

PLANNING AND DEVELOPMENT AMENDMENT BILL 2023

Consideration in Detail

Resumed from 9 November.

Clause 4: Section 4 amended —

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clause 5: Section 171C amended —

Dr D.J. HONEY: There is reference to “prescribed development application”, which is defined in section 171A(1) of the Planning and Development Act, but we do not have a definition of that here. Would it be possible to give a little bit more clarity on what that phrase means, please? Proposed part 11B refers to “prescribed development application” and “prescribed significant development”. Perhaps the minister could explain what those terms refer to. It is in clause 11 on page 7 of the bill.

Mr J.N. CAREY: If the member does not mind, this might be useful for further debate. I will just go through the different definitions. Under section 4 of the act, a development application is a normal ordinary development application and includes a development assessment panel application.

Dr D.J. Honey: Which section is that?

Mr J.N. CAREY: This is in proposed section 171I, which has various definitions. I am coming to the member’s question. It includes a DAP application but does not, for example, include a subdivision application or building permit. Under proposed section 171L(1), a significant development application is an application that will qualify under proposed part 11B via regulations and an application authorised by the Premier under proposed section 171M. They are applications that will obviously go through the significant development pathway and will be considered by the Western Australian Planning Commission. The member asked about a prescribed development application. Under section 171A(1) of the act, it is a type of development application—it is not to be confused with a prescribed significant development application, which I just described—that would qualify for DAPs, but would be assessed under proposed part 11B instead of by DAPs. Does that assist, member?

Dr D.J. HONEY: I just distracted myself for a moment. Did the minister also cover a mandatory significant development, because that will help with some of the others? I think it was the lack of me listening.

Mr J.N. CAREY: One of the other two that I did not mention is a prescribed significant development, which is another way of saying it includes an application via regulations under proposed section 171I. That is for developments worth \$20 million in the Perth and Peel region and \$5 million in regional areas. Remember, that is the threshold under which someone would be eligible to choose—it will not be mandatory—the prescribed significant development pathway and go to the WAPC. The other one is a mandatory significant development application, which must be determined under proposed part 11B as set out in regulations. It is a subtype of prescribed significant developments. It is important to note, however, that currently there are no mandatory applications, but further regulations could capture mandatory applications. My understanding is that if a future government wanted to prescribe a mandatory threshold, it could. I want to be clear that that is not our position, but it will be there as part of the regulations.

Dr D.J. HONEY: Under clause 5, the bill states at line 20 —

establish a Development Assessment Panel for 1 or more districts specified in the order.

I understood that the intention was that we would have three DAPs—one for both the north and south metropolitan areas and one for regional areas. Is it the intention that we will have more DAPs than that? To save time, perhaps the minister could describe what the other purposes might be.

Mr J.N. CAREY: That is a good question, member. Effectively, there is no intention to expand the number of DAPs. We want three panels for this simple reason: consistency in decision-making. The more DAPs in the system, the more possibility there will be for a number of different types of decision-making. That regulation will be there so that in the future—let us say in 10 years—when a lot more applications are coming through, a government could decide to reorganise the DAPs, so that provision will give it that opportunity.

Dr D.J. HONEY: Would it be possible to have different panels, if you like, for the same DAP or will it always be only one body of people? The thought occurred to me that, for example, there could be two separate panels sitting as the north metropolitan DAP, or will it be only one group of people?

Mr J.N. CAREY: In effect, the intention is that while we are seeking consistent panel members, they can rotate among the panels. Secondly, with these regulations into the future—not that it is our intention—there could be a commercial development assessment panel. For example, it could be a DAP that deals with all significant

commercial applications versus a residential DAP. Based on the current system that the member's previous government introduced, we believe that having those sort of more geographic areas makes logical sense.

Ms L. METTAM: I just want to clarify that further. The minister could have the make-up of those three DAPs varied. Can the minister also comment on the resourcing for the DAPs as well?

Mr J.N. CAREY: I will address the resourcing issue first. Yes, additional resources are being provided. That includes the new position of executive director of DAPs who will give oversight and governance in running the process. This also relates to the previous member's question: there will be six permanent members. They will potentially rotate among the DAPs, but, of course, having six full-time permanent members will give consistency. On top of that, there will be a pool of other experts, because that will give the opportunity to draw on particular expertise for development projects.

Clause put and passed.

Clause 6: Section 289 amended —

Dr D.J. HONEY: This question is about the transitional provisions for the current DAPs and the new DAPs. Could the minister describe the transition process from the existing DAPs to the three new DAPs? Is there an anticipated time line for that, given the process that the minister described?

Mr J.N. CAREY: We think the transition will be very easy because the simple fact is that it is not a radical change to the DAPs system; we are not changing its composition. Secondly, it is a consolidation of the DAPs. For example, we did not create the special matters DAP, so there is no change there. I have not committed publicly to a time frame because I did not want to pre-empt the Parliament. Once this legislation passes, we will provide a clear start date as soon as we can to give certainty to all stakeholders—local residents, councils and industry. However, it will not be 1 January, for example. We need some preparation time.

