PLANNING AND DEVELOPMENT AMENDMENT BILL 2023

Committee

Resumed from 29 November. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 11: Parts 11B and 11C inserted —

Progress was reported after the clause had been partly considered.

Hon NEIL THOMSON: We are up to proposed section 171R. We were in further discussion on that element of clause 11. Proposed section 171R(1)(a) does not require proof that an application be of state or regional significance, but rather the application raises issues of the same. I think just a general observation that we have made before in this place as part of discussions is that those subsections under proposed section 171R are extremely broad and open to interpretation. I am trying to envisage a situation in which there might be an appeal to the State Administrative Tribunal. Normally, appeals occur in the development application process when there is an argument of procedural fairness not having been applied by the decision-maker. Normally, if a developer was not given approval by a development assessment panel, they might take the matter to SAT. I am arguing here that these provisions are extraordinarily broad; I cannot see a situation in which someone is going to challenge whether the state applied the test of regional significance. If members could just bear with me a second. It is possible that the applicant may say, "Well, on what grounds was my application refused?" Then the grounds of it might be that it was not considered to be of state or regional significance or one of those other aspects in relation to the additional part of that approval process and it is inconsistent with the applicable planning instrument.

Because these are so broad, my question is: to what extent will the commission be required to provide evidence of any matters to do with state or regional significance or any of the other criteria outlined in proposed section 171R for a State Administrative Tribunal appeal?

Hon JACKIE JARVIS: The member initially asked whether decisions could be challenged. Yes, they could still go to SAT through the normal process, so there will be no change there. With regard to an application that raises issues of state or regional importance or is in the public interest, the onus will be on the applicant to outline the reasons why they believe the application is of state or regional significance or in the public interest. If the Western Australian Planning Commission refuses the application on that basis, it will have to provide a body of evidence and the reasons for that. Again, SAT could be invoked to review the decision.

Hon NEIL THOMSON: If the reason for refusal is that it is not in the public interest, will the commission apply a framework of a public interest test or will there just be a subjective determination by the WAPC about the public interest? I note that conventional public interest tests are applied to a whole range of matters under both federal and state governments. I wonder whether a public interest test as such would be applied, particularly in the case of a refusal.

Hon JACKIE JARVIS: The WAPC will develop a policy fact sheet or a framework, if you like, about what is in the public interest and it will use the broad expression of public interest. Case law outlines the concept of public interest. It is deliberately broad. Further factors from existing case law in which public interest is likely to arise include when broader benefits are public and are not merely in the private interest; when it promotes the objects of the enabling act, which in this case is the Planning and Development Act, which provides for an efficient and effective land use planning system in the state; when it promotes the sustainable use and development of land in the state; and when it promotes any negotiated planning solutions. Conversely, factors that are not in the public interest include when the benefits are to a private person only or when it is inconsistent with the Planning and Development Act. As I said, the onus will be on the applicant to show why it is in the public interest.

Examination of other jurisdictions also provides some guidance on issues of state or regional importance, which is covered under proposed section 171R(1)(a). Issues of state or regional importance could include the nature, scale and/or geographical area of influence; the potential contribution to the delivery of physical, community or other infrastructure; and the potential contribution to the economic wellbeing of the state or the region. For example, it could be a project that facilitates local employment opportunities. As I said, the WAPC will have a framework and a fact sheet to provide guidance on that.

Hon NEIL THOMSON: Could there be a situation in which the proponent has been given approval but there could still be an appeal? I think there could be, but I think it might be to do with the conditions only. Could the minister confirm that?

Hon JACKIE JARVIS: An applicant might get approval and it might have 50 conditions. They could appeal a condition or several conditions on that approval and still go to SAT. Was that the question?

Hon NEIL THOMSON: Yes. As I said, only the proponent can appeal. There will not be provision for a third-party appeal whatsoever.

Hon Jackie Jarvis: Correct.

Hon NEIL THOMSON: It highlights the scrutiny of the commission in the exercise of the public interest assessment or the assessment of state or regional significance, unless there is some sort of negative approval or there are excessive conditions on the proponent or a refusal by the proponent. There will be absolutely no scrutiny whatsoever in the approach that the commission will take. What other mechanism will a member of a local government or a member of the community have to at least scrutinise and assess whether the criteria listed in proposed section 171R have been applied in an objective manner?

