PLANNING AND DEVELOPMENT AMENDMENT BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.08 pm] — in reply: I made the point earlier in response to one of the themes raised in the second reading debate contributions of members that the Property Council noted that 35 per cent of existing apartment development supply was on hold and an additional $2.2 billion in the predevelopment stage was also on hold. That means about 10 000 apartments are impacted as a result of the escalation of costs and labour and material shortages.

I turn to the issues raised about part 17 of the bill. The part 17 pathway established an alternative assessment pathway for development applications with the Western Australian Planning Commission determining major proposals of economic and social importance to the state. By encouraging major development projects of $20 million or more in the metropolitan area and $5 million or more in regional areas, it was designed to generate jobs and investment. The part 17 pathway was initially open from July 2020 and closed in early January this year. Over those 18 months, it attracted almost 100 inquiries. In the end, following pre-lodgement discussions with the department, a total of 50 proponents lodged applications. It should be noted that some proponents chose not to proceed with the part 17 pathway and decided instead to proceed with the existing development assessment panel process. The DAP pathway continues to be an option for proponents.

Of the 50 applications lodged under part 17, the Western Australian Planning Commission has determined to approve 17 significant developments to date, with the eighteenth application set for determination soon. The current 17 projects translate into $1.7 billion in approved developments, which is more than 12 000 new jobs, including 9 294 jobs during construction and 2 859 jobs post-construction. It should be noted that $1 billion of this investment and the majority of the jobs will come from the Cockburn Quarter redevelopment. Of the 17 approved projects, six are already complete or under construction, including the state football centre in Queens Park, a wharf extension at Henderson and an LNG plant in Mount Magnet. The remaining applications submitted before the assessment pathway closed in January this year are at various stages of the assessment process. In all, the 50 projects lodged through the part 17 pathway to date represent more than $5 billion in private and public investment and could generate up to 30 000 local jobs. Feedback from proponents is that they have valued how the pathway has brought a more coordinated approach to dealing with significant projects; in particular, state government agencies have been working more closely together to ensure projects receive the appropriate assessment. Design review, through the state design review panel, has also been a key element of this new process.

There was also a theme in the second reading debate that the part 17 pathway was somehow a free-for-all. It has not been a free-for-all. The Western Australian Planning Commission is required to give due regard—meaning active, positive consideration—to planning schemes, orderly and proper planning, and amenity. The commission must also be convinced of the economic benefits to the state. During a pre-lodgement discussion, state development assessment unit officers moderate the appropriateness of potential applications, with only about half the initial inquiries resulting in a formal application lodged in the part 17 pathway. Of the 17 applications that have since been determined under part 17, four resulted in no variations to planning scheme requirements; seven involved variations, but these were already possible under the underlying planning scheme; and three involved variations that were consistent with draft amendments to the underlying planning scheme that had not yet been finalised. The rigorous design review has ensured that only projects that demonstrate high-design quality have been approved. The commission also must consult local governments, relevant government agencies and the general public.

Consultation is a key feature. It is a minimum of 42 days' consultation with local government. Community consultation is also a key feature of the part 17 system. In some cases, proposals will be advertised, reflecting modifications made to the design as a result of the feedback during the consultation process.

The other theme that was raised was the Western Australian Planning Commission as the decision-maker. The Western Australian Planning Commission has been a long established and pre-eminent decision-making body. The decisions about part 17 that have been made by the WAPC to date have been conservative, despite concerns of the ability of the commission to go beyond planning frameworks. Claims that the process is not transparent are not correct. Part 17 meetings are run exactly like a DAP meeting: they are open to the public; people can make deputations; reasons for the decisions are given; and the full agenda and minutes are published on the website.

To reiterate, the purpose of the bill before us today is, broadly, threefold: to extend the time frame in which new development applications can be submitted in the part 17 system to 5.00 pm on 29 December 2023, the last working day of the year; to enable the WAPC to extend the time frame by which existing development approvals must be substantially commenced; and to clarify and tidy up some existing ambiguities in part 17. Many projects have been deferred due to the very heated construction markets. Options to extend the window in which construction can commence are already available to projects approved through other pathways, such as the DAP and council approvals.

This bill will allow proponents in the part 17 pathway to also seek one extension to substantial commencement. This is key to ensuring that some of these 17 projects are realised.

The other theme that was raised was about a permanent pathway. As outlined in the original bill, part 17 was to be replaced in time by a special matters development assessment panel. The government has been working to draft regulations that will provide for this panel to be established. The government received feedback during consultation recently undertaken on the draft regulations and will be undertaking further work in refinement to ensure community and industry views are addressed. The special matters DAP was to become operational by the end of the year. The start date will now be deferred to ensure that the policy settings are appropriate and to address stakeholder feedback. The extended part 17 pathways proposed in the bill before us will ensure significant projects continue to have access to a streamlined assessment and referral process in the interim.

I thank members for their contributions. I commend the bill to the house. I understand that we will be going into Committee of the Whole House.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

The DEPUTY CHAIR: Members, we are dealing with the Planning and Development Amendment Bill 2022. I draw members' attention to supplementary notice paper 69, issue 1.

Clause 1: Short title —

Hon NEIL THOMSON: I thank the minister and I appreciate the response she provided to the comments that I and others have made in this place. There are a number of aspects of this bill that we obviously disagree on, and some of those are worthy of consideration in the clause 1 debate as well as finding out further detail on the effectiveness of this process.

In starting my clause 1 interrogation—you could say—I want to focus on the purpose of this legislation. In a media release on 10 May 2022, the Minister for Planning commented on the bipartisan support for this process. Yes, there was bipartisan support for this process during the early stages of the COVID-19 pandemic because people understood the rationale for it. On 3 April, amendments to the new regulation and local planning schemes were put through, which I know is a different matter from this bill, but they are related. The rationale for the amendments was about adhering to local planning schemes. I want to thank the minister for her comments about the numbers of those approvals that either comply with or vary local planning schemes. I think the words the minister used were that those variations to local planning schemes would happen in the future. I am not sure what that means, but I certainly would appreciate some comment from the minister about that. But the rationale I think is very important because the state of emergency—when we brought in those regulatory changes, which are of the same ilk—was all about safeguarding the supply of central goods and services and maintaining matters such as keeping the trucks rolling, the shutters open et cetera.

