METROPOLITAN REDEVELOPMENT AUTHORITY BILL 2011

Consideration in Detail

Resumed from 16 August.

Clause 65: When development application must be decided —

Debate was adjourned after clause 64 had been agreed to.

Clause put and passed.

Clause 66: Deciding development application —

Mrs M.H. ROBERTS: We have already had some debate on clauses 63, 64 and 65 that are all interrelated. Clause 66 commences by stating —

> (1) In considering a development application, the Authority must have regard to the following —
>
> …
>
> (c) any submission received from a person notified under section 64;

However, when one looks at who is notified under proposed section 64, one sees that they are the local government of the district, public authorities and any other public authority that appears to the Metropolitan Redevelopment Authority to have relevant functions and so forth. I made the point that I think that notification of the application should be put on the internet so that other interested parties could see it. Again, the bill specifies in this clause that the authority must have regard to a submission received from a person notified under section 64. I do not see why the authority should not have regard, for example, to a submission from an interested community group, a heritage group, a ratepayers' group or some other group.

Mr J.H.D. DAY: I agree with the principle that the member espoused. I am sure that it is normal practice; certainly for local government development applications, that is the case. I do not see why it should not apply to the proposed redevelopment authority. I think that it will be important for the authority to establish good practice. Whether that needs to be written into the act is perhaps debatable. I will give further consideration, as I indicated previously, to whether there might be some amendment to proposed section 64 to require that to be the case. But I certainly agree with the principle that has been expressed—namely, that any reasonable submission should be at least considered.

Clause put and passed.

Clause 67 put and passed.

Clause 68: Development may be approved after it is undertaken —

Mr J.N. HYDE: I want clarification. This clause deals with retrospective approvals and it seems to be light on how retrospective approvals will be granted. What consultation will be undertaken? There has been a lot of community angst in the City of Perth. Say a building has been limited to three storeys and the original proposal for 10 storeys was knocked back. If the authority in a non-public meeting is able to retrospectively approve a 10-storey development, what considerations will be given to public consultation and to the original objections?

Mr J.H.D. DAY: I am sure it would be a matter of looking at each case on its merits. If it is a fairly minor development that has been undertaken without approval and it has little effect on neighbours or on the overall neighbourhood, it would be a fairly straightforward process and I would not expect any significant consultation to be undertaken. If a much more substantial development is sought to be approved after the event, there would need to be much more careful consideration, obviously, by the authority. I am sure there is established practice by local governments in this respect, and I would expect the same sort of process to be undertaken by the authority. I do not pretend to be an expert in this area, of course. I am speaking essentially from a commonsense point of view.

The ACTING SPEAKER: Members!

Mr J.H.D. DAY: I am advised that development approval is defined under clause 66.

The ACTING SPEAKER: Members!

Mr J.H.D. DAY: To be more precise, development approval referred to in this clause is defined under clause 66.

The ACTING SPEAKER: Members, if you want to have a meeting, take it outside, please! Your own minister is on his feet.

Mr J.H.D. DAY: It is defined under clause 66 and the ordinary procedural requirements will apply, as provided for in other aspects of part 6.

Mr J.N. HYDE: I want to clarify that. A number of local governments do not allow similar motions for development to be brought back for, say, a three-month period and so on. Again, will this be allowed under regulations? What will happen if a developer gets upset and then comes back the week after? Will an entirely new DA need to be lodged and the whole consultation process start from scratch if the authority intends to give retrospective approval?

Mr J.H.D. DAY: I am advised that an application can be considered if it is different from a previous one. There does therefore need to be some difference. A development application does need to be lodged for retrospective approval to be given; therefore, there needs to be full consideration, as I described, and as provided for under clause 66.

Mr J.N. HYDE: Again I want to clarify this. We referred to the example on Tuesday of the original DA for a penthouse and 15 car bays that then becomes 15 one-bedroom flats with 100 people and still only 15 car bays. That is the usual example of when retrospective approval would be applied for and having the fines and everything else waived.

Mr J.H.D. DAY: That sounds to me like a new development and a development application would need to be lodged if the application is made in advance of the 15 flats or whatever being installed. If development approval is sought after the event, similarly a development application would need to be lodged, would need to be carefully considered and a decision would need to be made. I do not imagine that approval would be given very easily in the hypothetical example the member provided.

Mr J.N. HYDE: Clause 68 refers only to development approval. It states nothing about application. The minister is confirming to us that the authority cannot of its own volition suddenly issue an approval, so that an application must be applied for by the developer or the proponent.

Mr J.H.D. DAY: The answer to that is yes. To elaborate a little more, clause 3 defines "development approval", and states —

> ***development approval*** means a development approval issued by the Authority under section 66(2)(b);

If the member goes to that clause, he will see that further referred to. The short answer to his question is yes.

Clause put and passed.

Clauses 69 and 70 put and passed.

Clause 71: Unauthorised developments: Authority's powers —

Mr C.J. TALLENTIRE: I have a very quick point on the penalty rate of $25 000 a day. My recollection is that the Planning and Development Act has a penalty rate of $50 000 a day. I am wondering why there is that inconsistency.

Mr J.H.D. DAY: Is the member quite sure that it is $50 000 a day in the Planning and Development Act?

Mr C.J. Tallentire: I am certain it was in the former Town Planning and Development Act. I am just checking through the Planning and Development Act now.

Mr J.H.D. DAY: We will take that question on notice. If the member can find it, we can at least confirm that what he says is correct, and if there is a difference, we will seek to ascertain why.

Clause put and passed.

Clauses 72 and 73 put and passed.

Clause 74: Minister's powers to ensure environmental conditions are met —

Mrs M.H. ROBERTS: My point is similar to the point raised by the member for Gosnells in the previous clause. I refer to the penalty of $200 000 and a daily penalty of $25 000. I note that is consistent with the amounts in clause 71. I have two questions. What kind of breaches of the EP act does the minister anticipate? These are significant fines. What kinds of offences would people commit to incur these fines? My further question is about other pieces of legislation that generally list penalties in penalty units; certainly most of the justice legislation does. One issue with putting a dollar amount in an act occurs when there is a change in value of money over time. Sometimes fines can become meaningless as time goes on. The value of $50 000, for example, 20 years ago and the value of it now in terms of what people can buy with it, are two entirely different things. There are plenty of examples when we look back at past legislation when fines were mentioned in pounds and were doubled and converted to dollars and so forth. The fines then became meaningless and the legislation had to be brought back to Parliament just to up the fines to a more appropriate level. Why would the minister not have a framework of penalty units rather than an actual dollar amount, as the penalty unit amount is generally changed by government and the fines keep pace with inflation?