Hon JACKIE JARVIS: There will be a couple of avenues. The member is talking about a serious objection by a third party. There will be a judicial review process, so a third party could go down that track. Proposed section 171ZA provides that the Governor may amend or cancel an approval granted by the commission. That would be done via a request to the minister. There will be a legislative instrument whereby the minister can request that the Governor amend or cancel an approval granted. I would not think that that would be used very often, but there will be an ability to do that.

Hon NEIL THOMSON: I was going to get on to proposed section 171ZA, so I thank the minister for that. That helps my line of questioning. If we could just digress a little to refresh my memory, does the judicial approval process apply right across the board for approvals under the Planning and Development Act? That is just a general approach, is it not?

Hon Jackie Jarvis: The judicial appeal process, yes.

Hon NEIL THOMSON: I move to proposed section 171V, "Enforcement powers of Commission in relation to conditions". I note that this is a prelude to further discussion later this afternoon. There will obviously be significant inspection powers provided to officers in the agency. That is maybe what proposed part 10 refers to. There are a lot of moving parts to this legislation and I am trying to keep my head around them all. The important thing here is that I understand why the commission might want to enforce conditions of development because it now gets involved in the business of development approvals in a way other than the part 17 process. I think there are some exceptions on crown land for which the commissioner has had an approvals process for decades for some developments. They have always had those powers over some of those crown land approvals. My question raises the fact that this provision is now in this bill. Is this in response to some concerns that the conditions applied under part 17—those COVID-inspired provisions—might not have been able to be managed appropriately, or have there not been any concerns about conditions applied to those part 17 approvals?

Hon JACKIE JARVIS: Proposed section 171V was created because the Western Australian Planning Commission stands in the shoes of the normal decision-maker—that is, the local government—so it was considered that there might be some confusion about who is responsible for enforcing significant development approval. The intent of this proposed section is that because the WAPC makes the decision, it should be responsible for it. This is different from development assessment panels or the State Administrative Tribunal, which make a decision and then essentially send it back to local government to enforce. It was considered fairer that the WAPC should spend its own time and resources enforcing its own decisions.

Hon NEIL THOMSON: I totally understand that. That was very ably presented in the explanatory memorandum. As I said, I totally understand why this would be needed. It is also a fact that the WAPC not only stands in the shoes of the local government or the decision-maker, but also stood in the shoes of the decision-maker under part 17. Was there a deficiency with part 17 that motivated this provision?

Hon JACKIE JARVIS: There was simply a lack of clarity, and so this will hopefully clear that confusion up.

Hon NEIL THOMSON: That is very interesting. I suppose lack of clarity has real-world impacts. Obviously, proposed part 11B will supersede part 17, notwithstanding that part 17 will be retained and effectively grandfathered in the future. Were there any concerns by the commission about the failure of proponents and developers with respect to those part 17 approvals that might have been developed and built in a way that did not conform with the conditions applied by the WAPC?

Hon JACKIE JARVIS: Not that we are aware of.

Hon NEIL THOMSON: Can we move on? We are just stepping through clause 11. I turn to proposed section 171W, "Substantial commencement of development approved under s. 171P(1)". This issue has been raised. I might have been overly generous in saying earlier that I thought maybe some of these proposed part 11B provisions might have been tighter than the part 17 provisions. There may be better clarity, which is probably the right word, and it tightens things up in some respects. For the record, I state that I do not find these provisions sufficiently robust in some respects. I have said many times that there is scope for outcomes that will not necessarily be sufficiently "scrutinisable"—if that is a word, but the minister knows what I mean. I would like to get a bit more understanding of this provision. I believe there was an example under part 17 arrangements in which a development was approved on the Cottesloe foreshore, with a couple of extra storeys being added over and above the local planning scheme.

The local planning scheme had been designed through a very extensive inquiry and design process, which had involved local community input. Although people could argue the merits of that approval, the fact is that that block was later onsold without any development or substantial improvement. I understand that development has not yet progressed to this day.

My point is that part 17 doubles the default period. It was said that two years was too short. What evidence did the commission have for coming up with this four-year process?

Hon JACKIE JARVIS: Obviously, part 17 applications preceded the writing of this bill. It was discovered during that part 17 application process that the two-year time frames were too short and not practical. It should be noted that a proponent cannot begin construction straightaway after planning approvals. There still needs to be further approvals from other approval agencies such as for building permits and road access. There needs to be preparation and obtaining of further plans from management, and on some occasions finance. That is why this bill has the default time line of four years. However, the WAPC can still impose a shorter or longer period if appropriate, depending on the development.