In my speech in the second reading debate, I mentioned the concern that the market was paralysed to a certain extent, and we were quite worried, and that is why we supported the bill. Therefore, I think that is very important to clarify why that bipartisan support occurred. It was within that original context that the significant development pathway was approved and supported by both sides of this place. That was before I entered into Parliament, but it was supported. I want to ask what has fundamentally changed since then. The minister has presented some of that rationale, but I do not believe there has been adequate consideration of what, with the change in the circumstances—we have seen a completely changed circumstance—has significantly changed since 2020 that means we have to have the identical provisions implemented in June 2022 as we did in 2020, six months after they were terminated?

Hon SUE ELLERY: The purpose is set out in the explanatory memorandum, my second reading speech and my second reading reply. No more than five minutes ago, I literally referred to economic activity within WA being very strong; limited movement of people around the world, which created strains on our labour supply; supply chain shocks, which created significant lags in the delivery of products for construction activity; and significant cost escalation of building materials. The combination of these impacts has seen the deferral of many projects, and at the same time the level of demand for new housing stocks has increased. I literally set out those things. I responded to the question that the member asked in his second reading contribution, and I cannot add anything further than that.

Hon NEIL THOMSON: I thank the minister, because I think it is very important. I agree with her. Those issues have changed. Those are the things that have happened. Supply chain shocks are one of the things affecting the delivery of projects. The point I am making is that the things the minister read out in her commentary to say why this is required relate to supply chains. They all relate to economic activity. They do not relate to the approval process.

In fact, one could argue that too many projects are approved. I do not think anyone is going to say that too many projects are approved, but that could be a point of argument because a whole bunch of projects cannot be delivered because there simply is not enough labour. There are not sufficient materials. The minister mentioned what the Property Council presented about the number of projects currently on hold, but there is something that the government has not done in the presentation of this bill. It has grabbed all these headlines about the number of jobs and the activity that will be created, but it has not done the "with versus without" scenario—the assessment of what this pathway will do to accelerate that process. The constraint is not to do with the approval. We have not seen an analysis of the effectiveness of development assessment panels versus the effectiveness of this process. We could have this debate all day, and we are not going to, but I want to make a point that the basis of this bill has not been sufficiently outlined. The government has just grabbed some headlines about what this is going to do for economic activity, but it has not assessed this, and that is the big issue of concern. I want to find out more about this, and I am going to ask questions as we go.

Can the minister answer the questions about what the difference is? I will put a question to her now. Has anyone done an assessment of the difference between the development assessment panel process—there must be hundreds of applications that have gone through that process—versus the 16 or 17 that have been approved, the number of applications? I cannot recall exactly how many applications have been made, but over 30 applications have been made in the State Development Assessment Unit to date. What time has it taken for those assessments to be assessed and what time has it taken compared with the alternative pathway if the SDAU did not exist? That is what I would like to know to convince this side that this is an effective measure. Has any assessment been done? Does the minister have any numbers at all on that assessment comparing those two pathways? I think they are fundamental to this debate.

Hon SUE ELLERY: I am going to do my very best to assist the honourable member, but I literally answered the questions that he began his contribution with, say, 15 minutes ago in my second reading reply. The proposition that he put was: what is the connection between approvals and economic capacity, if you like? The approval process, and the honourable member would be aware of this, is a key influencer. It is a key lever that is used in the economy. I said this literally a few minutes ago. We want to avoid stalling the economic recovery in the situation we find ourselves in two years and a bit out from the beginning of the pandemic. We have a different set of problems, and I set out precisely what those problems were. The one-off extension, for example, is to provide parity to the other approvals. I will happily answer any questions the member has about matters within the bill, but the house has voted on the second reading. The policy is set and I specifically addressed those policy issues in my response to the member in my response to the second reading debate.

The DEPUTY CHAIR: Member, I will just note that I have a copy of the second reading speech and I could quite easily find the responses to the questions you have asked in here. I will remind you that clause 1 debate is about the content of the legislation, not the underlying policy.

Hon NEIL THOMSON: I seek some guidance because I find this extraordinarily frustrating. I know I am not allowed to question the chair so I seek some guidance if that is possible.

The DEPUTY CHAIR: Member, perhaps if you just progress with another question and we can take it from there.

Hon NEIL THOMSON: Minister, how many applications does the government expect to receive for this pathway from the time it starts on 1 July through the end of next year; and, of those applications, how many would it expect to have been made to a development assessment panel—I will ask a multi-point question here—and how much time does it expect the SDAU to take to assess those, on average, versus the time it would have taken to assess those assessments through the development assessment panel? I think that is fundamental to this question. The minister has not answered my question. That is the question. The minister has given me answers about the value of things that have gone through the process, but she has not assessed with versus without. I do not know how to make the question clearer. The question is: what would happen if the SDAU did not exist versus what would happen if it did? Because I have been asked not to repeat that question, I am going to say: what is going to happen in the future with the SDAU versus what would happen if we did not have the SDAU?

Hon SUE ELLERY: I thank the honourable member. I genuinely am happy to assist him in the committee process. The way I will do it, just to help him understand, is I will write down the questions that he asks so that when I am getting the response, I can make sure I am matching what he asked. I would say that in the first 20 minutes of questioning on this clause, the member has been asking me questions that I literally directly responded to in my second reading reply.

Hon Neil Thomson: You have not responded to it.

Hon SUE ELLERY: As a learning exercise, the honourable member could look to the *Hansard* for what he actually said. Then I will stop my teaching and I will not try to help him other than to give him answers to his questions.

Hon Neil Thomson: You have not answered that question.

Hon SUE ELLERY: Okay. I tried. I cannot do any more than that.

I cannot predict the future, but I can repeat what I said in my second reading reply about the kind of scope that may be before us. The Property Council of Australia made the point that about 35 per cent of existing apartment development supply is on hold, and an additional $2.2 billion in the predevelopment stage is also on hold.

Hon Neil Thomson interjected.

Hon SUE ELLERY: If the member would let me give him the answer —

Hon Neil Thomson: It would assist me if the minister could repeat that second one, please.