Mr J.H.D. DAY: I am advised that this clause relates to breaches of the ministerial notice issued under subclause (3) and not to breaches under the Environmental Protection Act.

Mrs M.H. Roberts: Subclause (3) states —

> After receiving advice given under the EP Act section 48H(4) …

The minister then does whatever and then there can be this huge fine.

Mr J.H.D. DAY: The intention is that the Minister for Planning, not the Minister for Environment—I know the member is not suggesting that—issues a notice of breach and an order to stop doing something or to change the way they are doing something. If that order is not complied with, it is considered that there needs to be the potential for a substantial penalty to be applied. Of course, these are maximum penalties and would apply only if somebody did not stop what they should not be doing.

A question was asked about penalty units and the suggestion was made that they should be used. I am advised that penalty units are a useful statutory mechanism but that they are not currently supported by planning law. I am not sure whether that really answers the question. They do not exist in any planning legislation at the moment. If we were to make a change, it would probably be desirable to have the same system across all planning legislation and particularly in the Planning and Development Act. That could be considered. I am not sure whether penalty units are used in legislation outside the justice area—outside the Criminal Code and so on—but it is something we can consider for the future.

Clause put and passed.

Clauses 75 and 76 put and passed.

Clause 77: How board is constituted —

Mr J.H.D. DAY: This clause relates to the constitution of the board of management of the authority. It provides, among other things, for the sorts of qualifications that would be considered in appointing a member to the board. I move —

> Page 51, line 24 — To insert after "housing" —
>
> , tourism development, planning law

This amendment originated, firstly, from representations made to me by the Minister for Tourism. I think it was after the issue was raised with him by the Tourism Council Western Australia, the peak body of the tourism industry in this state, that it would be desirable, if possible, to have somebody with a tourism background on the board of the authority. Therefore, I am proposing that experience in tourism development may be a qualification for appointment to the board.

The suggestion of including somebody with a background in planning law came out of the second reading debate, when the member for Armadale suggested that it would be desirable to have somebody with a legal background on the board. These comments also apply to the constitution of the land redevelopment committees, which we will come to in a short while. It was a sensible idea. I do not think it is essential to have somebody with a legal background on the board, but it may well be a desirable qualification. The member for Armadale, who has a legal background, was a member of the board of the Armadale Redevelopment Authority. I cannot recall that anybody with a legal background is a member of the East Perth, Subiaco or Midland Redevelopment Authorities' boards; however, a member of the Armadale Redevelopment Authority Board, subsequent to the member for Armadale, has a legal background. It may well be a useful qualification for a board member to have. It seemed to make sense to make it more specific to planning law, so that is what I have proposed in that respect.

Mrs M.H. ROBERTS: I ask the minister to clarify a couple of things. The minister will see that there is an amendment on the notice paper proposed by Tony Buti. If it suits the house, I am happy to move that amendment in place of the member for Armadale. Can I get the minister's response on why he thinks his amendment is preferable to the amendment proposed by the member for Armadale? I think that is what he is saying. Various qualifications are listed in subclause (2). After "housing" it will be "tourism development, planning law". Will people need qualifications in one or more of the areas listed, or must they have qualifications in all those areas?

Mr J.H.D. DAY: It would be highly unlikely that somebody would have qualifications in all those aspects. Subclause (2) states —

> A relevant qualification … is knowledge of and experience in one or more of the fields …

The amendment on the notice paper from the member for Armadale becomes redundant. The only effect of his amendment is to add the word "law". I am suggesting "planning law". I think it is better to be more specific. He is not here at the moment, but from a brief conversation I had with him outside the chamber, I think he agrees

with that approach. I do not want to put words in his mouth, of course. Really, the effect is much the same; I am just being a bit more specific in saying "planning law", whereas he had law generally. I have given an explanation for the inclusion of the words "tourism development".

Mrs M.H. ROBERTS: Really, these words are not of much import. So long as the category "community affairs" is present, it incorporates just about anyone whom the minister wants to appoint anyway.

Mr J.H.D. DAY: I guess that approach could be taken. The qualification of community affairs has been used in a range of legislation. The essential point is that the government and minister of the day need to be able to justify who they are appointing to boards. That applies across all of government. Community affairs is a catch-all term, but I think that having other more specific aspects referred to in the subclause explicitly focuses on the sorts of qualifications that are considered desirable for the constitution of this board. Generally speaking, there is an intention, as has been the practice in the past, for the board to be made up of people with a range of backgrounds and experiences. The list really does specify more precisely than community affairs the sorts of things that are relevant. Tourism development applies more specifically to the City of Perth area. Perth is a capital city in which it has been recognised that increased hotel development is needed. A qualification in tourism development may well apply in other parts of the metropolitan area as well, but we specifically had the central Perth area in mind.

Amendment put and passed.

The SPEAKER: Member for Midland, did you want to move the amendment proposed by the member for Armadale?

Mrs M.H. Roberts: I think the minister is right; it is redundant.

Clause, as amended, put and passed.

Clause 78: Remuneration and allowances —

Mrs M.H. ROBERTS: The minister will be aware that local government councillors have been members of various authority boards. Some of those local government councillors are public servants who have taken time off work. Representations have been made to me that it would be fair for those people to be paid the same way that other people are paid, especially if they take time off work. A lot of public servants work flexitime and sometimes meetings could be held outside of their normal working hours. I think it is unfair that someone who is a councillor, or who is a public servant, and commits to serving on the board, should not be paid the same as everyone else. I am not sure what the current status of that is. It has certainly been some time since someone raised the issue with me. I am just wondering what the import of this is and whether anything has or can be done about local government councillors or public servants who participate.

