

CITY OF PERTH BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 17: City of Perth boundaries on and after 1 July 2016 —

Debate was interrupted after the clause had been partly considered.

Mr C.J. TALLENTIRE: Before the break we were discussing clause 17 and the number of local government authorities that are located around the Swan River. The advice from the minister was that there were something like 16 or 17. That contradicts schedule 7 of the Swan and Canning Rivers Management Act, which lists 21 local government authorities.

Mr A.J. Simpson: That might include Northam. Are they all in the metropolitan area?

Mr C.J. TALLENTIRE: They are all in the metropolitan area and they are all local governments that have some connection with the Swan and Canning Rivers. Why do we have that contradiction?

Mr A.J. SIMPSON: It includes the Canning River. I remember the figure of 16 or 17 because it came up in one of my speeches during the reform process. As I cycle around the river, I go through 16 or 17 local government areas, and as I drive down the coast, I go through 12 local government areas. The member could be correct, if he is taking into account local government areas around the Canning River. I do not think I cycled around the Canning River; I only took in the Swan River, so the member could be right. He is a bit more expert on that than I am.

Mr C.J. TALLENTIRE: It is a concern, because these new boundaries will enable local governments, in this case only one, the City of Perth —

Mr A.J. Simpson: And East Fremantle.

Mr C.J. TALLENTIRE: Yes; there is also the existing East Fremantle local government. I have outlined that that has been problematic in the past, and now we are going to allow another local government to have a river boundary. We will have an incomplete picture of local governments with authority over the Swan and Canning Rivers. The minister's defence to this is that the Robson report suggested that, in fact, all of the Swan and Canning River area should be carved into different local government authorities. The minister says 16 or 17, and I am saying 21 because that is the number listed in the Swan and Canning Rivers Management Act. We are going to carve the area up so that we have a confused situation when it comes to responsibility for what goes on in the river. I would like a bit more information from the minister on this matter, especially on how it would relate to a river protection notice, which is one of the enforcement measures under the Swan and Canning Rivers Management Act and can be issued to anyone who is deemed to be causing some pollution of the Swan and Canning Rivers. I am unclear from what the minister has said how those river protection notices will work into the future, especially if it turns out that the City of Perth might be the main offender here. The City of Perth has that vast area of grassland that was once used for the landing of aircraft, which I guess receives large amounts of fertiliser, but there is nothing to protect the river from the slow movement of that fertiliser into the river. I think that may be the cause for the issue of a river protection notice in the future, unless the City of Perth is able to find some other treatment for that area that enables it to be fertilised without leaching fertiliser into the river. What would happen if the body with responsibility for the river was policing its own performance? The issue of a river protection notice would perhaps be precluded by the fact that we are in an area that is in the City of Perth's jurisdiction and no longer an area in which the Swan River Trust or that body's agency, which is actually a division of the Department of Parks and Wildlife, could enforce the river protection notice?

Mr A.J. SIMPSON: The member for Gosnells is far more experienced with protection orders on the Swan River than I. I am the Minister for Local Government, so I am enforcing the Local Government Act. I take on board the member's concerns around responsibility for the river. I have spoken many times today and last night about the powers over the river still remaining with the Department of Parks and Wildlife, which has responsibility for the river. Our plan is to make sure that the whole metropolitan area is covered by a local authority, so that local laws can be implemented. The recommendation was to work very much along the lines of those for the Town of East Fremantle. I restate that local government boundaries relate to local laws, dealing with such things as dogs and applications and approvals. The Department of Parks and Wildlife will still manage anything to do with the river, as the member for Gosnells will understand. If the City of Perth breaches a requirement to do with the river, it can have a work order put on it just like anybody else through the process the member mentioned.