Hon SUE ELLERY: According to the Property Council of Australia, 35 per cent of existing apartment development supply is on hold. That is what I said in my second reading reply.

Hon Neil Thomson: Yes, I heard that.

Hon SUE ELLERY: An additional $2.2 billion in the predevelopment stage is also on hold. That is about 10 000 apartments impacted as a result of escalation of costs and labour, and material shortages. Part of what the member asked for was the time frames, which I am about to give to the member. Under the part 17 process, the average assessment time frame was 184 days. Under the DAP process, it depends upon whether it is a 60-day statutory time frame or a 90-day statutory time frame—for the 60 day, the average is 84 days, and for the 90 day, the average is 265 days.

Hon NEIL THOMSON: That is the answer I was hoping for. If I have not been clear in my questioning, I will attempt to be a lot clearer. This data about the average time frame is very important. For the former 184 days, we now have a DAP system of 84 days and a DAP system of 265 days. If the 184 applications that come under part 17 had to go through the JDAP system, has the department assessed which of those two pathways in the JDAP process that the minister has just outlined they would have to go through? It is a little confounding for me to understand. This was the subject of a WAtoday article. An assessment was done by a journalist about six months ago around this issue, and the claim was made that DAPs was a faster process. I want to hear whether there has been some assessment of that 84 and 265-day process to do an averaging and a comparing of like with like. That is what I am after.

Hon SUE ELLERY: In order to compare like with like, we would have to look at the 90-day statutory time frame because that is advertised, whereas the 60 day is not advertised. If we want to do like with like, we have 184 days under part 17 versus an average of 265 days under the 90-day statutory time frame. The other point to make is that part 17 also coordinates across the whole of government and of course the DAP process does not.

Hon NEIL THOMSON: I thank the minister for that, because now we are getting somewhere. Basically, the minister is saying that the DAP system has shortened the process for like for like.

Hon SUE ELLERY: So that we get it right in *Hansard*, that has not shortened the process; part 17 has.

Hon NEIL THOMSON: I thank the minister for the correction. For the benefit of *Hansard*, under the significant development pathway process, all 17 of the applications that have been approved have had a shortened pathway, as has been claimed by the department, of 81 days. That is on average. That is what the minister is saying. I am getting a nod from the officers. That is actually useful, because it is not what was said in WAtoday by the journalist or whoever wrote that article when they did the assessment.

A member interjected.

The DEPUTY CHAIR: Hon Neil Thomson has the floor.

Hon NEIL THOMSON: I do have the floor. Thank you, Deputy Chair.

A better analysis would be to look at the value to the economy of the shortened pathway, rather than just coming in here and saying it will create all these jobs and all this economic value, because that is looking just at the total value of the applications. That is like saying that would be exactly the same if they all went through DAPs. There are benefits and there are costs. The minister might convince me of the benefits of a shortened pathway. I have outlined in the second reading debate the cost of the erosion of the statutory process. The minister has provided some helpful information on the 17 approvals that have been given and that conform with the scheme. The minister mentioned that three of those conformed with changes that were anticipated in the scheme. I think that is what the minister said. I would like an explanation of what those were, because that will get to the heart of it. I assume they are about Marine Parade, Cottesloe; I am not sure. I would like to know which of those applications that did not conform with the scheme were approved, and the basis for their approval. Was it based on the idea that the planning commission had said that the scheme was about to change? If it would help, I wrote a note of what the minister said. I think the minister said that it involved variations that were underway. That is the wording that was used. I have just found my note.

Hon SUE ELLERY: I will give the example that the member raised, which was Marine Parade. I do not know that it will be useful to use the chamber's time to go through all of them. In the Marine Parade example, there was a modest variation, namely a 12 per cent height difference.

Hon NEIL THOMSON: So that I am clear on the data that the minister has given me, was that one that did not require a variation that was underway? Was it within the scope of the scheme to make that variation? Did that example conform with the scheme?

Hon SUE ELLERY: It was a variation to the scheme. It did not conform with the scheme.

Hon NEIL THOMSON: I think it is very important that it did not conform but it was a variation that conformed with the scheme. Can I please get clarity? To make it clear so we are not thinking I am just repeating the same question, would a DAP have scope under the scheme to make that variation? It is only a yes or no question.

Hon SUE ELLERY: I give the member the example of Marine Parade, Cottesloe. It is one of the schemes that does not allow for variations. There are some other schemes that do, but Cottesloe is not one of those. If I give the honourable member another example, which might help, for Harvest Terrace here in West Perth, that scheme permits discretion, so there are variations, but that is okay because that scheme actually allows for variations.

Hon NEIL THOMSON: The Harvest Terrace one could have been dealt with by a DAP within the scope of the approval given. The Cottesloe example could not be dealt with. I am still not clear. When the minister listed the types of approvals, there were three categories—the ones that met the scheme and the ones that involved a variation within the scope of the scheme. There was one with a variation that was underway. Were there any in this group of approvals that did meet any of those criteria and were in breach of the scheme?

Hon SUE ELLERY: We need to make sure we get the language right. There is not a "breach" of the scheme. The scheme either allows something to happen, including a variation, or it does not. The first one that I told the member about, that scheme did not. In the second example, the Harvest Terrace one, that scheme did. The difference was variations were made and they were allowed to be made. That does not mean they were in breach.

Hon NEIL THOMSON: Yes, we agree that variations were allowed. I understand that, minister. I understand that we can make a variation on the scheme and that allows for a decision. It is still unclear to me because the minister is talking about three cases involving variations that were underway. At the risk of repeating myself, because I do not think the minister has been clear, does that group involve all the approvals that have been made that do not either conform with the scheme, or conform with a capacity within the scheme to make a variation? Does that make sense? Is that clear? Apart from the three, are we saying all the other ones either do not conform with the scheme or cannot conform with it as a variation within the scheme?

Hon SUE ELLERY: What I said was, of the 17 applications that had since been determined under part 17, three involved variations that were consistent with draft amendments to the particular underlying planning scheme that had not yet been finalised.

Hon NEIL THOMSON: Thank you; now we are very clear. Can the minister answer my original question whether those three are all the ones that do not fit into the other two categories? Of the 17, I am looking for the ones the minister has not yet mentioned. I just need to know whether there are any others that do not fit in any of those three categories the minister has just mentioned.

