things. Clearly, the authority must act within its functions, but the clause goes on to define those functions in subclause (3). It is somewhat concerning that the bill provides that the authority will be subject to scrutiny, but it goes on to say that that scrutiny will be by the minister and the Treasurer. The scrutiny provision applies only to clause 11(3)(b), which states —

subject to section 12, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; ...

It does not refer to selling advertising opportunities. The Metropolitan Redevelopment Authority could do whatever is necessary or convenient to fulfil its functions, including selling advertising in an area, which the community or even the minister might not agree with. This provision will also give the authority the capacity to use expertise, resources and other services for profit. Although the minister made the comment that clause 12 provides for the scrutiny of the broad powers that will be given to the authority, that is not how I read the bill. I am happy for the minister to point out where I may have misread it, but on my reading of clause 12, only the issues listed in clause 11(3)(b) can be scrutinised. This clause has a long list of issues that will confront the authority in paragraphs (a) through (e). Given that this bill will bring together three authorities, why will this authority need such a broad power to do all things that are necessary or convenient? Firstly, what were the considerations for including the power to do all things that are necessary or convenient, beyond the minister just saying that that is how legislation is drafted? That is a recent drafting policy of the executive, because it wants to take away the ability of Parliament to scrutinise. That is my belief. Secondly, given that the minister said that scrutiny is provided for under clause 12, can he tell me how there will be scrutiny of all those other areas beyond those outlined in clause 11(3)(b)? In effect, the bill does not provide for any scrutiny by the minister and Treasurer of the issues outlined in clause 11(2), which refers to the power to do all things necessary or convenient.

Mr J.H.D. DAY: It is necessary for the authority to be given appropriate powers to operate in the modern commercial world and to have a sufficient degree of flexibility. I am advised that there is a similar provision in section 19 of the East Perth Redevelopment Act. However, it has been modified and updated to deal with expenditure for sponsorship arrangements and the receipt of money for advertising. It also includes standard provisions that have been recommended by parliamentary counsel. This is not some radical change of policy by the government, but is based on the good, professional advice of parliamentary counsel to deal with contemporary commercial arrangements. For example, at the moment the East Perth Redevelopment Authority is involved in the management of the public space at the Perth Cultural Centre. It is also involved in putting on quite a number of events. It may well be that in the future, if it has not already occurred, there may be some sponsorship involved with some of those events. That is really normal practice to a large extent. I imagine that this sort of provision will ensure that there is power to enter into those sorts of arrangements when it is appropriate.

Ms J.M. FREEMAN: I thank the minister for that response, but he did not tell me how clause 12 provides for that scrutiny. How does the Parliament have any scrutiny in the example that the minister has just outlined, other than the fact that it is performing the functions of the authority and the authority has been given the capacity to do any of those things? Clearly, the minister can use his general directions powers. The minister talked about the capacity for sponsorship. Other than the issues outlined in clause 11(3)(b), how will the minister have the capacity to scrutinise the broad power that he has given the authority to do all things that are necessary or convenient?

Mr J.H.D. Day: What are you asking?

Ms J.M. FREEMAN: Previously, when the minister answered the member for Perth's question, he said that those functions will be able to be scrutinised, as provided for in clause 12. But from my reading of clause 12, it simply applies to clause 11(3)(b). Given the minister's answer to the member for Perth's question, in which the minister said that these functions will be able to be scrutinised and dealt with by the minister and the Treasurer, how will the minister and the Treasurer consider and scrutinise the power of the authority to do all things that are necessary or convenient on the issues outlined in subclause (3)(a), (c), (d) and (e), bearing in mind the broad powers that will be bestowed upon the authority?

Mr J.H.D. DAY: I am advised that this bill strengthens governance arrangements and the transparency provisions generally compared with the current situation. It would be ridiculous to suggest that the minister should effectively act as the CEO, which would result in the minister having to scrutinise every business decision. The authority will be a public sector agency and will be subject to questioning through Parliament and the minister in the same way as existing redevelopment authorities and all other public agencies. It is subject to all the usual scrutiny through Parliament, the media and so on. I think the concerns the member raised are a little of an overreaction.