Mr C.J. TALLENTIRE: What is the minister's understanding if there is a conflict between the direction, objectives or enforcement procedures of the body authorising the Swan and Canning Rivers Management Act and the City of Perth? How does the minister think that would play out? It looks to me as though sections 6 and 7

Extract from Hansard

[ASSEMBLY — Wednesday, 18 November 2015]

p8521c-8527a

Mr Chris Tallentire; Mr Tony Simpson; Mr Ben Wyatt; Mr David Templeman

of the Swan and Canning Rivers Management Act would require that the Governor get involved. A whole process is laid out in the Swan and Canning Rivers Management Act when there is a conflict between different bodies. If the ministers who are responsible cannot resolve the conflict, it will eventually get escalated to the Governor, who will make a determination. I have never heard of anything like that before. It sounds to me as though there is some sort of constitutional crisis. I point the minister to the Swan and Canning Rivers Management Act and the reference to the potential for a conflict to arise. It refers to the minister who is responsible for the Swan and Canning Rivers, the Minister for Environment, and an authority that is the responsibility for the Minister for Local Government. If such a conflict cannot be resolved, the matter will go to the Governor. Section 6(7) of the SCRM act states —

- (7) If ... the Ministers cannot agree as to the matter, the matter may be finally and conclusively determined by the Governor, and effect must be given to the determination.

Is it anticipated that there could be a potential conflict between the Minister for Environment and the Minister for Local Government, who will oversee the activities of the City of Perth?

Mr A.J. SIMPSON: The Minister for Local Government will not oversee the activities of the City of Perth. This bill in front of members is the City of Perth Bill and provides for a boundary. I can only state what I said before. The member is quoting from the Swan and Canning Rivers Management Act, which is administered by the Minister for Environment and it has its own rules and regulations and it quite rightly protects the river. I have responsibility for local government boundaries, which the City of Perth will be in, and in this case the boundary of the City of Perth will go to the middle of the Swan River and it will give continuity for all local laws. More importantly, the entire metropolitan area has local government boundaries so that local laws can be implemented. The act the member for Gosnells is quoting is the responsibility of the Minister for Environment and not me as the Minister for Local Government.

Mr C.J. TALLENTIRE: I do not think we can ignore that there could be a potential conflict between the City of Perth Bill and the objectives of the Swan and Canning Rivers Management Act. That conflict would bring into play a conflict between the two ministers. I say that because the Swan and Canning Rivers Management Act is clear when it states that if a problem arises and it relates to the functions of a statutory authority, the Swan and Canning Rivers Management Act defines —

Mr A.J. SIMPSON: Can I clarify a point? I think the member is confused between power and who has control. A local government boundary means that an area is within a local government boundary. I will look at the Swan River for a moment. The member is reading from an act that manages the Swan River and is referring to a conflict of interest. Say, for example, Mr Smith applies to the City of Perth to put a water feature in the middle of the Swan River. The local government would consider it and note that it is within its boundary, but it does not control the river, so it would refer the matter to the Department of Parks and Wildlife, which manages the Swan River through that act. The City of Perth does not develop anything within the river. If it wanted to put a fountain in the middle of the river, it would have to go through the same process and apply to Parks and Wildlife, which would refer to that act. It will not mean that because a fountain is being proposed to be put in the middle of river, all of a sudden the powers will come down to two ministers. The act will make it clear that there is a boundary. That will not mean that suddenly there will be concrete or grass up to the boundary in the middle of the Swan River. The powers of the Swan and Canning Rivers Management Act to which the member refers will remain in place. He should understand that all local governments will operate under those local laws. I wanted to clarify that for the member for Gosnells.

Mr C.J. TALLENTIRE: I thank the minister for that explanation, but it appears as though the minister has not foreshadowed the potential conflict between the objectives of the City of Perth Bill and the objectives of the Swan and Canning Rivers Management Act. The overlapping boundaries issues that will be created here increase the potential of that conflict arising. The chances of this conflict arising are very real. I referred to one example, which was the use of fertilisers on Langley Park. To help illustrate my point, I draw the minister's attention to another example. I begin by asking the minister: who will have responsibility for drains that come through the City of Perth and go into the Swan River?

Mr A.J. SIMPSON: I will mention a couple of things about the potential for conflict of interest. The Town of East Fremantle's boundary is in the middle of the river and in 50 years there has been no conflict of interest between the Minister for Local Government and the Minister for Environment. I do not believe there is a conflict of interest.

The member mentioned drains, and they are the responsibility of the Department of Water and the city. When a person wants to develop a block, approval for drainage will need to come from the city, and if that water is going to flow into the river, they will have to get approval via the act that the member just read out on how to drain water into public waterways. There is a raft of legislation that refers to the treatment of that water.