Hon NEIL THOMSON: So the commission could put a 10-year period if it so chose to?

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: That seems quite extraordinary. I suppose it would have to provide reasons for that.

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: We are getting there. Is this expansion of the time frame an admission that the part 17 provisions, which were designed to stimulate the economy, did not work?

Hon JACKIE JARVIS: No.

Hon NEIL THOMSON: There was a nice, short answer. It gives me the impression that maybe there were a lot of challenges with materials and a dearth of construction workers and so forth. I guess the whole need for this part 17 in the first place was that it would somehow stimulate that the economy.

Sitting suspended from 1.00 to 2.00 pm

Hon NEIL THOMSON: I want to finish off with proposed section 171W. There seemed to be a need to make some changes related to part 17. Given the very generous approach here with respect to the proponent and given the objectives of proposed part 11B, was any consideration ever given to prescribing the onselling of property prior to commencement?

Hon JACKIE JARVIS: Planning approvals come with the land regardless of who the owner is. If the ownership of a development changes hands during that time, the planning approvals stay with the land.

Hon NEIL THOMSON: Just to finalise that point, as the minister knows, the Land Administration Act, for example, contains certain conditions that apply to only the holder of that particular title—notwithstanding that sometimes it may be a leasehold title. Given that the objective here is to create opportunities for urban infill and housing, and that there is the potential for very long lead times on these approvals, I would have thought that some incentive could possibly have been put in place.

I might just leave that one there and go to proposed section 171Z, "Ministerial call-in of application for review under s. 171Y". The call-in powers here are a little different to the call-in powers that I understand currently exist in the Planning and Development Act. Is there any variance at all in terms of their broader application from the existing call-in powers in the Planning and Development Act?

Hon JACKIE JARVIS: I am advised that proposed section 171Z clarifies the call-in powers. If the Premier has, in the first place, authorised a project as being of state or regional significance, which is why the application has gone to the Western Australian Planning Commission, and an appeal is made on any of the approvals or the conditions, the minister's call-in powers will automatically come into play. It will still go to the State Administrative Tribunal for a review.

Hon NEIL THOMSON: I may have misread that. I did not know it was restricted to projects of state or regional significance and that the call-in power in proposed section 171Z does not apply to the other matters outlined in proposed section 171R.

Hon JACKIE JARVIS: I am advised that under the current act, the minister already has call-in powers for those projects of state and regional significance. A power currently exists under section 246 for the Minister for Planning to call in applications from SAT if it raises issues of state or regional importance. Under this proposed section, the Premier will be given the power to authorise the lodgement of applications to be determined by the WAPC, which I said previously. If the Premier has authorised the lodgement of an application, which is of state or regional importance, it logically stands that that application is also worthy of being called in for any application to SAT. I think

the heart of the member's question was "What's changed?" As far as I can see, the minister already has call-in powers. The change in this bill is that call-in powers will become automatic if there is an appeal after the Premier has initially referred an application.

Hon NEIL THOMSON: I think I know what the minister is saying. Basically, the process under proposed section 171R states that the commission may make a determination for a whole range of reasons, including public interest and state significance. In that case, if there is an appeal, is there an ability for the minister to call that in under all those provisions? The minister can correct me if I am wrong. I am a bit confused. Proposed section 171Z only talks about call-ins and the application of state significance. It has to be past that threshold. I am probably confusing the member, because I am confused.

Hon Tjorn Sibma: I am confused also.

Hon JACKIE JARVIS: The member's confusion is not my issue.

Hon Tjorn Sibma: It is a serious issue for myself!

Hon JACKIE JARVIS: I will let the member deal with his own condition.

Proposed section 171Z just outlines the process whereby if the application is originally determined by the Premier to be of state or regional significance and therefore goes to the Western Australian Planning Commission at the Premier's request. It then automatically gives power to the Premier to have a call-in if an application was made to the State Administrative Tribunal. There were already call-in provisions for the minister. That does not change. This is literally just to deal with call-ins by the Premier when the Premier initially put the project to WAPC.

Hon NEIL THOMSON: I was interested in that last point, too. Is it fair to say that the Premier's ability to call-in a matter is only if it is to be considered of state significance?

Hon Jackie Jarvis: By interjection, yes.