Ms J.M. Freeman: The member for Perth said that they are not subject to the estimates process. Given that under clause 12 the minister and Treasurer can consider proposals under clause 11(3)(b), I would assume that 11(3)(b) would be subject to estimates because you have the power over those things. Will all the powers under clause 11(2) and 11(3)—the capacity to make a profit—be subject to estimates?

Mr J.H.D. DAY: Under their respective portfolios, the Minister for Planning and the Treasurer participate in the estimates committee process as part of the budget bills. To that extent, any question can be asked of them if it relates to the budget and is pertinent to their respective portfolios. The estimates committee process, of course, is not the only way in which scrutiny can be applied to public sector agencies. Ministers can be questioned about a range of activities and aspects of the operations of public sector agencies, whether they be corporatised entities, statutory authorities, public sector departments or whatever. All the scrutiny that is available now will continue to apply. I am advised that the authority will be subject to the development of business and operational plans. They will need to be approved by the minister and the Treasurer.

Ms J.M. Freeman: Will they be FOI-able?

Mr J.H.D. DAY: Presumably they will be, and they will be included in the annual report.

Clause put and passed.

Clause 12: Minister and Treasurer to consider proposals under section 11(3)(b) —

Mr J.N. HYDE: I seek some clarification regarding the Metropolitan Redevelopment Authority obtaining the written agreement of the minister before it enters into a transaction. What are the circumstances in which the minister may not agree and what process is available to the authority if the minister does not agree to a proposed transaction?

Mr J.H.D. DAY: If approval for a project is not given, clearly the authority is unable to undertake what it has proposed. The authority could continue to argue to the Minister for Planning and the Treasurer that a project should be approved, and if after reconsideration of the same proposal or consideration of an amended proposal the project is given approval, obviously it could go ahead. This constraint is deliberately put into the bill to ensure that the government of the day, including the Treasurer, who has responsibility for the financial management of the state and the amount of debt incurred by the state as a whole, is comfortable with the major projects that are proposed. That is what this is all about.

Mr J.N. HYDE: I seek further information regarding the definition of "transaction". I am concerned that the Treasurer is able to nobble the Minister for Planning by exempting any transaction or class of transaction. In effect, the Treasurer is telling not only the authority, but also the Minister for Planning what to do in his portfolio. Is it a new policy under the Barnett government to give the Treasurer major oversight of a range of transactions in different portfolios? Does this mean that the Treasurer could exempt a department from buying paperclips or does the Treasurer have to sign off on buying paperclips? What range of transactions is expected to be covered under this provision?

Mr J.H.D. DAY: Clause 12(4) provides that an exemption can be granted, subject to the Treasurer's approval. That ensures that the Treasurer and the Department of Treasury and Finance do not have to get involved in considering a range of minor issues. The overall purpose of this clause is to ensure that the Treasurer, and therefore the government more widely, are comfortable with the financial implications of a major proposed project. If I were speaking only as the Minister for Planning and looking at the world from only that perspective, it would be possible to argue that this clause should not be there. However, the reality is that the planning

portfolio is part of the government as a whole, and I recognise and fully support the fact that Treasury and the Treasurer must be comfortable with and supportive of the major projects that will be undertaken by the authority. It is up to the Minister for Planning to argue the case with the Treasurer, if necessary, and, as is most likely for major projects, in cabinet as a whole. Clearly the case for the project needs to be made. That is the case with all major projects that are undertaken by state government agencies, whether it be an electricity agency, the Water Corporation or any of the other major trading enterprises. Major projects have an impact on state debt and the state's finances. Therefore, it is appropriate, in my view, to have a degree of oversight and for the government as a whole to approve the implications of any major project that might be undertaken. As I said, clause 12(4) provides that an exemption can be given for the more minor matters so that Treasury does not get clogged up with, and the whole process is not completely frustrated by, minor issues being subject to this provision.