Hon SUE ELLERY: I think I understand what the honourable member is trying to get at. Of the 17, I then gave examples of 14. There are some—another three—in which it could be either/or, and because the scheme permits variations and it is consistent with draft scheme amendments. I referred to three that involved variations that were consistent with draft amendments. One in South Perth, for example, had an issue with the height, but the scheme permitted variations and, in addition to that, the proposal was consistent with amendments that were being made to the scheme.

Hon NEIL THOMSON: Thank you; that is absolutely crystal clear and I think that goes to the heart of some of the concerns. It is great we have this information now. If it is not already made clear, I know it is probably written somewhere in the detail of the outcomes, but I think it is probably useful for the communication of the government's case to present it, particularly to the Western Australian Local Government Association. I see WALGA does not support this because there is a growing concern in local government that the schemes are not being managed or adhered to, and obviously I understand that we get behind on schemes. I believe it is an essential role of the commission to work and focus on that, rather than making these development application assessments, because it really comes back to that. Six of those applications could comply—we were a bit vague about three of them—but three required variations for the scheme to be amended. That really comes back to the nature of the question about the role of the WAPC. I understand that the government has been unable to deliver the DAPs regulation reform. I have seen a draft of the DAPs regulation reform proposal—the marked-up copy, which I appreciate was provided to the community in quite a transparent way. That was useful. It poses the question of the suitability of the composition of the WAPC. I am sure we will agree to disagree on that. For the record, if we look at a DAP, there are two professional appointees, the chair, and two local government appointees. Who on the WAPC, if we take out the public servants, has a professional capacity to make these decisions based on the advice of the state development assessment unit?

Hon SUE ELLERY: Perhaps while my advisers are trying to get some definitions for the member of the make-up of the WAPC, it is important to note that, from my point of view—I am not going to speak for the member—I am really not going to counter criticism of the good members of the WAPC. I do not think it is appropriate to reflect on the skills that they bring to the commission. I will find the member some definitions. If we go to the parent act from 2005, it states that the membership is made up of persons representing the interests of local government; persons having experience in the field of coastal planning and management; a person having practical knowledge of and experience of in one or more of the fields of urban and regional planning, property development, commerce and industry, business management, financial management, engineering, surveying, valuation, transport or urban design; or persons with experience in one or more the fields of environmental conservation, natural resource management or heritage interests. Another criterion is having practical knowledge of and experience in one or more the fields of planning and provision of community services, community affairs or Indigenous interests. Then there are the directors general and a person nominated by the regional minister. There is, really, a combination of skills and expertise that are required to be held by members of the WAPC.

Hon NEIL THOMSON: The minister mentioned representations from the industry. What representations has the minister received from the industry?

Hon SUE ELLERY: I am not in a position to answer that here; I have no idea what representations she has had, and I am not sure that the advisers at the table can tell me that, either. I am happy to give the member an undertaking that I will raise that with the minister, and if she feels the need to provide him with an answer, she will, but I cannot answer that here.

Hon NEIL THOMSON: Did the minister formally seek representations in relation to the extension of this process?

Hon SUE ELLERY: Again, I do not have that information here. I can give the member an undertaking that I will raise the issue with the minister. If she is of a mind to give him an answer, she can do so.

The DEPUTY CHAIR (Hon Jackie Jarvis): I will take a moment before the next question to remind members that we are in Committee of the Whole, so I am Deputy Chair of Committees. I appreciate it is a little confusing because I would normally be sitting down there, but we are still under COVID restrictions. I raise that matter because the member made a comment earlier about being unable to object to a decision. I let him know that under standing order 117, if any member wishes to object to a decision of the Chair of Committees or, in my case, the Deputy Chair of Committees, there is a mechanism for stating an objection and providing it in writing to the President. That is just for future reference: if the member wants to object to one of my decisions, there is a mechanism to do so.

Hon NEIL THOMSON: I thank the deputy chair for the call, and for that clarification.

This is actually an important issue, to my mind. This bill was something of a surprise. We got notification of it with, I think, only 24 hours' notice. I appreciate the fact that the minister rang me personally; I think that was helpful, so I appreciate that communication and put on the record my thanks to her for making that call. Notwithstanding that, it was a surprise. As far as I was aware, there was no indication from the state government that this bill would be coming before us. I think a lot of people were preparing to discuss the development assessment elements within the legislation, and the regulations. That was important. But as far as I know, there was no warning. The minister has offered to give me feedback—I thank her for that—on whether any formal representations were made. The second question I would like to ask is: did the minister receive any formal requests from either the chair of the Western Australian Planning Commission or the WAPC as a whole to introduce this mechanism again?

Hon SUE ELLERY: I am advised that that would not be something that the WAPC would do—to recommend legislation of this kind to the minister—so, to the best of my knowledge, no. It would not be the normal practice of the WAPC to do anything like that.

Hon NEIL THOMSON: Does the minister know when the Minister for Planning determined that this was the right mechanism, given the other piece of reform that was underway? There must have been a point at which the minister formed the view that this was the appropriate pathway.

Hon SUE ELLERY: As the honourable member will be well aware, government makes decisions via cabinet. There was cabinet consideration, and a cabinet decision was made.

Hon NEIL THOMSON: I appreciate that answer, but it does not really shed much more light on the situation. As I said earlier, the approach seems to be ad hoc. We have seen the planning reform program outlined on the government website, and I support a lot of those reforms. I think they represent some very important pieces of work, particularly the strategic planning piece and the work on referrals. There is a range of things there that the opposition supports. This is the bit that the opposition does not support, because it effectively creates a duplication. I return to the rationale for this legislation, because it is a duplication. We have found out that it may be slightly faster, like-for-life, so that is a positive, but I want to home in on the issue around the economic situation and why this has to occur. The minister talked about supply chain pressures and price escalations. Are approvals affecting any of those processes?