Mr J.H.D. DAY: The issue that the member raises is not dealt with directly in this clause. It is a matter of policy across all of government that people employed by either the state or commonwealth governments or local governments or in the public sector—generally in the case of universities, for example—are not paid for being members of boards generally. That is contained within Premier's Circular 2009/12. The policy that exists under this government, I think, is the same as existed under the previous government and has been in place for some time. If it was going to be changed, it needs to be considered on a wider basis. I think there is some merit in the argument put by the member for Midland.

Mrs M.H. Roberts: When I was on the EPRA board there were CEOs who went along because they were designated to go along. I am not for a moment suggesting that those people should be paid additional money. I am talking about people who are not representing their public service position but are representing their local government position, who might be an average or more lowly paid public servant, who is not doing it because of their public service position. It would seem that the Premier's Circular does not differentiate between the two.

Mr J.H.D. DAY: Certainly, if they are undertaking these duties during normal working hours, then they should not be paid.

Mrs M.H. Roberts: Nobody wants to be double paying.

Mr J.H.D. DAY: Everyone would agree with that. If it is clearly in addition to their existing work, then there is an argument. They are, of course, still on the public payroll, but if it is clear they are doing additional work over and above their normal public service role, I think there is an argument that can well be made. I am happy for this to be considered by the Public Sector Commissioner for maybe further advice to be provided. The policy in effect at the moment is across all of government of course. Perhaps it is a bit of a blunt instrument and needs some further consideration.

Clause put and passed.

Clause 79 put and passed.

Clause 80: How LRC is constituted —

The SPEAKER: There are two proposed amendments to clause 80 —one by the member for Perth and one by the Minister for Planning. I am going to propose that, along these lines, the question would be that the words to be deleted be deleted. I will put that particular question to the house and then proceed after that. A member will have to move it.

Mr J.N. HYDE: I move —

Page 52, lines 21 to 23 — To delete the lines.

THE SPEAKER: The question is now that the words to be deleted be deleted.

Mr J.H.D. DAY: I agree with that action, because, although our amendments differ slightly, they both have the effect of deleting these particular lines. Therefore, I agree with that action and then we will have some discussion about the specifics of the two amendments.

The SPEAKER: I indicate to the Minister for Planning that I am well advised on the action that I have taken. I thank him for that acknowledgement, though.

Amendment put and passed.

The SPEAKER: The question now is that the words to be inserted be inserted. I give the call to the member for Perth, because his name appears first on the notice paper.

Mr J.N. HYDE: I move —

Page 52, lines 21 to 23 — To insert the words —

(b) one is to be a person who is a currently serving local government elected member from the relevant local government for the redevelopment area; and

I am assuming that through discussion here we may end up with me withdrawing my amendment, because the minister's amendment actually achieves what we are setting out to achieve. My query is, though, that the minister's amendment says —

(b) one is to be a person nominated in accordance with section 81A; and

Section 81 A does not exist at the moment. I am just wondering how we go about passing an amendment for something that does not exist. I seek advice on that.

The SPEAKER: To provide some advice before the minister gets to his feet, it is not an uncommon practice. There is some anticipation that an amendment will be made, and section 81A therefore comes into being. If the amendment is defeated and section 81A does not come into being, this particular amendment we are dealing with would have to be withdrawn and the bill resubmitted.

Mr J.N. HYDE: My difficulty is that I cannot find a section 81A. I am wondering if it is a typographical error and it was meant to be section 80A.

Mr J.H.D. DAY: I am advised that it does appear to be a typographical error on the notice paper. What is in the draft is not actually the one that I have signed. I do not know whether the error was on the paper that was submitted or whether it has occurred since. However, what is proposed as section 81 should in fact be section 81A.

The SPEAKER: Just for clarification, section 81A is in fact how parliamentary counsel provides information with respect to this bill. It is not an clerical error. It is just a difference in the system between parliamentary counsel and then what appears on this particular page.

Mr J.H.D. DAY: If I can clarify, therefore, in the amendment I am moving, presumably that should be modified slightly not to refer to section 81A but to refer to proposed new section 81. Is that correct?

The SPEAKER: That would be correct. If I can just provide further information. The good people at this table to my left and my right are familiar with this process and will make the appropriate adjustments as we go on.

Mr J.H.D. DAY: We have the words proposed to be included by the member for Perth. He has spoken briefly on that. I do not support that particular amendment, because of the fact, as has been referred to, there are other provisions that I am proposing that I think cover the situation more fully. In short, the member for Perth is proposing that a member of the committee does need to be somebody who is currently a local government elected member. That could be any councillor from a relevant local government area. We do need to, amongst other things, take into account the situation in which more than one local government area is included within a redevelopment area. Therefore, the subsequent amendment that I am proposing takes that situation into account.

Secondly, what I propose—I think it provides fair balance—is for local governments to submit a list of three names. They do not necessarily have to be councillors, but most likely they would be councillors; it is up to the local government of course. So long as three names are submitted, then one of those will be chosen. If they

choose not to submit three, but if they submit only two or one, then one of those may be chosen. Quite likely that would be the case, but I think it is appropriate for there to be a choice of people available. That is why the subsequent amendment appearing on the notice paper really makes a strong effort to ensure that three alternatives are provided. We are essentially getting the same result, but I think the provisions listed here in the amendment I have moved, and which have been drafted with the assistance of Parliamentary Counsel, will cover the situation more comprehensively.

Mr J.N. HYDE: I require some clarification. Regardless of whether it is a clerical error or whatever, can the minister please read what his amendment is—whether it is called 81(a) or whatever. Is it 81 in full?

Mr J.H.D. Day: It is what is listed on the notice paper as 81, yes.

Mr J.N. HYDE: So that is 81 in full—proposed sections (1)–(5).

The SPEAKER: Correct, member for Perth. It is on page 12. It will be the new clause 81. Then clause 81, which also appears on that page, will be renumbered by parliamentary staff to 82 et cetera. It is not an error; it is the way Parliamentary Counsel does things.

Mr J.N. HYDE: As long as we are sure, if I am withdrawing my amendment, what the minister will then put up is an amendment with the effect that new clause 81(1)–(5) will be the amendment. On that basis, I am happy to withdraw my amendment. I cannot withdraw it; okay.