Mr J.N. HYDE: I appreciate the minister's comments. The key issue is: what is the threshold? What is the difference between minor issues and major projects? At what level and which activities does the minister anticipate the exemption will start to apply?

Mr J.H.D. DAY: That has not been determined at this stage. Obviously, that will be subject to discussion between Treasury and the new authority when it is established, with the approval of the Treasurer and the Minister for Planning.

Mr J.N. HYDE: That is concerning me.

Mr J.H.D. Day: And why is that?

Mr J.N. HYDE: The minister does not know what the level of transaction will be; he cannot tell us what is going to be a major transaction and what is going to be a minor transaction that will be exempted.

Mr J.H.D. Day: It may be anything above \$10 million, for example. It may be anything above \$1 million. I imagine that it is more likely to be anything above \$10 million. I do not think Treasury would want to be concerned with everything below that level, but that is me speaking completely off the top of my head. It is obviously subject to discussion between the Treasurer and the minister at the appropriate time.

Mr J.N. HYDE: Again, with comments like "I am speaking off the top of my head" and "I imagine", I can now fully understand why the City of Perth and others are describing this piece of legislation as quite nebulous and giving incredible power.

Mr J.H.D. Day: Where have they said it is nebulous?

Mr J.N. HYDE: In their report to council on Tuesday night.

Mr J.H.D. Day: Did they use that word "nebulous"?

Mr J.N. HYDE: Probably not; that sounds like a John Hyde sort of word. It is probably a concise summary. In fact, if the minister would like, I will read into *Hansard* some of the comments of the City of Perth. The minister has asked me whether the word "nebulous" was used. What was actually stated in the meeting was —

... it is considered that the Bill is divisive and its implications for local government and ratepayers are likely to be damaging.

That is perhaps a little bit stronger than "nebulous". It continues —

The lack of consultation that has been undertaken in preparation of the MRA Bill is of great concern. The Bill has substantial implications for the City, removing the City's involvement in decision making on major development projects within its boundaries and enabling the potential erosion of the City's role and powers in relation to future development and infrastructure planning and provision.

Again, I have great concerns that the minister wants us to pass this legislation when I do not think the minister genuinely knows, and perhaps the government does not yet know, exactly what level of power will be given to Treasury over this portfolio, over this authority and over the real functions of an elected local government.

Mr J.H.D. DAY: I very much doubt that the City of Perth is particularly concerned about this aspect. I earlier referred to the issue of consultation. I also made the comment that the working relationship between the state government and the City of Perth is a very cooperative and productive one. I see no reason why that will not continue.

Clause put and passed.

Clause 13: Delegation except of powers and duties under Parts 5 and 6 —

Dr A.D. BUTI: Many of the comments I am going to make on clause 13 will also apply to clause 14, and perhaps even more so, because clause 14 deals with development schemes and development control of redevelopment areas. I refer to delegation. Clause 13(2) states —

If a person is not an LRC, —
That is, a land redevelopment committee —
a committee established under section 111,

I go to clause 111(1), which states —

The Authority may, in addition to LRCs, appoint other committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

I am really concerned about the delegation of powers to a number of people and bodies without, in many respects, even ministerial control or, particularly, parliamentary scrutiny. The delegation of powers is an incredible power that we give to people. I really have a major concern with having such a wide net, particularly when clause 111 is introduced in this clause. I wonder why it was necessary to cast the net so wide with the delegation of power.