Hon SUE ELLERY: Approvals are not affecting the supply chain; it may well be the other way round. I will respond to the member's preamble about what the driver was for this legislation. Without wanting to pat myself on the back, one of the characteristics of the way in which this government dealt with the pandemic that industry and the community regularly tell us they appreciate is the fact that we consulted widely on the measures we put in place and we made sure that we listened to the issues that industry was facing as a consequence of the pandemic. For example, there was the skills summit in July 2021. Every member of cabinet attended that, as did a broad representation of industry and the community. After that, there were 10 regional skills summits. In addition to that, we have made decisions on the asset management program and on how we can maintain a pipeline of work, balancing public investment in infrastructure with private investment. There are continuing discussions and forums within which industry can raise issues.

We are working our way, as is the rest of the world, through a circumstance that no-one has faced for 100 years—a global pandemic. If the member casts his mind back to March 2020, we were being told by the federal government, federal Treasury, the RBA and everyone else that tens of thousands of people would die and that hundreds of thousands of people would be out of work. A bit over two years on, we have record low unemployment, significant supply chain issues and significant labour shortages. Timber for construction cannot easily be purchased. There is a whole range of issues that were not predicted, so as a way of working our way through that, we have made very conscious decisions, led by the Premier, to continue to consult with everyone being impacted on by the pandemic as we go along, because no-one has been able to accurately predict how this thing will pan out. Consultation and listening to the issues, whether with industry or the community, is what we have done throughout the whole process.

Sitting suspended from 6.00 to 7.00 pm

Hon NEIL THOMSON: I have some questions about alternatives. Before the meal break, we were talking about stakeholders and considering feedback, so I want to ask: did the minister consider other alternatives within the Planning and Development Act prior to rushing through this amendment?

Hon SUE ELLERY: This is part of the proposals that government is considering; a special matters development assessment panel is another that the minister has talked about publicly. While the amendments to part 17 were in place, the legislation worked satisfactorily, so the policy intent here is an extension of what had already been quite helpful.

Hon NEIL THOMSON: I speak to those in the development sector about the challenges they face and, to be honest, not a single developer came to me and said that they needed this extended before this was put forward. Clearly, the ministers had some representation from someone. We know now she has made the announcement that the Urban Development Institute of Australia and the Property Council of Australia support it. One of the things that I had feedback on prior to the announcement to extend this was the concern about strategic planning. One of the arguments I have is that this government is not putting sufficient investment into the strategic planning process. We know that extensive provisions that have bipartisan support have been included in the act already. Once again, I see Hon Alannah MacTiernan, a former Minister for Planning, here. As I said during my contribution to the second reading debate, when I worked with Hon John Day, there were planning control areas and new improvement scheme provisions and call-in powers were introduced by the former minister, Hon Alannah MacTiernan. Did the minister look at using those existing provisions for the sorts of fast-tracking options that are required?

Hon SUE ELLERY: The short answer is no. The minister has already announced what else she wants to do, which is the special matters DAP. This system was put in place and worked, so the proposition before us is just to extend that, rather than create something new from scratch.

Hon NEIL THOMSON: I think that is where the risk comes to the minister, and clearly the minister has made the decision to extend it. It is an easy thing to do; there are existing provisions here. She said in her media release that it has bipartisan support. I contend that there are already sufficient provisions to deal with those few developments. There may be a lot fewer than the 17 or so that have been approved and maybe the 30 or so that have been submitted, and who knows how many will be submitted over the period of time? I contend that there are existing provisions to deal with maybe a portion of those applications that might have otherwise struggled. We identified that six might not have conformed with schemes. We identified those few that have been approved. It is a very small number, much smaller than the numbers that the minister has put forward relating to the number of jobs expected to be created and so forth as a direct result of this provision. In my view, respectfully, I think it is nonsense. I think there are very few "with versus without", particularly given the restricted circumstances with the availability of materials and labour.

The point I am making is that with this bipartisan approach, there is a risk to the government. I will give the member some gratuitous advice in this process; I do not think it is as bipartisan as the minister says. There is a real risk that goes to the heart of this issue that I presented in my second reading debate contribution; there is a perception that the minister is undermining the role of local government, which is a very capable part of our government process. Hon Dr Brian Walker presented in more detail the media statement by the Western Australian Local Government Association, headlined "Extension of State Government Planning Powers Shuts out Communities". No doubt the

minister has read that. Obviously, WALGA, the peak body for local governments, does not support the proposed legislation. I think the important point is —

> The 30 Local Government's that participate in WALGA's Performance Monitoring Project represent 80% of the state's population, assessed over 20,000 development applications in 2020–21, a 25% increase from the previous year, of which:
>
> - 99% were approved,
> - 98% were determined under delegation, and
> - 88% were determined within statutory timeframes

Given we had the data on the number of days and the minister identified the 81 days' difference for the like for like, surely the minister could have homed in, with some consultation with WALGA, on how to increase the percentage of applications determined within statutory time frames from 88 per cent? Maybe that was the reason that the DAPs process does not work. Then the minister could have got buy-in from the state's peak body for local government and built confidence within the community. My question is: to what extent did the minister liaise with WALGA on this matter prior to her bringing the matter to this place?

Hon SUE ELLERY: I do not accept the premise of the member's question. The member made his point that he thinks that this is a step too far and it does not have consultation built into it. He made all those points in his second reading contribution and I responded. The house has voted and the policy of the bill has been set. We can move beyond clause 1 and start to talk about the detail in the clauses if that is what the member wants to do, but we are not going to revisit the policy of the bill.

Hon NEIL THOMSON: I appreciate that. The Leader of the House has set out her position. I was simply asking to what extent the government had consulted the Western Australian Local Government Association. The Leader of the House obviously does not want to answer that question. I will move on. I can only assume that the Minister for Planning did not consult at all with WALGA prior to drafting the bill. At the risk of duplicating myself, did the minister consult—not on the policy—at all with WALGA? The government has made its decision but prior to drafting this bill, did the minister consult at all with WALGA or any local government for that matter about the presentation of this bill?

Hon SUE ELLERY: I do not know how to say it again. The proposition behind Hon Neil Thomson's question is that he thinks that this system is not satisfactory for a whole range of reasons. He set out those reasons in his second reading contribution and I responded during my second reading reply. I do see how giving the member a number—"She spoke to X and she spoke to Y"—will take us forward, because the policy of the bill has been set. If there is something the member wants to ask about a specific clause, let us get there. This is not an opportunity to revisit the second reading debate.