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p8521c-8527a

Mr Chris Tallentire; Mr Tony Simpson; Mr Ben Wyatt; Mr David Templeman

To clarify a couple of points for the member, near Crawley the current boundary of the City of Perth kicks out where there is a boatshed, so we have made sure that the boatshed is within the old boundary. The member will see that the boundary that goes along the riverbank and then pops out near the boatshed in Crawley is included in the City of Perth boundary. The reason for that is that it is a shed—a structure—and it comes under the control of the local government. I can only restate that there has been no conflict in 50 years in East Fremantle. I do not believe a conflict will arise under this bill. The two pieces of legislation are strong. I understand the member is talking about a raft of things that could happen, but nothing has happened yet.

Mr C.J. TALLENTIRE: What about the drains that pass through the City of Perth and flow into the Swan River? I asked the minister specifically who is responsible for those drains. A very important document released by the Minister for Environment recently —

The ACTING SPEAKER (Mr P. Abetz): Member for Gosnells, I really do not think that this is germane to clause 17. I am going to let you finish this thought but we really need to get to the clause itself.

Mr C.J. TALLENTIRE: I will illustrate how this is absolutely central to the discussion about boundaries. Previously, the City of Perth's boundary was more or less on the foreshore. Now the boundary of the City of Perth will extend into the middle of the Swan River. This is a new thing. Because of that boundary, the City of Perth will be responsible for the water, in many ways. One issue is around the drains that flow through the City of Perth. The Swan and Canning Rivers' river protection strategy is clear that the local government authority is responsible for drains that go into the river. That contradicts what the minister has said. He previously said that the Department of Water was responsible for the drains that go into the river. Clearly there could be a problem with the stuff that is coming down those drains, which is the responsibility of the local government; that is in the Swan River strategy. The City of Perth is responsible for what is in those drains and what goes down them. That is in the strategy. If the content of those drains is problematic for the Swan River, who is going to take action?

Mr A.J. SIMPSON: The same people who take action today. I can only point out that the City of Perth Bill does not change anything to do with the drainage of water, full stop. It is as it is today and as it will be after 1 July 2016. What is happening now will happen after 1 July 2016. There will be no changes to or impact on the river.

Mr C.J. TALLENTIRE: Who is going to take responsibility for the water quality monitoring as a result of these new boundaries?

Mr A.J. Simpson: The same people who do it today.

Mr C.J. TALLENTIRE: Is it a boundary that gives the City of Perth nothing other than development rights or involvement in decision-making?

Mr A.J. SIMPSON: It will not give the city development rights; it will give it the local laws as well. When the member refers to “development rights”, it means that people will have to apply to do any development on the river. Therefore, the local government authority will be the first door that people will walk into and it will refer the matter to the Department of Parks and Wildlife, which controls the river. There is a process in place. The city will not have development power but the City of Perth will have to interact with the Department of Parks and Wildlife. If the member is asking about someone who wants to build a restaurant on a jetty or a marina, the local government will be able to deal with that as it goes through the process. The traffic that would be generated by that development would have an impact on the city, so the City of Perth would have input into that decision, but the final say, under the current legislation, would be with the Department of Parks and Wildlife, which controls the river.

Mr C.J. TALLENTIRE: Previously, the minister talked about enforcement procedures that the City of Perth officers would have, and he suggested that it would be clearer if the City of Perth officers had an enforcement power right up to the centre of the river. He used the example of somebody's dog misbehaving.

Mr A.J. Simpson: Yes.

Mr C.J. TALLENTIRE: The minister is on the one hand saying that the City of Perth officers will have enforcement rights, but on the other hand saying that they will not have enforcement responsibilities when it comes to something such as polluting toxins coming down drains.

Mr A.J. SIMPSON: Local governments do not police pollution. The current process in place stays as it is. This bill in no way changes anything to do with drainage or pollution. I am just expanding the City of Perth's boundary and making some changes to an act. In no way am I changing the current processes in place for drainage.

The ACTING SPEAKER: Minister, I just want to remind you that you are under no obligation to answer a question if you feel you have said enough.

Mr A.J. Simpson: Okay.

Mr C.J. TALLENTIRE: The Swan River's strategy makes it very plain that it is local governments that are responsible for the administration of those drains, including the toxins that go down there, so how can it work?