Dr D.J. HONEY: Would it be possible to have the new DAPs concurrently established with the previous DAPs dealing with the existing matters before them, or will there be a clean break in that the work of those other DAPs will stop and any work will transfer to the new DAPs?

Mr J.N. CAREY: If something was submitted in January and the DAPs came in in February, it would be considered under the new system. It is at the date of the decision. I suppose what I would principally say to the member is that the decision is being made in the context of the planning scheme of the local government and the planning policies. At that point in time, the decision-maker will have to give due regard to the scheme and the planning policies. I do not think there will be many changing from whenever it is introduced.

Dr D.J. HONEY: Is it anticipated that many of the existing DAPs members—that is, the non-council members—will transition into these existing DAPs or will the minister go through a separate recruitment process and see whoever applies for those roles?

Mr J.N. CAREY: I am advised that the DAP appointments will end at the end of the year. We will have to go through a process of expressions of interest. The six persons will be full-time employees of the agency and they will have to go through a recruitment process. As I have stated, they will have to remove any conflicts of interest. The member has to see that the pool is slightly different from these six employed full-time members.

Clause put and passed.

Clauses 7 to 10 put and passed.

Clause 11: Parts 11B and 11C inserted —

Ms L. METTAM: Proposed section 171I, "Prescribed significant development", states —

... *prescribed significant development* is development that is of a class or kind prescribed by Part 11B regulations ...

Does the minister have a draft of the regulations that he could table so that we can get an understanding of what a prescribed significant development may entail?

Mr J.N. CAREY: For the very reason of the question that the member has asked, we put the regulations on the significant development pathway online on the date of my announcement. I am happy to table the draft regulations. My understanding is that we are currently consulting a range of stakeholders.

[See paper [2518](#).]

Dr D.J. HONEY: There is a discussion about an applicable planning instrument as defined as any application under normal planning rules, which are obviously the local planning scheme and the regional planning scheme. However, we also have the Swan Valley Planning Scheme or an interim development order. How will those be dealt with

under this bill? Is my reading of the bill that the intent of the clause is to expand the reach of the Western Australian Planning Commission to all aspects of planning development correct? For example, would something like the Swan Valley Planning Scheme or the like fall under the direction of the DAP or would it progress as it has in the past?

Mr J.N. CAREY: The Swan Valley Planning Scheme is actually a minimal change because the decision-maker for that scheme is a statutory planning committee of the Western Australian Planning Commission. The WAPC is already the decision-maker for that scheme, and this will obviously enable it for the significant pathway process. Interim development orders are very rare, and my understanding is that they are issued by the minister in cases for which, for example, there might be an error in—is it the scheme or the zone?—an area that is perhaps rezoned. I would have to say that it is very rare for an interim development order, and the WAPC is already responsible for the Swan Valley Planning Scheme.

Ms L. METTAM: As I flagged, I am hoping that I may be able to ask about the *Statement of planning policy no. 6.1: Leeuwin–Naturaliste Ridge policy* at this point as it relates to Smiths Beach and the Planning Commission's decision-making about special developments. The question I ask here relates to previous decisions that were made and shaped the Environmental Protection Authority's 2009 report that highlighted some clear guidelines for appropriate development. It then transitioned and assisted with a development guide plan in 2011. It then updated the City of Busselton's *Local planning scheme no. 21*, which was a product of 20 years of planning work and environmental planning and highlighted a number of matters about what planning would look like for that area going forward. One of the issues that has been raised by my local Smiths Beach action group was the role of tourism as a key function of any development in that area. It also raised the importance of ceding 21 hectares of required land to national park.

I wonder whether the minister can comment on the extent to which those considerations and that investment in shaping those planning schemes and previous decisions will shape the decision-making of the Planning Commission and others going forward as part of the special development process?

Mr J.N. CAREY: Thank you, member. Just to clarify, under this new system, which is proposed part 11B, the environmental system will continue to take priority over the planning system. According to proposed section 171K(2), proposed part 11B cannot override environmental legislation under the Environmental Protection Act, and according to proposed section 171R(4), proposed part 11B also cannot override an environmental condition imposed through a planning scheme. This new process, which is a significant development pathway, cannot override an environmental decision being made.

Ms L. METTAM: To what extent will the significant pathway take into account previous decisions about the planning scheme, the amenity issues and the considerations of the *Statement of planning policy no. 6.1: Leeuwin–Naturaliste Ridge policy* about issues, for example, such as tourism being a key function of the 70–30 split for a development?