The SPEAKER: I need to put the member for Perth's amendment to the house. Member for Perth, the instruction would be that we need to defeat this amendment to enable the minister to put his amendment.

Amendment put and negatived.

The SPEAKER: Minister for Planning, now is your opportunity to move your words.

Mr J.H.D. DAY: I move —

Page 52, line 21 — To insert —

(b) one is to be a person nominated in accordance with section 81; and

We will subsequently come to the other aspect.

Amendment put and passed.

Mr J.H.D. DAY: I move —

Page 52, line 29 — To insert after "housing" —

, tourism development, planning law

The explanation for that is exactly the same as the explanation I gave in relation to the constitution of the whole board of the authority. These qualifications will therefore also apply to members of the land redevelopment committees.

Mrs M.H. ROBERTS: On behalf of the member for Armadale, who put that amendment on the notice paper, I thank the minister for taking into account the member for Armadale's suggestion; namely, "community affairs or law", by inserting "tourism development, planning law". I believe that will be acceptable to the member for Armadale, and, as such, the opposition will support the minister's amendment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 81 —

Mr J.H.D. DAY: I move —

Page 53, after line 19 — To insert —

81. Nominations for appointment under section 80(1)(b)

(1) In this section —

relevant local government, in relation to an LRC, means the local government of a district in which the redevelopment area in respect of which the LRC is established is wholly or partly situated.

(2) Whenever it is necessary to appoint a member of an LRC under section 80(1)(b), the Minister must, in writing, request each relevant local government to nominate 3 persons for appointment.

(3) If within 42 days after the date on which the Minister makes a request under subsection (2) each relevant local government has nominated 3 persons for appointment, the Minister must appoint one of the persons nominated.

(4) If within 42 days after the date on which the Minister makes a request under subsection (2) each relevant local government has not nominated 3 persons for appointment, the Minister may appoint under section 80(1)(b) a person who in the opinion of the Minister has knowledge of or experience in local government and that person is to be regarded as having been nominated under this section.

(5) The Minister may have regard to a nomination made by a relevant local government when making an appointment referred to in subsection (4) but is not required to appoint a person so nominated.

The SPEAKER: Members, just to clarify, we are dealing with new clause 81, "Nominations for appointment under section 80(1)(b)". As the Clerk informs me, and as has been referred to before, clause 81, which comes after this new clause, is as printed in the bill at this stage. I just reflect, again, that it will be renumbered by the staff of the Legislative Assembly.

Mr J.N. HYDE: Just to clarify, this amendment contains the initial definition of "relevant local government". If we look, say, at the East Perth Redevelopment Authority and the Perth Waterfront project, the majority, if not all, of that project is in the City of Perth; therefore, the relevant local government will be the City of Perth. If we are talking about a project that is slightly on the border, where maybe 10 per cent is in the Town of Vincent and 90 per cent is in the City of Perth, the relevant local government would be the City of Perth. I just seek confirmation of that interpretation.

Mr J.H.D. DAY: The situation that would apply if a redevelopment area extended over local government boundaries is that both local governments would be asked to nominate three names for appointment; potentially they could nominate a lesser number of names if they chose to, but the amendment that we are discussing really does encourage them to nominate three. In the situation the member for Perth described, if 90 per cent was in the City of Perth and 10 per cent was in the Town of Vincent, I think that any government that did not appoint a local government representative from the City of Perth would be making a mistake, clearly. It would need to justify that action, and it would be highly unlikely that such action would be taken. Therefore, there is virtually a guarantee that on a land redevelopment committee, if a project entirely covered or was within the City of Perth, clearly the representative would come from the City of Perth, and if a project was substantially within the Town of Vincent, it is highly likely that the representative would come from the Town of Vincent. If the situation was reversed and 90 per cent was in the Town of Vincent and 10 per cent was in the City of Perth, it would make more sense to have the representative from the Town of Vincent.

Mr J.N. HYDE: Further to that, the minister said that a local government can nominate up to three members. However, on my reading of this clause, and being a former president of the Local Government Association, which is now the Western Australian Local Government Association, a local government will always have to provide three names so that the minister can choose. The requirement in proposed new clause 81 is to nominate three persons; it does not say up to three. I want the minister to confirm whether that is how it will work.

Mr J.H.D. DAY: Whatever the arrangements may be for the Western Australian Local Government Association nominees, that does not relate directly to this situation at all. However, I think the overall principle is the same. This provides that local governments are required to nominate three persons for appointment to the Land Redevelopment Committee, and one of those who has been nominated must be appointed. New clause 81(4) provides that if in the event a local government nominates fewer than three persons, the minister may appoint someone who has knowledge of or experience in local government. The appointee does not necessarily have to be one of the one or two persons who have been nominated. The local government is strongly encouraged to nominate three persons. If three persons are nominated, one will be chosen.

New clause put and passed.

Clause 81: Appointment of initial LRC members —

Mr J.H.D. DAY: I move —

Page 53, lines 22 to 24 – To delete the lines and substitute —

appointment period, in relation to a member of an LRC, means —

(a) in the case of a member referred to in section 80(1)(a) or (c), the period ending 60 days after the Authority establishes the LRC under section 26; and

(b) in the case of a member referred to in section 80(1)(b), the period ending 72 days after the date on which the Minister first makes a request under section 81A(2) in respect of the member.

This refers to the appointment period.

Amendment put and passed.

Mr J.H.D. DAY: I move —

Page 53, line 25 – To delete "all of the members" and substitute —

a member

Amendment put and passed.

Mr J.H.D. DAY: I move —

Page 53, line 26 – To insert after "period, " —

in respect of that member,

Amendment put and passed.

Mr J.H.D. DAY: I move —

Page 53, line 28 — To delete "all of the members; and" and substitute —

the member; and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 82 to 84 put and passed.