Mrs G.J. Godfrey: It is a strategy.

Mr C.J. TALLENTIRE: Have a look at the Swan River strategy, member for Belmont!

Mrs G.J. Godfrey: It's a strategy.

Mr C.J. TALLENTIRE: Yes, and it indicates who is responsible. The government just published it a matter of weeks ago.

Clause put and passed.

Clause 18: Boundaries of other local government districts changed —

Mr B.S. WYATT: I rise to confirm that the opposition is satisfied with the content of this clause. While I am on my feet, as I have to finish these things with a question mark, I ask the minister: can he explain to the house the purpose of clause 18?

Mr A.J. SIMPSON: I thank the member for Victoria Park. This clause relates to consequential changes to the boundaries of the City of Perth, and the new boundaries of the City of Nedlands and the City of Subiaco will change correspondingly. The new boundaries of the City of Nedlands and the City of Subiaco will come into effect on 1 July 2016. These boundaries are defined on deposited plans that can be accessed at Landgate online and as referred to in clause 17.

Clause put and passed.

Clause 19: Election of Lord Mayor —

Mr B.S. WYATT: This clause reads —

- (1) The Lord Mayor is to be elected by the electors of the district of Perth under the *Local Government Act 1995* Part 4.
- (2) The *Local Government Act 1995* sections 2.11 to 2.14 do not apply to the City of Perth.

Can the minister inform the house what sections 2.11 to 2.14 actually are, and why they do not apply to the City of Perth?

Mr A.J. SIMPSON: I thank the member for Victoria Park. The Lord Mayor of the City of Perth is currently elected by the electors of the district of Perth, and the Lord Mayor of the City of Perth will continue to be directly elected by the electors of the district of Perth. It will not be possible to change the method of election of the Lord Mayor except by amending this proposed act, and this reflects the divisions in the City of Perth Restructuring Act 1993.

Mr B.S. Wyatt: Sections 2.11 to 2.14 of the Local Government Act 1995 do not apply. Can the minister tell me what they are in relation to?

Mr A.J. SIMPSON: Sections 2.11 to 2.14 of the Local Government Act set out how to go about changing the methodology of electing a mayor. If the member looks at the Local Government Act, he will see the provision to do with electing presidents and mayors, and then a subsection deals with how to change them; so it is part of the local government process.

Mr B.S. Wyatt: While the minister is on his feet, is the minister saying that the Lord Mayor is directly elected under part 4 of the Local Government Act?

Mr A.J. SIMPSON: That is what I was just referring to.

Mr B.S. Wyatt: Are sections 2.11 to 2.14 in part 4?

Mr A.J. SIMPSON: They are in part 4 of the Local Government Act; my apologies to the member.

Clause put and passed.

Clause 20: Successful enrolment eligibility claim of non-resident occupier does not expire —

Mr D.A. TEMPLEMAN: As indicated on the notice paper, the opposition opposes the clause and asks the government to support the opposition of the clause, which will therefore see it deleted. This clause has been included in this bill with regard to non-resident occupiers.

The ACTING SPEAKER: Can you speak up a little, member? I am having troubling hearing you.

Extract from Hansard

[ASSEMBLY — Wednesday, 18 November 2015]

p8521c-8527a

Mr Chris Tallentire; Mr Tony Simpson; Mr Ben Wyatt; Mr David Templeman

Mr D.A. TEMPLEMAN: Yes. The clause refers to non-resident occupiers—that is, businesses under the current system—that are required to re-enrol after a period of four years. Clause 20 will not require businesses to re-enrol after a period of four years but, rather, allow them to simply stay on the roll until they notify the City of Perth. The opposition has some key concerns if clause 20 remains. They include already proven problems and inherent flaws with roll integrity in terms of accuracy and validity. The Victorian Local Government Electoral Review only last year highlighted some of these irregularities. The problems remain that a lot of businesses change, particularly the businesses affected by this clause. Lease changes can occur rapidly. The occupier of a leased property can change business sometimes a couple of times or three times a year. We believe that basically allowing a business to remain on the roll after having been enrolled is not appropriate. Some issues were highlighted in the Victorian Local Government Electoral Review panel, which was overseen by former Liberal federal member Petro Georgiou. The report states that the maintaining of records of non-resident owners —

... cannot overcome the flawed process of automatically enrolling voters based on unreliable data and then having no mechanism or requirement for these voters to keep their entitlement details up-to-date.