The DEPUTY CHAIR (Hon Dr Brian Walker): Before Hon Neil Thomson rises, could I reiterate that he has had a number of opportunities to ask questions about the topic of clause 1, which despite being a wideranging discussion about the whole bill, does not revisit the second reading debate. Is the member ready now to speak to that topic of clause 1 or can we move on?

Hon NEIL THOMSON: Thank you, deputy chair. I have certainly not repeated anything from my second reading contribution. Did the minister speak to local government or WALGA—yes or no? How simple can I make it—yes or no? That was not asked during my second reading contribution. It is simply a question that the Leader of the House has failed to answer at this point in time.

Hon SUE ELLERY: Hon Neil Thomson can raise his voice and yell, but it will not make him anymore cogent—it does not.

Hon Neil Thomson: For goodness sake; that is ridiculous.

Hon SUE ELLERY: I am giving the member an answer to the question.

Hon Neil Thomson: You haven't answered it.

Hon SUE ELLERY: Honourable member, the Minister for Planning did not consult with WALGA —

Hon Neil Thomson: Finally, you've answered it.

Hon SUE ELLERY: Do you want to hear what I have got to say?

Hon Neil Thomson: Yes, I do, because I have asked multiple times.

The DEPUTY CHAIR: Honourable member, you will allow the answer to be given.

Hon SUE ELLERY: The question was whether the minister consulted on the drafting of the bill. No, she did not. But the point I was trying to make, honourable member, is that that does not take us any further in considering the detail, which is what the committee stage is about. The policy of the bill has been set by the chamber.

Hon NEIL THOMSON: I thank the Leader of the House. I appreciate the answer. The Leader of the House repeated herself about the policy of the bill; she said it multiple times. I understand that this is not the Leader of the House's portfolio, that she is not the responsible minister and that she is probably not aware of some aspects, but I appreciate the answer she has given.

Hon Sue Ellery: I will give you a tip, honourable member. Do not start patronising me—do not!

Hon NEIL THOMSON: I have had it from you all night.

Hon Sue Ellery: You want to think why, mate. You are not cogent.

Hon NEIL THOMSON: You do it constantly.

The DEPUTY CHAIR: Order! The member will be seated. We will take a few moments now to get tempers down. This is an inappropriate way of holding a discussion in what should be the Committee of the Whole. I would like order and decorum. We shall resume. I give the call to Hon Neil Thomson.

Hon NEIL THOMSON: I appreciate the Leader of the House's responses. We asked earlier about the Western Australian Planning Commission providing advice. Did the department initiate this as a matter for consideration for the minister or did this matter come from the minister herself?

Hon SUE ELLERY: Ultimately, decisions made by government are made by cabinet. The member asked me before about the genesis of the bill and I made the point then—I make it again now—that this is a decision of government. Throughout the course of the pandemic, one of the critical things we have done, for which we have been applauded, is continued to convene consultation forums to check in with all the stakeholders on how they are dealing the impacts of the pandemic. As part of the evolution of that process, a range of policy positions have been adopted by the government through the cabinet process, including the bill that is before us today.

Hon NEIL THOMSON: I will not repeat myself, but going back to the matter of local government, does the Leader of the House consider that this can be perceived as an erosion of community rights in the form and function of communities given that the provision to modify schemes—schemes, as we have discussed—are produced after consultation?

Hon SUE ELLERY: I addressed this in my second reading reply and in response to some of the honourable member's earlier questions. There is still a requirement to consult local government in the process within a minimum of 42 days. I set that out in my second reading reply. These applications would otherwise go to the development assessment panels, not to local governments. Of course, the DAPs are a creation of the member's side of politics. I make the point more generally: does the minister consider that this is eroding the role of local government, if that is the proposition? No, she does not.

Hon NEIL THOMSON: We have talked about the ability to not fully comply with the schemes; this pathway will enable that and that is not the case with a DAP because a DAP is constrained to abide by the letter of the law of a scheme. Is that correct?

Hon SUE ELLERY: We established this earlier. Part of the flexibility of the part 17 proposition is that due regard will be paid to the terms of the scheme but the process will not bind the decision-makers to limit themselves to the provision of the scheme. That is the additional flexibility that will be granted.

Hon NEIL THOMSON: In relation to state planning policies, can the Leader of the House inform the chamber whether there is any difference with the requirement for a DAP to abide by state planning policy vis-a-vis this special pathway? What additional flexibility will be in the remit of the WAPC to not adhere to a state planning policy vis-a-vis a development assessment panel?

Hon SUE ELLERY: They are the same. Under the DAP process, due regard is to be given to state planning policy. It is the same in part 17.

Hon NEIL THOMSON: I appreciate that it is identical; that is good. This will come to an end, Leader of the House. I want to home in on a particular proposal that is particularly sensitive to matters of the environment, coastal setbacks and fire management issues—that is, Smiths Beach. I think this is worthy of further discussion. I am concerned that this bill might open the door to another Smiths Beach application because I think that application is an inappropriate use of the pathway, notwithstanding our support for that back in 2020. I do not think anyone in this place anticipated a proposal like that coming through the state development assessment unit. Given the extensive modifications that are required for the approval of Smiths Beach if it is to be approved—the new development that is currently before the state development assessment unit has been there for some time but has been referred, I understand, to the Environmental Protection Authority—what is the minister's view in a general sense on an application as extensive as that, given the challenges that are associated with it? What is minister's view on that if some restrictions were

placed on this provision that might give some comfort to our side? What mechanism does the minister think could be applied at all, if any? Does the minister consider that to be an appropriate use of the SDAU process?

Hon SUE ELLERY: The Western Australian Planning Commission is bound by the provisions of the Environmental Protection Act and cannot determine the Smiths Beach application until the Environmental Protection Authority concludes its processes or completes its assessment, so there is that. Section 270(3) of the Planning and Development Act 2005 says that that particular part, which deals with the effect of any other laws, is subject to section 5 of the Environmental Protection Act.

Hon NEIL THOMSON: I will come back to that because this is relevant to the time frames. We have already mentioned the days. I assume there is a stop-the-clock process in the counting of the days the moment the matter is referred to the EPA. Is that correct?