Clause 85: Casual vacancies —

Mr J.H.D. DAY: I move —

Page 55, after line 20 — To insert —

(4) If —

(a) under section 26(3) the Authority determines that an LRC that is already established in respect of a redevelopment area is to be taken to be established as the LRC in respect of a redevelopment area that includes part or all of a local government district that was not previously included in a redevelopment area in respect of which the LRC was already established (a ***new district***); or

(b) a redevelopment area is amended to include part or all of a local government district that was not previously included in that area (a ***new district***),

the local government of the new district may, within 42 days of the determination or amendment taking effect, nominate a person for appointment under section 80(1)(b).

(5) If the Minister decides to appoint a person nominated under subsection (4), the Minister may —

(a) remove from office the member appointed under section 80(1)(b); and

(b) appoint under section 80(1)(b) the person nominated under subsection (4).

The purpose of inserting these two subclauses is to take into account the situation in which an additional area of land is included within the responsibility of a land redevelopment committee and to provide a process whereby the relevant local government can nominate a representative for potential appointment to the land redevelopment committee when land is added. It may well not result in any change to the membership of the committee, but if there was a substantial change to the area of land under the responsibility of a land redevelopment committee, it is appropriate for there to be at least further consideration of the membership of the committee and, in particular, the local government nominee. This amendment provides a process by which that can occur.

Mrs M.H. ROBERTS: I agree with the comments of the minister. If there is a change that brings in another local government authority, it would be appropriate to give consideration at that time to include on the board a person from that authority. However, subclause (5) in the minister's amendment states —

(5) If the Minister decides to appoint a person nominated under subsection (4), the Minister may —

(a) remove from office …

(b) appoint under section …

This does not require the minister to do that. Arguably, if there was a significant change when land was added that meant that it would make sense to include someone from the new authority, the minister could in fact not do anything. He might decide not to proceed with this and keep on the board someone less relevant who is already on the board and not include someone else. There is a process for it to occur, should the minister want it to occur, but, as I read the amendment, it does not place the minister under any obligation to do that. I seek some clarification from the minister whether that is the case and whether we will again just have to rely on the minister of the day doing the right thing.

Mr J.H.D. DAY: That is the case; there is no obligation to make a change, but this provides a process whereby a change can be considered. Like all actions we take as ministers, they need to be able to be justified and defended, and if only a minor change to the area was included, there would probably be little case to make a change, but if there was a substantial change in the membership of the committee, the intention would be that there may well be a change of the local government nominee on the committee. I also point out that there is, of course, nothing to stop more than one local government councillor being on a relevant committee, so it may well be the decision, if there was a significant area of land in two local government areas, that two local government councillors could make up two of the five members of a land redevelopment committee.

Mrs M.H. Roberts: In proposed subclause (5), will the significance of the word "and" between proposed paragraphs (a) and (b) affect that or not? It says "remove from office … and appoint". What you're suggesting is that you don't need to remove someone from office; you could just appoint an extra councillor.

Mr J.H.D. DAY: No more than five people can be appointed, so I guess if someone new is going to be put on the committee, somebody will have to come off, but this provides a process whereby that can occur.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 86 to 92 put and passed.

Clause 93: Proximity interest —

Mr C.J. TALLENTIRE: I am interested in the planning laws that surround the proximity interest test, especially when we consider that proximity is only one aspect of a type of interest. There is also that of visual amenity. I do not see how that would be covered in this legislation at the moment. I feel it should be in this proximity interest test, if that was broadened out to be a proximity and visual amenity interest consideration. It is an important area, because we increasingly find that people have an interest in adjoining properties—properties that may be a couple of blocks away—because of a development that has an impact, either positive or negative, in terms of the visual aspect that a new development might provide from their own property.

Mr J.H.D. DAY: Whether somebody has an interest is, to a large extent, a subjective judgment and it relies on people acting in good faith and taking a commonsense approach in all situations. The member describes a proximity interest possibly coming from some visual impact that may occur; it is a question of how far that argument can be taken. I think if there were any attempt to write into legislation the impact of some visual change, we would be opening something of a Pandora's box. How far do we go, and where do we draw the line in such a situation? It relies on people acting in good faith, but I think that that will generally occur. I presume that is what occurs at the moment. There are fairly well established guidelines in local governments, and I would expect the same sort of guidelines to be in place in this situation.

Mr C.J. TALLENTIRE: I thank the minister for that. I suppose that raises the question of the proximity test and the test for whether something may be adjoining a person's land. The fact that a development is adjoining someone's land could be of very little significance, but the fact that something is in the view of a person's lounge room on a modern inner city–type apartment building could be a far more significant issue than the fact that the development happens to be on the adjoining land. I feel that, perhaps not through the Metropolitan Redevelopment Authority Bill 2011, but in the future, we should look at this aspect of planning law. I think it needs some real serious policy thought. As it stands, we are locked into the idea that it is next door, therefore, there is an interest, but we are not considering at all something that might be much more significant.

Clause put and passed.

Clause 94: Closely associated persons —

Mrs M.H. ROBERTS: Closely associated persons are referred to in clause 91: "When a member has a material personal interest". Clause 94(1)(a) refers to when the person is in partnership with the member. The partnership is obviously not referring to marriage or de facto because that is covered in paragraph (f). I presume therefore

that it is about a business partnership. Is there a legal definition of what constitutes a partnership and how that will be interpreted?

Mr J.H.D. DAY: I am advised that "partnership" is as normally understood to be meant in federal corporations law—the commonwealth Corporations Act 2001.

Clause put and passed.

Clauses 95 to 111 put and passed.

Clause 112: Business plans and operational plans —

Mr J.N. HYDE: I note that it is now sunset and the Muslim community is rightly celebrating the end of Ramadan and I am not there, despite being invited, along with the Liberal upper house member, Hon Liz Behjat, as members of Parliament, to celebrate with the Muslim community. Earlier today I expressed my outrage at the mismanagement of time on this bill.

Mrs M.H. Roberts: You were right to do so.

Mr J.N. HYDE: We were prepared to finish debate on this bill on Tuesday night. We were then prepared to finish it on Wednesday night, but I know it is not the fault of the good people here. I have made my point and I will proceed.

Mrs M.H. Roberts: It is the fault of the Leader of the House, who is the Minister for Police and Emergency Services.

Mr J.N. HYDE: He is not in the chamber.

Mr M. McGowan: Another shocking example.