That is a quote from a report of the review panel of the Victorian system with regard to these sorts of enrolments.

The minister used the example of the member for Belmont in her role previously as a rate enrollee who was basically keeping track of correct enrolment. However, the fact remains that there are inherent flaws in a system that moves swiftly from a requirement to re-enrol every four years to one in which electors stay on the roll until they decide, if they do decide, to provide the information that they do not occupy that place. In fact a \$500 fine for any breach of that requirement is quite minimal. I think the minister indicated to us that he will support us in our opposition to this clause and I seek his confirmation that he will join us in deleting this clause by opposing it when we vote on it.

Mr A.J. SIMPSON: I support the member for Mandurah's motion on the notice paper to oppose the clause.

Mr B.S. WYATT: Can I just get some clarity? I thank the minister for pointing that out. Can the minister explain to the house why this clause was introduced in the bill in the first place? I am curious about how it got there and why the government thought this was an appropriate amendment originally.

Mr A.J. SIMPSON: When we put this bill together, we had a meeting of stakeholders. The City of Perth pushed this clause as part of the process. I think the argument was that it had to go out every two years and encourage people who had dropped off the roll to get back on the roll. However, as the member for Mandurah rightly pointed out, businesses in the city in particular can change many times. In that working group, the Chamber of Commerce and Industry of Western Australia was keen to push for it as well; it wanted its votes to stay permanently on the roll. At the end of the day, the current system is where it is today. I do not think it is either way for me. I am happy for it to stay as it is. It was a recommendation from that working group, which is how it ended up in there. I am convinced by the opposition's argument that it can possibly stay as it is.

Mr B.S. WYATT: Thank you, minister. I am not surprised that the City of Perth and the CCI were keen to have this provision introduced. I do not want to talk about this forever, but I am interested that I think the minister is saying that the City of Perth was sick of going out to encourage people to re-enrol every two years. Out of interest, does the minister know—he may not—what the City of Perth act does to encourage people to re-enrol who are on the roll on the basis of occupation of rateable property? That may be outside the minister's jurisdiction but I am curious whether he knows.

Mr A.J. SIMPSON: Basically, if the member leases a shop, he will get onto the roll—probably for this election—to vote for a councillor. In two years, he will fall off the roll so he will have to re-nominate back on again. Because everyone leads busy lives, they do not think to do that so it is then probably up to the councillor they voted for or the person they spoke to, when their term is coming up, to make sure that the member is back on their roll. That is the situation. All they have to do is bring the paper to the member and ask him to go back onto the local roll. As the member for Belmont pointed out, three staff members will manage that roll as of today, and will continue to do so.

Mr B.S. WYATT: I have a question in terms of the procedure: the minister does not rescind or remove the clause; we just oppose it?

Mr A.J. SIMPSON: Members opposite just oppose it so that the status quo remains.

The ACTING SPEAKER: I will just make it clear that the minister is voting against this. The question is that clause 20 stand as printed —

Mr B.S. WYATT: Mr Acting Speaker, I have a sudden disquiet that the minister is concerned about something. I want to make sure that we get this right.

The ACTING SPEAKER: Procedurally, my understanding is that if nobody votes to support this clause, it will then fall out. By nobody voting for it, it will be deleted.

Mr B.S. Wyatt: Do we still need to oppose it?

The ACTING SPEAKER: Just simply vote no—that is all. That is why I wanted to make sure that the minister is voting no.

Clause put and negatived.

Clause 21: Offence for owner or occupier to fail to notify becoming ineligible as elector —

Mr D.A. TEMPLEMAN: The opposition is having such success here that I am tempted, given that we have expanded the scope of this bill, to introduce an amendment to the parliamentary superannuation scheme and see how I go with that one! We will see if we can limit the debate on that one very quickly and then we had better all scoot off before the media find out that we have done it.

The ACTING SPEAKER: As long as the City of Perth funds it, it will be fine.

Mr D.A. TEMPLEMAN: I would also seek to have immunity from having anyone in the Liberal Party stand against me. Clause 21 relates to failure to notify becoming ineligible as an elector. Given that we have deleted clause 20, can the minister clarify whether we need to take this clause out too?