Mr J.N. CAREY: Just to clarify and avoid any confusion, that particular project was submitted as part of the COVID provisions, part 17 of the Planning and Development Act. Of course, I am referring to proposed part 11B, but the significant pathway also will be exactly what I stated for proposed part 11B. The environmental system will continue to take priority over the planning system. The second part to note is that the Planning Commission in its decision—I am not pre-empting its decision in any way because it is yet to make a decision because the environmental assessment is still being undertaken—will give due regard to the planning scheme, local planning policies and so forth. That is all I can say, member. I cannot pre-empt the decision of the WAPC.

Ms L. METTAM: I refer to the decision-making and resources of proposed part 11B. What are the significant differences between how that will operate and the mechanism or structure of how the COVID pathway, which would be subject to this proposal, operates?

Mr J.N. CAREY: Good question. Effectively, I think the member's question is how proposed part 11B will be different from part 17 of the Planning and Development Act. The clarity is that we will remove the COVID-related provisions, so the criteria regarding facilitating economic recovery as a response to the pandemic will be removed. I think we all agree that is no longer relevant. The limit of a one-off extension will be removed, so the need to encourage shovel-ready proposals is no longer relevant. The best practices from part 17 will now be enshrined in law. Everyone agrees pre-lodgement advice is important. Design review, which I think everyone would agree about for major, significant projects, will go via the State Design Review Panel, and then there will be the requirement for public meetings. There will be the discretions made under the existing planning framework but with new discretions, including Peel region scheme area and Perth to align with government strategic planning. There will be an enshrined 120-day time limit or deemed refusal period. The default period for substantial commencement will be four years rather than two years. There have been some small alterations and improvement in language. They are the changes.

How is the legislation similar? Obviously, the Western Australian Planning Commission is the same decision-maker but we have enshrined the pre-lodgement design review. State agency referral coordination is there, as are public meetings.

Dr D.J. HONEY: I refer to page 139 of the bill and proposed section 171H. The proposed section refers to the design review in relation to development and so on. Could the minister explain the need for that to be a separate group from the WAPC—so it is a special group? Could he also describe what factors it will consider? Really, what will be the scope of that design review panel, and what other factors will it decide on when it makes its input?

Mr J.N. CAREY: In the proposed section the member referred to, proposed paragraph (a) to the definition of “design review” says —

a committee established under Schedule 2 clause 1 ...

That refers to the existing State Design Review Panel.

The other relevant paragraph under the same definition is (b), which reads —

another person or body that the Commission considers has appropriate qualifications, knowledge and experience to conduct the review ...

For example, there may be a development that really does not need a state design review process but could still need some level of review, so there would be the ability for the commission to appoint an individual or another body. Most go through the state design review process. Here is an example: an industrial project would not necessarily go to the State Design Review Panel but it would still go to the Government Architect for consideration.

I turn to the principles. There is a pool of 75 individuals from which four to six experts will be taken. They do not make a decision; they have an advisory role in accordance with *State planning policy 7.1—State planning policy 7.7: Precinct design*, sorry; I added a .1 in for the fun of it! I referred to that in my second reading speech or perhaps in the debate. It was introduced in 2019. It is basically about better design. The member may be aware that it has some policies of Design WA in relation to apartment buildings. There are 10 principles of good design and the process is in accordance with the consideration of those principles. In fact, I think they were first developed in New South Wales—I think we nicked it from New South Wales!

Dr D.J. HONEY: I assume that one of the considerations would be whether what is planned is structurally safe, if you like, and can be built. I know that the minister is also concerned about the physical amenity of a building and the impact it has—whether it has a built-form impact on the community or the impact on other users of the area and the like. Is that group responsible for giving advice on those matters?

Mr J.N. CAREY: There are two separate questions here. The answer to the first is that the member is right. There is amenity and impact. How the design of the built form may impact on neighbours would be considered by the State Design Review Panel. It could give advice. A number of local governments have their own design review panels, which we have strongly encouraged, and even at a state level there is quite significant engagement and changes in design. The structural elements, whether something is engineered to be sound, are addressed at the building permit stage. The State Design Review Panel and the WAPC does not override the need for a building permit. Even at a local government level people can get planning approval but they may have problems at the building permit stage.

Ms L. METTAM: Apologies if this question has previously been asked, but are there any thresholds put on the time limit of the design review stage? It has been raised as a concern.

Mr J.N. CAREY: Often, engagement with the State Design Review Panel or even a local government review panel happens before lodgement. This means that it is not part of the 120-day time limit. It depends on the applicant’s desire to engage. An applicant could engage a number of times with the State Design Review Panel. An applicant may ultimately decide that it no longer wishes to engage. Of course, the risk then is that the design review panel may recommend to a decision-maker something to which a suitable number of changes have not been made to address key concerns or considerations by the panel.

Dr D.J. HONEY: Does anyone else have any opportunity to have input into the design review panel? We will go directly to it. Perhaps the community has a very strong feeling about one or a couple of aspects of the proposed design, and it wants those factors to be considered by that design review panel. Does the community have any opportunity to provide input or feedback to that group?

Debate interrupted, pursuant to standing orders.

[Continued on page 6299.]