Mr J.N. HYDE: I am standing to speak on this clause with regard to the exemption from state taxes and local government rates. I want to establish whether in approving the draft business plan and the other requirements under this clause, those exemptions will be provided; and, if not, where?

Mr J.H.D. DAY: I am advised that there is no automatic exemption, and certainly nothing in this bill provides for the MRA to be exempt from such taxes or rates. It is possible for an exemption to be given as a matter of policy as a specific decision by the government under the relevant taxing statute, but no general exemption is provided for in this bill.

Mr J.N. HYDE: I have a further question on clause 112(7). We previously debated clause 11(3)(b), which covers the minister and the Treasurer having to endorse —

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

Clause 112(7) refers only to the minister approving or refusing business plans. Why are the minister and the Treasurer not mentioned in this clause?

Mr J.H.D. DAY: If the member looks slightly ahead to clause 112(10), he will see that approval cannot be given by the minister without the prior written approval of the Treasurer. That process is provided for.

Mr J.N. HYDE: The intent of that is that the Treasurer will not trust the minister to approve it, but he fully trusts the minister to refuse it on his own.

Mr J.H.D. DAY: I guess it could be read that way. As we discussed earlier in the debate on the bill, the government's view is that when substantial financial implications will be incurred, it is appropriate that the Treasurer and the Department of Treasury have some input into those decisions. Generally speaking there would be a cabinet decision, I would expect, about any major project being undertaken and there would be that process of consultation. Given the impact on state debt levels and expenditure, it is considered appropriate that the Treasurer is given the opportunity to consider the effects of those decisions.

Clause put and passed.

Clauses 113 and 114 put and passed.

Clause 115: When directions take effect —

Mrs M.H. ROBERTS: Clause 114 gives the minister authority to give directions and there is a requirement for the tabling of that direction before each house of Parliament within 14 days and so forth. Clause 115, the clause with which we are dealing and which relates to clause 114, provides that —

> ... a direction under section 114(1) becomes effective on the expiry of 7 days after the Authority receives it or of such longer period as the minister may, at the request of the Authority's board of management, allow.

It appears to me that the direction would most likely have already taken effect before the minister tables that direction in Parliament. I am not quite sure what the point of that is other than as a type of disclosure after the event. It seems that the minister can give the direction and the authority has to make it effective within seven days, but the minister does not have to table the advice for 14 days. Can I find out the rationale for that?

Mr J.H.D. DAY: As the member suggested, the purpose is disclosure and transparency, and it may well be the case that direction has already taken effect. That is the same with a whole lot of existing provisions in legislation, not only in the planning portfolio, but in other portfolios I would expect, in which ministers are able to direct agencies to undertake certain things. Those actions often need to be put into effect straight away. The purpose is to provide information to Parliament; Parliament, in this instance, does not have an ability to disallow a direction, therefore there is no absolute need to provide information prior to the direction taking effect. The intention is to ensure that people are made aware and obviously ministers need to be able to publicly justify the reason for a particular direction being given.

Clause put and passed.

Clauses 116 to 143 put and passed.

Clause 144: Effect of redevelopment schemes and validity of things done under them —

Mr J.N. HYDE: I have query pertaining, I think, to subclause (2) or (3). Is this is where the subsidiary legislation comes into play?

Mr J.H.D. Day: Don't you mean regulation?

Mr J.N. HYDE: I thought it was regulation, but I understand that the term is now subsidiary legislation. Is that the same thing?

Mr J.H.D. Day: Yes.

Clause put and passed.

Clauses 145 and 146 put and passed.

Clause 147: Assets, rights and liabilities —

Mrs M.H. ROBERTS: I move —

> Page 95, line 28 – To insert after "section" —
>
> > , except in the case of all items of moveable heritage at the former Midland Railway Workshops, which are to be transferred into the ownership of the Western Australian Museum

As members are aware, one of the existing redevelopment authorities that gets brought into this Metropolitan Redevelopment Authority as part of this legislation is the Midland Redevelopment Authority. The Midland Redevelopment Authority has assets; this area of the bill deals with the assets of the authority. Principally, redevelopment authorities deal with planning matters rather than matters of heritage, particularly moveable heritage. I have deliberately talked about moveable heritage because, of course, moveable heritage, as the minister would well know because he is also Minister for Arts and is generally informed on these matters, is not covered under the Heritage of Western Australia Act. Although I am sure many people in the Parliament, and certainly lots in the community, think that moveable heritage should be incorporated into the act, I do not think that we can wait for that to occur. People have talked about it for years; it has not happened. My concern is that items of moveable heritage at the Midland Railway Workshops are not protected. The minister can well say that this currently applies to the Midland Redevelopment Authority, and that when that authority was set up perhaps some consideration should have been given to those moveable heritage items then. If he were to say that, I would be likely to agree with him, because I think we should have given some consideration to that issue. However, the Midland Redevelopment Authority was set up as an authority that was dealing with only the former Midland railway workshops and related areas. I felt quite confident that the people charged with responsibility solely for that area would take the appropriate steps to deal with the heritage assets. We are now moving to a situation with a much broader planning authority. When we look at the purposes for which that authority is set up and at those early sections of the bill, none of it is about preserving the state's heritage and none of it really deals with those kinds of assets, which other redevelopment authorities in effect do not have. When the workshops closed, the items of what I call moveable heritage were really under the ownership of the Minister for Transport and/or Westrail. Those items effectively became owned by the Midland Redevelopment Authority and, if this bill proceeds without amendment, will become owned by the Metropolitan Redevelopment Authority. I do not think

that is the appropriate group to have charge of these heritage assets. I do not think that is its core brief or what this legislation is about. I think that the WA Museum is the appropriate owner on behalf of government for these items of moveable heritage. These items obviously include—I will not go into a lot of detail—the patterns in the pattern shop. I am told that is one of the best collections of patterns in the world and that they are the most intact. Part of the reason for that is that this was technically an operating workshop until 1994. Former Premier Richard Court announced the closure of the workshops in 1993 and it closed in 1994. Those patterns are just one example. Of course, there is other machinery and I am not for a moment thinking —

Mr J.N. HYDE: I am very, very interested in this issue of moveable heritage. It is very important in Perth and in Midland.