Mr J.H.D. DAY: I made a comment on this issue in my response to the second reading debate, and I will reiterate some of what I said then. In relation to the delegation of the authority's functions, there is a degree of confusion about the relevant provisions. Clause 13 of the bill enables the authority to delegate a range of its functions to a committee of the board, a board member, a staff member or, in some circumstances, a person or office holder approved specifically by the minister. This provision enables the kinds of functional and financial delegations necessary to enable any statutory authority or agency to perform its day-to-day business. It is really necessary for normal daily operations. It will relate to contracting, purchasing, human resources and other similar functions. Clause 14 of the bill, by contrast, deals specifically with the authority's planning and development control functions, which are its key focus of operation. These powers can be delegated only to a land redevelopment committee, another committee of the board or a person identified in the regulations. A delegation of planning or development functions can be limited depending on the particular stage and requirements of the relevant project and the strengths of operation of the applicable land redevelopment committee. It is possible to delegate those planning and development powers only to a land redevelopment committee, another committee of the board or a person who will be clearly identified in the regulations that will be established. That is similar to the current operations, as I understand it, of the Western Australian Planning Commission, under which some of the more straightforward matters are delegated to individual officers or people who hold particular offices within the Department of Planning, but the more contentious or complex issues are considered by the statutory planning committee of the WA Planning Commission or, in some cases, by the board of the Planning Commission as a whole. A similar sort of arrangement is intended for the Metropolitan Redevelopment Authority. I reiterate that it will not be possible to delegate the planning or development control functions to just anyone, without that person being clearly identified. Generally speaking, the land redevelopment committee will have responsibility, in the same way as the boards of existing redevelopment authorities have responsibility, for the development control and planning functions.

Dr A.D. BUTI: I thank the minister for that clarification. I understand that the minister or even the authority itself cannot be involved in everything, but my major concern is the clause 111 committees. Clause 111 states that the authority may, in addition to the local redevelopment committees, appoint other committees. There does not seem to be any fetter on the range of committees. The functions they can perform, under clause 14, are very significant. I do not know what control we will have over the quality of the people who will form those committees. If clause 111 were not included as a possibility under clauses 13 and 14, but more so under clause 14, I may not have as much concern, but I do have a major concern with how it now reads and with the ability of committees established under clause 111.

Mr J.H.D. DAY: I understand that the intention under clause 111 is that, as the member pointed out, other committees could be established, but it would be for the purpose of having an audit committee, a budget committee or something of that nature. It is not the intention to establish some other committee to undertake the development control powers. Given that we are setting up the land redevelopment committees, it really does not make sense to contemplate that we would have some other alternative undertaking those functions. In relation to control of who would be appointed, clearly the board of the Metropolitan Redevelopment Authority is responsible to the minister and needs to justify its actions. In any case, given that members of any other committee, be it an audit or budget committee, would most likely be paid, the clear policy and practice of government is that all such appointments need to be approved by cabinet, so there is that degree of control and scrutiny.

Mr J.N. HYDE: The minister mentioned delegation by the board to a budget committee. Currently there is a requirement under the East Perth Redevelopment Act for the minister's approval for acquisition and disposal of land that exceeds \$1 million in value. It is my understanding from the minister's second reading speech and media statements that that threshold will be a lot higher for the MRA. I think the member for Armadale and

others have raised a quite valid concern. If the threshold reaches an amount of maybe \$10 million, as the minister mentioned off the top of his head, could that responsibility also be delegated to a budget committee, so that the minister would not have to be notified of a decision involving amounts of up to \$10 million?

Mr J.H.D. DAY: We are talking about a hypothetical situation that I do not really expect to arise. I expect the board of the authority to take responsibility for financial decisions that are made. I gave the example of a budget committee maybe being established, but I do not really expect that to occur. An audit committee could well be established; I think they exist in some other public sector agencies, and certainly in the corporate world. Clause 111 provides the ability for the authority to set up some other committee, but certainly I, as Minister for Planning, would want to justify the need to do so, and I am sure that any future minister would also. The ability is provided there, but it is debatable whether it is really required because, as I understand it, it is likely that boards will be able to establish committees in any case. It is really just to try to ensure that all possibilities are provided for in the future.

Clause put and passed.

Clause 14: Delegation of powers and duties under Parts 5 and 6 —

Mr J.N. HYDE: Again, I refer to the issue of delegation of powers. There is a proviso that it cannot be further delegated. I am a little confused, because the example we have been given so far is that the MRA can delegate to a land redevelopment committee, but the minister just stated that the LRCs may be able to delegate to a budget or audit committee. Have I understood that correctly or not?