Hon NEIL THOMSON: Would state significance be in accordance with other definitions of state significance? That maybe seems like a higher threshold than what might be required for decision-making on those matters under proposed section 171Z. Would it be fair to say there is a standardised definition of that?

Hon JACKIE JARVIS: It is the same definition that we discussed earlier. It has a broad meaning but is likely to include matters of social, economic and environmental importance to the state or the region. Some examples might include a children's hospice, community housing or a childcare centre in a regional area with a lack of facilities. It is when the nature and scale of the geographic area of influence is considered to be significant to the state or the region.

Hon NEIL THOMSON: I have one last question on this. I do not know of any other matters under the Planning and Development Act in which the Premier can call-in a matter. We already have the minister, who is a member of cabinet. What was the logic to insert the Premier into a call-in? I would have thought that the cabinet would have made the decision or that there would at least be a conference in cabinet about a matter that might have gone to SAT. I would have thought that the minister would be more than capable to undertake that review. Is there some sort of orchestration here by the government in order to try to give the perception of the independence of the minister?

Hon JACKIE JARVIS: I am advised that when the term "Premier" is used in a bill, it refers to cabinet. My understanding is that the term cabinet is not used in bills and that Premier is the term for a decision made by government at a cabinet level.

Hon NEIL THOMSON: I have another part of my question. Has this Premier or cabinet call-in power been applied in any other legislation?

Hon JACKIE JARVIS: Not that we are aware of. The use of the word Premier to represent the cabinet in the draft was on the advice of the Parliamentary Counsel's Office.

Hon NEIL THOMSON: Okay. We have clarified that. Proposed section 171ZA states that the Governor may amend or cancel approval granted by the commission. This is a different angle to this. Normally, the proponent appeals a decision of the commission. Up until now, we have had a situation in which a proponent may appeal a position and then there may or may not be a call-in by the minister or just a SAT determination. However, the government may amend or cancel an approval here. We have obviously been talking about the Premier, but we are now talking about the Governor. Under what circumstances would the Governor choose to amend or cancel an approval by the commission?

Hon JACKIE JARVIS: I am advised that the purpose of the Governor's oversight is to ensure an additional check and balance for significant development approvals. In practice, reference to the Governor means the Governor acting on the advice of the relevant minister in Executive Council. The Governor's power is by way of subsidiary legislation, meaning that it cannot be easily used. It requires the drafting of formal instructions by PCO, approval

and presentation to the Governor by the Minister for Planning, and scrutiny and potential disallowance by each house of Parliament. It is not something that could be used very easily.

The most likely situation would be one in which the WAPC approved a development that resulted in widespread community outrage to such an extent that both the minister and Parliament felt that the decision should be cancelled or amended. It is hard to speculate more broadly on what kinds of scenarios would be contemplated, but I think the important thing to remember is that it provides a check and balance for the significant development approvals pathway.

Hon NEIL THOMSON: I have suggested that it is an unprecedented provision, notwithstanding that the title of Governor just refers to the Executive Council and so forth. In another part of the bill, there is a provision to codify or formalise the independence of the commission, so is this provision necessary?

Hon JACKIE JARVIS: I answered a question earlier about public interest. This clause will provide a check and balance that requires approval of the minister of the day and both houses of Parliament. There is nothing more to it than that, other than it will provide an additional check and balance when dealing with significant approvals.

Hon NEIL THOMSON: Is there any comparable provision in the Planning and Development Act?

Hon JACKIE JARVIS: I am advised that this was taken directly from part 17.

Hon NEIL THOMSON: I move to proposed section 171ZD, "Regulations", and the proposed part 11C conflict resolution procedure. Can I firstly, at a high level, get a brief explanation? Proposed part 11B is the approvals, appeals and governor role that seems to cover all the matters that are pertinent to a decision. Part 11C seems to deal with the issue of conflict resolution and maybe some other ancillary matters. Is that a reasonable surmisal of that process? Can the minister give me a quick overview of the difference between proposed parts 11B and 11C?

Hon JACKIE JARVIS: As the member said, proposed part 11C is conflict resolution provisions. They are modelled on existing provisions in part 17. This comes from stakeholder consultation that illustrated that the focus should be on resolving conflicts between planning and transport regulatory agencies. As the member said, proposed part 11C is with regard to avoiding conflict. That is why it exists.

Hon NEIL THOMSON: Is it also fair to say, at a quite specific level, that it seems to limit the agencies with which matters can be dealt with under this conflict resolution process to those under the Main Roads Act?