Mrs M.H. ROBERTS: I am not for a moment suggesting that anyone is about to rip out the incredibly significant heritage machinery that is in the foundry. However, there are smaller items that are quite moveable. Although the workshops site is heritage-listed and is acknowledged on the register of the National Trust, those items of moveable heritage are not covered by the Heritage of Western Australia Act. The minister well knows that in recent times I have certainly become more concerned about the preservation of heritage at the workshops. Indeed, the interpretive centre that was opened by the former Minister for Planning and Infrastructure, Hon Alannah MacTiernan, has been closed for more than two years. The interpretive centre is padlocked and people cannot go in. I am very concerned about the lack of precedence being given to the heritage of the site. The current Midland Redevelopment Authority does not see keeping the interpretive centre open as part of its core business. It was thought that perhaps the City of Swan might like to keep the interpretive centre open; that was one of the suggestions. When I raised it with the City of Swan, it did not see that as its job either. I think I alluded, perhaps in my contribution to the second reading debate, to having recently been to Ipswich. The Ipswich Railway Workshops has a museum in the front part; it does not consume the whole site. I had the benefit of a tour of the back part of the site, which still operates as a workshop and where the general public are not permitted to go. But at the front of the workshops, in one section of them, they have a museum. That museum is part of a suite of museums in Queensland, and it is run by the state museum. So my view is that the Western Australian Museum is an appropriate owner of those items of movable heritage. I think, yes, perhaps something should have been done previously, but I think it has really become more apparent in recent times, with the closure of the interpretive centre and with some of the other actions of the Midland Redevelopment Authority, that it is charged with a certain core business under the legislation. I understand that it is doing what it is doing because it is a planning authority, and it is also charged with trying to make an income. I think I suggested in my contribution to the second reading debate that the government should give consideration to a proper rail history museum such as exists in other parts of Australia; I have noted the Ipswich example. We have a Maritime Museum; why should we not have a rail museum, and why should this heritage not be preserved for future generations? There is enormous interest in that. Whenever we have had an open day at the Midland railway workshops, thousands of people have turned up wanting to learn about the history of that site. I do not think that it is good governance, or makes sense, for the owners of that movable heritage to be a Metropolitan Redevelopment Authority. Those valuable heritage assets of the state should be under the ownership of the Western Australian Museum.

I note that the responsible minister is also the Minister for Culture and the Arts, and he has responsibility for the Museum. Yes, no doubt there would be costs involved. I also just want to make it perfectly clear that I am not suggesting that the Museum should be moving things offsite there; I think that, quite clearly, those items of movable heritage belong on site, and some arrangement are needed across government. I do not see that the appropriate personnel to maintain that heritage are likely to be employed by the new Metropolitan Redevelopment Authority.

Mr J.H.D. DAY: I understand the motivation of the member in moving this amendment, and I agree with the overall sentiments that have been expressed, but I do not support the actual amendment for reasons that I will outline. I entirely agree that the preservation of the state's heritage—building heritage, cultural heritage and other aspects—is very important. I also agree that the existing redevelopment authorities and the proposed MRA are primarily land development agencies largely involved in regeneration of old industrial sites or areas with contaminated soil and so on. As we have discussed, they play a major role in urban renewal and urban regeneration. In such regeneration, the preservation of heritage is a very important aspect, of course, and that has been achieved, as the member said, by the Midland Redevelopment Authority on the one hand, and by the East Perth Redevelopment Authority on the other hand, and in the Subiaco Redevelopment Authority area probably to a lesser extent; I do not think this applies so much to the Armadale Redevelopment Authority. The Midland Redevelopment Authority and East Perth Redevelopment Authority, which also covers Northbridge, particularly give heritage preservation a very high priority. I think any examination of or visit to the areas that have been developed, where there are old historical buildings for example, will demonstrate that priority.

It is also important to bear in mind that redevelopment authorities, particularly EPRA at the moment, are involved in not only heritage preservation, but also the organisation of events. That particularly applies to Perth Cultural Centre. They are therefore not confined to strict land development. We certainly intend that the new MRA will play a role in event organisation and management; for example, in the area at Perth Cultural Centre and potentially in the area of the Perth Waterfront project, when that development gets underway or is perhaps largely completed. If I recall correctly, the Midland Redevelopment Authority has been involved in organising some events in the past. I recall a concert in recognition of the Paul Robeson concert that was held in the 1960s at the Midland railway workshops. That was a major event at the time. There was a concert about eight or 10 years ago to commemorate that event and I am pretty sure that was organised by the Midland Redevelopment Authority.

The point I make is that redevelopment authorities are not concerned only with land and building development. I would also be loath to impose another obligation on the Western Australian Museum, even if a lot of the movable heritage, as the member for Midland referred to it, was kept on site at Midland. I entirely agree that the patterns there, for example, are very important. They should be maintained in their current location, as that is where they have the most heritage context, and of course there are also relevant storage facilities. However, to impose an obligation on the Western Australian Museum to take responsibility for that collection, for example, would require the Museum to undertake a substantial expenditure, I would expect, and that is not something that can be contemplated at the moment. The Museum has enough on its plate and enough financial pressures without taking on any additional obligation at the moment. Other artistic events occur at Midland, of course. The member for Midland would be aware of the Midland Atelier, the artists' studio in one of the old buildings on the Midland Workshops site where some wonderful furniture creation, jewellery manufacturing and design and other artistic and creative activities take place as well.

I have no doubt that the new authority will continue to be involved in similar activities and will ensure that the heritage is respected and preserved where it is appropriate to do so. Bear in mind that this will be a public agency responsible to a minister and to the government. We are not putting something into the private sector here for which, it might be argued, there would be less of an interest or obligation to preserve.