Hon SUE ELLERY: There is no statutory time frame under part 17. I do not know whether that is the line of questioning that the member wants answered.

Hon NEIL THOMSON: Yes. Just to clarify when the minister says "no statutory time frame", could that matter sit with the EPA for an indefinite time, come back to the SDAU at some point in the future and then be considered by the state development assessment unit?

Hon Sue Ellery: Yes.

Hon NEIL THOMSON: That is relevant to applications that might then be placed on it in the future. Might trailing applications sit around for some time if they are of a most complex nature, such as for the Smiths Beach development?

Hon SUE ELLERY: It is less to do with the complexity and more to do with meeting the obligations under the Environmental Protection Act. It is not about whether it is complex; it is how long the environmental protection process takes to do the work that the EPA needs to do.

The DEPUTY CHAIR (Hon Dr Brian Walker): Before you continue, honourable member, I will read out the practice of the Legislative Council. The short title debate does no more than give members the opportunity to range over the clauses of the bill, foreshadow amendments and indicate, consistent with the policy of the bill, how its form or content may be improved. It is not a vehicle for continuing debate on policy. Rather, if members do not wish the bill to proceed, the action they should follow is to vote to defeat clause 1 of the bill as it stands.

Hon NEIL THOMSON: Thank you for the clarification, Deputy Chair. We will look to improve the bill, if possible. One of those improvements might be some sort of sunset clause on a development like Smiths Beach. Clearly, in the case of the Smiths Beach development and the long time frames for the EPA process, it would not make any bit of difference, I would think, except that it would exclude the City of Busselton from participating through a development assessment panel. If we are looking to meet that standing order about the improvement of the bill, my line of questioning was focused on the opportunity that some restrictions should have been placed on complex applications. This bill would be more acceptable if restrictions were placed on complex applications because of the huge history of Smiths Beach. I am aware of the amount of work the local authority did to determine the form and function of that development, including the national park and so forth. That was a very robust and engaged process. Whether or not it is true, people feel disempowered because the act says that things can be done outside of that. To clarify for all those listening to this matter, that is why we are looking to highlight some potential improvements that we might otherwise have had, but no doubt we will not have those. The point I make is that in addition to the EPA process for the Smiths Beach application, putting aside all state scheme considerations, what other considerations might the commission have to consider in the approval of that particular matter? Are any of those considerations not able to be considered by a development assessment panel?

Hon SUE ELLERY: I commence my answer by noting that this is not the forum to canvass whether the member supports the Smiths Beach proposal. I will make the point that the part 17 regulations allow the Planning Commission to consider the public interest, whereas DAPs are constrained by the provisions of planning principles. In fact, the advantage of dealing with Smiths Beach as part of the part 17 regulations would be that the commission could take into account the broader public interest.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 269 amended —

Hon NEIL THOMSON: The extended recovery period was something that we discussed, and I think that the Leader of the House has made clear the reasoning for it. On what basis did the minister make a decision on how that extended recovery period would operate?

Hon SUE ELLERY: There was not a huge amount of science, I have to say, because we do not know how long recovery will take, but the best application of science that we could come up with is: the original time frame was

about 18 months and the new extension period will go for a further 18 months. That is considered enough time to also pursue that other policy matter that the minister wants to pursue—that is, the special matters development assessment panel system—as well, which will effectively replace part 17.

Hon NEIL THOMSON: I appreciate the reasoning for it. Does the Leader of the House have clarity on the timing of the special matters DAPs and the next iteration of that, given that it will be important to make sure that we are not here again arguing for further extensions?

Hon SUE ELLERY: Not beyond what I have just said. We are aiming to have the special DAPs in place before the conclusion of this extension.

Hon NEIL THOMSON: This will be the last time we see this sort of bill coming before the house.

Hon SUE ELLERY: Chair, I certainly will not be verballed. That is not what I said at all. I said that the intention is to complete the work on the special DAPs before the time period associated with this expires. That is the work that is being done.

Hon NEIL THOMSON: Noting the timing around the extended period, special matter DAPs and the implications, I suppose, for the resourcing for the department, this could potentially extend the life of the state development assessment unit and the role of the commission for several years, given some of the applications are trailing applications. I assume there has been some planning for that and the actual resourcing of this matter.

Hon SUE ELLERY: What the member is proposing is a hypothetical situation so I am not sure I can add anything factual to it.

Clause put and passed.

Clause 5: Section 271 amended —

Hon NEIL THOMSON: The explanatory memorandum is one of the better ones, to give a compliment, of the ones that we have had. To the staff present, at least I can say it is one of the better explanatory memorandums I have had to deal with, because it gives a fairly comprehensive assessment of the impact of the clauses. Excuse me though, because I need some clarification of clause 5 and its impact. It sets out the period in which a development application is submitted and it provides the ability for an application to be lodged during the new extended period in addition to the current recovery period. Can the Leader of the House please explain for my sake the difference between the recovery period and the extended period and how that plays out?

Hon SUE ELLERY: The "recovery period" is the term that we are using in a very general sense. We are talking about how long it is going to take the economy to recover from the pandemic. That is not a defined time. Frankly, I would like it to be tomorrow, but that will not be the case. Scrap all that. There is a definition that I will show to the member. The technical advice is that it is not a very helpful definition —

> ***recovery period*** means the period of 18 months beginning on the day on which the *Planning and Development Amendment Act 2020* section 4 comes into operation;

The "extended recovery period" is defined in clause 4 of the bill.

Clause put and passed.

Clause 6: Section 272 amended —

Hon NEIL THOMSON: Clause 6 refers to laying documents before the house of Parliament and the explanatory memorandum refers to it being a tidy-up provision. There was some issue with the timing of Parliament that affects the tabling of documents, but to get to the nub of this provision, does it really make any difference? The requirement for tabling and the actual presentation information on the website of Department of Planning, Lands and Heritage is a relatively transparent process. What is the role of tabling it? I assume it is purely for an information piece. I was a little confused about that. I seek advice on laying documents before each house.

Hon SUE ELLERY: It is a transparency measure that was introduced by the opposition when the bill was first considered.