Mr A.J. Simpson: This goes as well; the same as the last one.

Mr D.A. TEMPLEMAN: We need to highlight that we will also vote no on this clause, which will delete it because of its relation to the previous clause.

Mr B.S. WYATT: Did the Leader of the House hear that? The noes have it; the place has fallen apart while he was not here!

Mr J.H.D. DAY: That depends upon what side the minister is on.

Clause put and negatived.

Clause 22: Local Government Act 1995 applies as if things done by section 2.1 order —

Mr D.A. TEMPLEMAN: This is where the amendment that stands in the minister's name is still on the notice paper. Given our previous vote, what is the status of the minister's proposed amendment to line 15?

Mr A.J. SIMPSON: The member raises a good question, but I think I will leave this amendment here because it does not change anything. To clarify again, it basically states that an amendment will need to be brought back to divide the district of Perth into wards or change the boundaries of the district of Perth. I think the amendment strengthens the member for Mandurah's amendment to clause 15 even more in his favour, in which he moved that an act of Parliament is needed to move that boundary. If the member is happy, I am happy to leave that amendment in there and we have talked about strengthening the legislation to make sure that the boundaries of the City of Perth cannot be amended without using this act to do so.

Mr D.A. TEMPLEMAN: By leaving this amendment in, if a future government wishes to introduce wards, will it need to come back as an amendment?

Mr A.J. Simpson: It comes back here, yes.

Mr D.A. TEMPLEMAN: Okay; that is fine.

Mr A.J. SIMPSON: I move —

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

- (b) divide the district of Perth into wards; or
- (c) change the boundaries of the district of Perth.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 23: City of Subiaco may review ward boundaries and councillor numbers —

Mr D.A. TEMPLEMAN: Clause 23 is part of division 1. To clarify, my understanding is that this clause sets out the process that the City of Subiaco would need to undergo given the fact that under this bill there has been a transfer of a significant number of electors from its existing south ward, I think it is called. This clause sets out a process that allows the City of Subiaco to review its ward boundaries and councillor numbers. In the minister's

discussions with the City of Subiaco, in terms of allowing this to occur, has the City of Subiaco given any feedback about what it may intend to do about its wards and councillor numbers? This clause will essentially allow it to review and propose changes to its wards and the number of councillors. Off the top of my head, I do not know how many councillors there are in Subiaco.

Mr A.J. SIMPSON: Neither do I, but I can tell the member the process. Regarding Subiaco's ward structure and number of councillors, the City of Subiaco will go through a Local Government Advisory Board process to review its ward structure. That process looks at all its wards to make sure that it gets an even balance of elected representatives for each area with even numbers of voters for elected council members. That is for it to initiate. It has to go through quite an extensive process to come up with what is normally three or four proposals, then get a community engagement and go off to an advisory board to make sure that the balance is right. It is signed off by the advisory board. It then comes up to me to sign off and to the Governor for gazetting. Those new wards will then come into place. Hopefully we can start that process by March next year to get it all into place before 1 July next year. At the same time, the City of Subiaco may wish to take a review of councillors and numbers, and it can also make a submission to the Local Government Advisory Board. Councillor numbers are normally looked at in line with election cycles, especially if it is looking to reduce them. That tends to mean, for example, that the city will say, "We will drop this new ward structure at the 2017 election when it will go from nine down to seven councillors." Normally in that situation, two councillors will be retiring so no sitting member will lose their seat. They are normally given a transition period for that. It is quite a common occurrence throughout Western Australia. I am regularly signing off on ward structure movements, boundary movements and councillor numbers.

Mr C.J. TALLENTIRE: Further to that, in south ward, which is losing 3 000 people according to the letter that we all received from Heather Anderson —

Mr A.J. Simpson: It is 1 100 voters.

Mr C.J. TALLENTIRE: She says it is 3 000 residents. I am sorry, minister, but I think the mayor would have a very good idea of how many people she is talking about. I will quote from the letter if the minister likes.

Mr A.J. Simpson: Member, just to clarify it, in wards we look at the elected number of people, so although there are 3 000 people, there are only 1 100 voters.

Debate interrupted, pursuant to standing orders.

[Continued on page 8540.]