Mrs M.H. ROBERTS: I note the minister's response. Part of his response was to say that if the responsibility were to be transferred to the Museum, it would require substantial expenditure by the Museum. I can only assume that that expenditure would include cataloguing and itemising things, and ensuring the security of significant heritage items. The Midland Redevelopment Authority, soon to become the Metropolitan Redevelopment Authority, would presumably incur that expenditure if it were to do the job properly and to appropriately catalogue and preserve those items of movable heritage. I put to the minister that the Midland Redevelopment Authority has competing demands for its expenditure and it is unlikely to want to spend the money on that. When I have heard about the authority's attitude in recent times about the paltry amount of expenditure required to keep the Midland Railway Workshops interpretive centre open, its simple answer is that it is not its priority. I assume it is also not its core business. I am no more confident that it would be the priority of the Metropolitan Redevelopment Authority. If the Midland Redevelopment Authority is not prepared to make the minimal amount of expenditure and the minimal amount of effort that is required to keep the interpretive centre open, how could I think for a moment that it would appropriately catalogue and preserve those most valuable movable heritage assets of the Midland Railway Workshops? Those workshops were in operation for more than 90 years. They are, from my point of view, some of the most immensely valuable heritage assets reflecting an era of working history that will not come again.

I would like to think that in the future the state maintains the option of having a fully funded rail heritage museum. To do that, it is essential that the items of moveable heritage that are there are appropriately maintained. The minister is asking me to trust him as it is a public authority and it will do the right thing, and the government will do the right thing. The minister has not done the right thing by the interpretive centre. He has not given the board any direction in that respect. The board and management of the Midland Redevelopment Authority appear to care little that a huge padlock is on the front of that interpretive centre. Its relations with the labour history group and the former workers of the railway workshops is not good. Many of those people are getting very old. Many of them are 70 to 80 years of age. They will not be around to tell the stories in the future. We run the risk of a significant part of the history of this state being lost. The minister has quite correctly said that if the Museum took over, it would look after those assets properly and that would involve the expenditure of money—money that is not being expended by the Midland Redevelopment Authority and I doubt would be expended by the Metropolitan Redevelopment Authority. He has advised me to have some confidence in the fact that it is not being sold off to a private interest. I cannot see anything in this bill that would prevent the Metropolitan Redevelopment Authority selling some of those assets. I do not think it is particularly likely, but there might be a category of assets that it might choose to sell or could choose to sell. I cannot see anything that prevents it from selling it. It is not the business of a land development agency to deal with those heritage asset

items; it is the business of a museum. Yes, I know it would cost money but it is the right thing to do by the heritage assets of our state.

Mr J.H.D. DAY: As I said, I appreciate the arguments being put but I do not think it is an obligation that is appropriate to impose on the Western Australian Museum at the moment. Regardless of this legislation, there is nothing to stop the Western Australian Museum taking an interest or providing advice or, indeed, taking full responsibility for some aspects of the heritage at Midland in the future. That is something that could be considered.

I am not aware of the issues relating to the interpretive centre in addition to what the member has outlined but I will seek information about that.

I point out that the Midland Redevelopment Authority has provided some assistance to the Australian Railway Historical Society. Most of the rolling stock has now moved out of storage. I understand that there is only one piece of rolling stock there at the moment. The situation that exists obviously exists under this government, but it also existed under the previous government. I think the previous government and the previous minister were subject to the same circumstances; that is, there was a desire to find the highest and best use for the heritage buildings on the site. Some of that is about preserving heritage.

Mrs M.H. Roberts: A lot of it's about making money.

Mr J.H.D. DAY: And it is about trying to find an income that can be made available to preserve the buildings and the heritage that is there, given that a lot of public money has been expended, quite rightly, on restoring or preserving buildings, replacing the roof and so on. For all the important heritage to be maintained at Midland, there needs to be a lot more appropriate development on the site. There was the prospect of a tertiary education facility there, set up by the Raffles Education Corporation. That is not being considered now. However, some work was being done and discussions being held about the possibility of other tertiary education facilities being located there. The new Midland hospital will be constructed adjacent to the workshop site. All of that will add to a greater critical mass and hopefully encourage further development on the site. Hopefully, before too long, there will be more residential development and, hopefully, further development in Atelier. The artists' studio needs more funding if it is to be taken to completion. Once that work can be undertaken, there will be a much greater critical mass and, perhaps, greater ability to put more into interpreting some of the heritage. However, I agree it is very important that it is maintained, and I will ensure that the existing MRA is aware of this discussion. As long as I am minister, I will continue to take a strong interest in ensuring that there is appropriate development on the site and that that important heritage is not only preserved and maintained, but also, ultimately, and hopefully, interpreted further, in the future.

Amendment put and a division taken with the following result —

Ayes (13)

Ms L.L. Baker	Mr M. McGowan	Mrs M.H. Roberts	Ms R. Saffioti *(Teller)*
Mr R.H. Cook	Mr P. Papalia	Mr C.J. Tallentire	
Mr J.N. Hyde	Ms M.M. Quirk	Mr A.J. Waddell	
Mr J.C. Kobelke	Mr E.S. Ripper	Mr B.S. Wyatt	

Noes (16)

Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Dr M.D. Nahan
Mr I.C. Blayney	Mr J.M. Francis	Mr J.E. McGrath	Mr D.T. Redman
Mr I.M. Britza	Dr K.D. Hames	Mr W.R. Marmion	Mr M.W. Sutherland
Dr E. Constable	Mr R.F. Johnson	Mr P.T. Miles	Mr A.J. Simpson *(Teller)*

Pairs

Mr T.G. Stephens	Mrs L.M. Harvey
Mrs C.A. Martin	Mr C.J. Barnett
Mr A.P. O'Gorman	Mr T.K. Waldron
Mr D.A. Templeman	Mr B.J. Grylls
Mr M.P. Whitely	Mr A.P. Jacob
Dr A.D. Buti	Mr M.J. Cowper
Mr P.C. Tinley	Ms A.R. Mitchell
Mr W.J. Johnston	Dr G.G. Jacobs
Ms J.M. Freeman	Mr P. Abetz

Amendment thus negatived.

Quorum

Mr J.N. HYDE: Mr Speaker, I draw your attention to the state of the house.

[Bells rung.]

The SPEAKER: There is not a quorum and I am going to adjourn today's sitting until the next ordinary sitting day, which will be Tuesday week. I draw members' attention to standing order 25. I am prepared to consult members in this place with respect to the date and time at which the Assembly might next meet. At this point, we do not have a quorum, which means the house is adjourned.

House adjourned at 6.38 pm