Mr J.H.D. DAY: I am advised that the land redevelopment committees are not able to further delegate the powers that have been delegated to them by the board of the authority.

Clause put and passed.

Clause 15: Subdelegation of delegated WAPC powers —

Mr J.N. HYDE: What are the sorts of powers under the Planning and Development Act that the minister anticipates could be subdelegated?

Mr J.H.D. Day: Which subclause are you referring to?

Mr J.N. HYDE: Clause 15(3).

Mr J.H.D. DAY: This clause contemplates the delegation of powers relating to improvement schemes under part 8 of the Planning and Development Act. We changed the Planning and Development Act last year to, amongst other things, enable improvement schemes for a nominated area to be prepared by the Western Australian Planning Commission. The purpose of this particular clause is to enable a land redevelopment committee to delegate some of the powers of implementation of an improvement scheme by the WA Planning Commission.

Mr J.N. HYDE: Again, I have to go back to this point; the City of Perth has also made the same point. The consultation process prior to adding land to a redevelopment area is limited to the WAPC and the relevant local authority, so that there is no requirement for public or landowner consultation; whereas within local government there are requirements for affected neighbours and others to be consulted. We are further subdelegating these powers to the LRCs.

Mr J.H.D. DAY: I hope I have understood the point that is being made by the member for Perth. I am advised that section 16 of the Planning and Development Act enables the Western Australian Planning Commission to delegate to a range of public sector authorities, and the Metropolitan Redevelopment Authority Bill does not change that; it simply enables the Metropolitan Redevelopment Authority to subdelegate to a land redevelopment committee. If the member is raising concerns about the need for public consultation on the preparation of an improvement scheme, that is provided for in the Planning and Development Act. The usual consultation that exists at the moment for planning scheme amendments will need to be put into effect. This clause contemplates the implementation of an improvement scheme, not the preparation of an improvement scheme or the overall land use approvals that would be determined by the preparation of an improvement scheme. The improvement scheme replaces the local planning scheme and also the metropolitan region scheme, in the case of the metropolitan area. It enables detailed planning arrangements to be undertaken for that particular area. The normal public consultation and advertising processes will occur, so I do not think there needs to be any real concern about the public being excluded from the decision-making process for land use approvals.

Mr J.N. HYDE: The minister rightly states that this will replace the local planning scheme and other schemes, certainly under the Metropolitan Redevelopment Authority. Currently local planning schemes have requirements regarding advertising, billboards and often heritage. The great concern here is that, through delegation, the LRCs will be exempt from the advertising of specific activities that local councils are engaged in. Will there be

exemptions for cases such as if we wanted to establish a step-down house for the mental health department? As we see at the moment, it has to advertise because it is a use within the scheme that is not allowed. This allows the LRCs to totally ignore a local planning scheme.

Mr J.H.D. DAY: There are no changes to the public consultation arrangements. There will not be an exemption for the sort of situation that the member has just outlined. As I mentioned earlier, a redevelopment scheme or an improvement scheme under the Western Australian Planning Commission will need public consultation to be undertaken. Redevelopment schemes are provided for much more fully in part 5 of the bill, which we will come to at a later point. If the member looks at that, he will see there are some quite extensive provisions about how that needs to be undertaken.

Clause put and passed.

Clauses 16 to 18 put and passed.

Clause 19: Powers in relation to land contiguous to redevelopment area —

Mr J.N. HYDE: The concerns I raised about clause 15 are also very appropriate for clause 19, which deals with the contiguous area. This is another point that the City of Perth raised and I think we touched on it during the second reading debate. The bill is ambiguous and unclear about the activities that could be taken over from a duly elected local council on land contiguous to the redevelopment area. The City of Perth stated that there is potential for this clause to erode the city's powers. This may be particularly relevant given the significant state government development projects planned in the city. This clause and a variety of others in this legislation enable various functions and powers of the Metropolitan Redevelopment Authority to pertain to land that is contiguous to the redevelopment area and the council, I think quite rightly, fears that is an erosion of its powers.