Hon Neil Thomson: My excellent colleagues must have introduced that.

Hon SUE ELLERY: Sure. That is why it is funny that the member is asking about it.

Hon Neil Thomson: I was not here.

Hon SUE ELLERY: It kicks in in the event that the Premier were to call in an application. As a check and balance, a transparency measure, that is what is then laid before the houses of Parliament. The Premier has never called it in. It is highly unlikely that we will call it in, but that is the provision in the event that a Premier of the day were to do so.

Hon NEIL THOMSON: I do recall the power of the Premier to call in a matter. The Premier would call in a matter only when there was something of significance that had to be done in the system. It is a ministerial calling power,

so that a decision could be made by the Premier over and above that by the commission. Effectively, it would speed up the process. Is that the purpose of that calling out?

Hon SUE ELLERY: To date, no; that is, zero applications have been referred by the Premier under section 272. As I said, it is unlikely to be used in the future. But the provision was drafted before the Legislative Council lowered the financial thresholds in 2020. The provision still exists in case a matter of state or regional significance was below the $20 million or $5 million thresholds—depending on the circumstances—particularly in regional areas where a development under $5 million may still bring significant benefits to that town or regional community. One of the safeguards introduced in respect of that was informing Parliament.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Section 278 amended —

Hon NEIL THOMSON: Clause 9 deals with the substantial commencement period. The minister presented some rather uninspiring data on the number of proposals that have already commenced. For the reasons I outlined earlier, I question the ability of developers to deal with some of the challenges around commencing work. As we have already discussed, I think that 95 per cent of the problem is related to the inability to deliver approved works; it is more about the shortages of labour and materials. We have the period of 24 months in which the work must be substantially commenced, and the definition of that has already been highlighted. We have a challenge in relation to banking. I want to clarify my thoughts on this question. This provision could have been amended and we could have thought about it. It disturbed me a little when I heard that one of the approvals on Marine Parade had been onsold. Basically, approval had been given for a development that was over and above what would have been provided for under the scheme and the plot of land was then onsold. No doubt the person who sold it has been provided with a significant improvement. The government is trying to protect warehousing and banking. Could there not have been more consideration about onselling a development, particularly when it does not fully conform with the planning scheme?

Hon SUE ELLERY: I think the essence of the member's question is: was consideration given to perhaps changing the time frames for the planning process? I am advised that when a party purchases the land, the new owner, in effect, takes over the terms of any existing approval and whatever time is left on that approval. I am advised that that is not new to part 17; that is a longstanding principle.

Hon NEIL THOMSON: I understand that that is a standard principle across the board for development approvals. From the feedback that I have had, I think the part that troubles people is when a developer obtains an additional benefit that might otherwise not be attainable with no intention of meeting the objectives of the legislation, which is to proceed with development. That goes to the heart of the concern. These processes are special, although it could be said that they are exceptional. That is why there should have been an exception if we want to make sure that some development goes ahead. We just hope that the new owners of the lot will proceed with the development in order to obtain those benefits. That is a point, but my question was whether there was any thought about the exceptionality of this provision in relation to some restriction around onselling approvals to avoid the impression that some sort of gaming might be going on outside of the normal process.

Hon SUE ELLERY: It is important to recognise that this is a one-off. The provisions in the bill before us provide for a one-off extension of time. That needs to be made by application. This is not a kind of universal right. This is a one-off opportunity that people will need to apply for.

Hon NEIL THOMSON: The minister has made her comment. I think part of the problem is that it is a one-off right and therefore there should have been a one-off protection. The original objective of this legislation was to fast-track, through a one-off right, some development at the risk of upsetting the community more than it might have otherwise been upset. We know in this example that a significant inquiry by design was undertaken, and that sums up the feeling that people have that the provisions that were achieved through that inquiry by design were not taken into consideration. I hear what the minister is saying. Does the minister know how many of these developments have been onsold prior to commencement; and, if that seems to be a trend, would the minister consider reviewing this provision?

Hon SUE ELLERY: Far be it from me to lecture someone on the other side about capitalism and market forces, but that is what happens. If people want to sell, they can.

Hon Neil Thomson: All within the rules-based framework, and that is part of the problem.

Hon SUE ELLERY: And here we are making the rules, honourable member.

Hon Neil Thomson: And doing away with the whole lot.

Hon SUE ELLERY: The member can form his judgement, but I am just advising him that if someone chooses to sell and someone chooses to buy, so be it.

Clause put and passed.

Clauses 10 to 15 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [7.49 pm]: I move —

That the bill be now read a third time.

HON NEIL THOMSON (Mining and Pastoral) [7.49 pm]: I rise to make a brief contribution to the third reading of the Planning and Development Amendment Bill 2022 and provide a summary of the Committee of the Whole. My concern still remains. I wish to put on the record that there has finally been some clarity around some of the numbers. We have some transparency. I think it would be useful feedback to the agency and the Western Australian Planning Commission to provide more statistical analysis of their approach. Members opposite seem to struggle with this "with versus without" concept. It is a basic concept in science. I have a science background. We do not just say there are 50 000 jobs or so many millions of dollars coming through an application; we have to do a comparison of the counterfactual. What would happen if we had one outcome versus the other outcome? We would have to subtract the other outcome, and then we can do a proper cost–benefit analysis. There is a cost.

We have seen the Western Australian Local Government Association come out. It is feeling uncomfortable. It does not come out with comments like it did in May, when it opposed this legislation, without getting feedback from local governments. Local governments are increasingly concerned about the erosion of their power. I am not saying that local governments get it right all the time. I believe that cutting red tape is important. The point is that we need to do proper assessments. I encourage those on the other side to give us more comfort as we are simply reflecting the views that have been expressed to us by those in local government and the community who are also watching the sense of erosion of community consultation and the lessening of engagement in the process of the form and function of our communities. The commission should understand that. The commission should be doing a lot more to present some statistical analysis of the effectiveness of this process. I put the commission, the department and the minister on notice because there needs to be a proper statistical assessment of the effectiveness of this process to drive those sorts of returns for the community and justify that sense of alienation that people in our community have as they see their rights being eroded through the progress of legislation such as this.

Question put and passed.

Bill read a third time and passed.