Mr J.H.D. DAY: I think this issue was addressed earlier but I will make some additional comments. Clause 19(1) enables the Metropolitan Redevelopment Authority to undertake activities on the whole of a lot of land if the redevelopment area boundary transects the lot. The effect of this provision, therefore, is really quite minor. Clause 19(3) enables the authority to pay for work that is undertaken outside the redevelopment area if it is appropriate. Therefore, this proposed section deals with the situation in which a boundary, for whatever reason, goes through the middle or part of a lot—transects it, as I said—and ensures that the whole of that lot can be included in the development.

Ms J.M. FREEMAN: I note that clause 19(3) states —

Without limiting section 11(2), the Authority may pay for the carrying out of any work on land that is contiguous with a redevelopment area if the work is, in the opinion of the Authority, directly related to the improvement of the redevelopment area or the functions of the Authority.

Can the minister please clarify how a dispute will be resolved if the Metropolitan Redevelopment Authority is not of the opinion that the work is directly related to the improvement of the redevelopment area or the functions of the authority, but the local government is of that opinion? Will the determination of that come down to the minister? Can the local government go to the State Administrative Tribunal? What is the dispute resolution procedure for what appears to be a contentious clause? What is the dispute resolution process for local government if the authority is of the opinion that the work is not its responsibility, thereby leaving the parties with, I suppose, a long and protracted dispute? I want to know how we can ensure that those sorts of disputes are curtailed and that there is appropriate capacity for appeal and that there can be a quick and effective determination of a dispute in that area.

Mr J.H.D. DAY: I understand that if a landowner is dissatisfied with the conditions of development of that land, they would be able to appeal to the State Administrative Tribunal. If the Metropolitan Redevelopment Authority is the developer or proponent intending to undertake work, ministerial approval is required for that work to be undertaken; otherwise, development approval is required by the authority for any development that may be undertaken by any individual or entity other than the authority itself.

Ms J.M. FREEMAN: That was not as clear to me as I perhaps need. The minister was talking about a private business owner who believes that work on the land needs to be carried out. I think yesterday we used the example of the continuation of a pathway or something like that. I suppose we would probably not use the example of a private developer next to a private property owner. I think it is more likely to be a private property owner next door who believed that for the development to be contiguous with the redevelopment area, it would be something more to do with their private land than a pathway. I agree that probably in that instance it is something that would be in the opinion of the Metropolitan Redevelopment Authority. If a person takes their concern to the State Administrative Tribunal, in the opinion of the authority it is a very direct issue, so I question whether it can be directly determined by SAT. It is perfectly clear—I am not a lawyer in the room—that if the authority does not have the opinion that it is contiguous with the redevelopment area, it does not get payment for

that. That is still on the basis of the authority not being of the opinion that it is contiguous with the redevelopment area.

When there is a dispute about this matter, it seems pretty clear to me that appealing to SAT would be fruitless on the basis that the clause is a definitive clause; it is in the opinion of the authority. Can it seek redress through the minister so that its decision is determined quickly and efficiently? The process of appealing to SAT is unfortunately not as quick as people would like. Local governments would say that the path is part of that redevelopment area and they need to continue it to make that redevelopment area work and operate properly. I am still a bit mystified as to how the minister can foresee that it would go to SAT and how it does not need something that is determined or has some sort of capacity in this legislation for a dispute resolution or a determination clause.

Mr J.H.D. DAY: People can always make representations to ministers, and there is normally an attempt to resolve an issue if that representation is made. Whether the land is contiguous, which is a large part of what the member is raising, is a clear question of fact. Normal legal explanations and principles are followed in the case of a dispute. Whether something is contiguous is pretty obvious in most cases and is a clear question of fact rather than an issue of debate. I think that really deals with the issue that the member has raised.

I also point out that under this provision it may well be that the authority is only funding the work outside the redevelopment area, and the work to be undertaken is always subject to the relevant local planning scheme.

Debate adjourned until a later stage of the sitting, on motion by **Mr R.F. Johnson (Leader of the House)**.