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: In my contribution to the second reading debate I gave a rather lengthy and complex report on a matter of the Kelmscott district centre structure plan. A number of submissions were made to that. Although it was not directly related to matters that might be considered under proposed part 11B—although it could be in the future—the point I am making is that we can often see those referral agencies having a significant imposition, in a broad sense, on the progress of a certain development. I can understand the need for conflict resolution because, in this case under part 11B approvals, the scenario could arise in which matters are approved that might not necessarily accord with the legislative or policy objectives of those other referral agencies. I can understand maybe why there is this requirement.

In the experience of part 17, have there been situations in which approvals have been provided, noting that the educative process of part 17 and its practice has been, no doubt, a factor in the creation and design of part 11C? We could say that the learnings from that process have actually influenced part 11C. Has there been a situation in which decisions have been made under part 17 that have led to a level of legislative conflict with other referral agencies' requirements that has necessitated this conflict resolution process?

Hon JACKIE JARVIS: As I said, this came back following stakeholder consultation regarding part 17. The stakeholder consultation reported that there should be a focus on resolving conflicts between planning and transport regulatory agencies. The most common issue was, for example, that a development could be approved but then there might be conflict with regard to crossovers or slipways for Main Roads. This clause was put in specifically because that was an issue raised by stakeholders. I think that was the most common issue with regard to transport regulatory agencies and planning major developments.

Hon NEIL THOMSON: Let us hope it is not counterfactual and that, given the commission's powers to make approvals that do not necessarily conform, it has made an approval with the policy or instruments that might exist under, for example, the Environmental Protection Act, the Main Roads Act or any other act, for that matter. I assume that the commission is bound in every way with regard to law, but I am talking about the policies that might flow from that.

Hon JACKIE JARVIS: The impact of this part of the bill is to bring transport into the equation earlier rather than later, which is where conflict was arising. The applicant would submit their development approval and the transport agency, for example, Main Roads, would identify any road or traffic issues up-front. The Western Australian Planning Commission, as the relevant decision-maker, would incorporate transport-related information into the planning decision. This will then provide development approval with the appropriate conditions, so that the proponent knows up-front that they require a crossover or slipway before progressing any further. They would then apply to the transport agency for approval to construct the crossover or slipway. As I said, that was identified by proponents

during the stakeholder consultation process as an issue of timing with Main Roads plus development approvals. This will bring the transport agencies front and centre at the start of the process.

Hon NEIL THOMSON: Maybe I could go to section 171ZE just to sharpen my line of inquiry on this matter. Regarding the definitions, the proposed section outlines relevant legal instruments being a legal instrument in part 17; however, it will be narrower when applied to the Planning and Development Act and the Main Roads Act 1930. If a decision has been made by the commission under proposed part 11B, will it be possible that prior to any conflict resolution there might be a case under proposed part 11B to make a decision that will contravene matters sitting under the Main Roads Act 1930?

Hon JACKIE JARVIS: No, they are separate systems. This will not override the Main Roads Act. All it will do is bring the transport regulatory agency in earlier. When the planning decision-maker approves development of, for example, a crossover, the applicant will still need to apply to the transport agency for approval to construct that. At this point, the transport agency would be prohibited from refusing to allow construction of a crossover or slipway when transport issues were already dealt with during planning approval. There are still separate processes and the applicant will still need to apply. This will fix the issue when someone builds or plans to build a significant development and Main Roads Western Australia says the developer needs a slipway and cannot turn in off the highway to that property because it has not dealt with the transport issues. All it is doing is bringing transport to the table early. The proponent still needs to complete the two approval processes, and if Main Roads declines to have a slipway or a crossover for traffic management reasons, then I guess the developer would need to rethink their access ways.

Hon NEIL THOMSON: In the situation that a proponent puts up a proposal, the commission will undertake its assessment under proposed part 11B and then seek submissions from referral agencies. I assume that will still occur under proposed part 11B and is just a normal practice under this process. The officer under the delegation of Main Roads' CEO, as the delegated authority, then says, "We need all these slipways; we need this traffic modelling," and all these other things under—let us say—subsidiary legislation or whatever instrument they are utilising. Under normal circumstances, if we go back to the point at which the commissioner is now standing in the shoes of the decision-maker, I would have thought it would be up to the decision-maker to make a decision based on their obligations under the Planning and Development Act, and the raft of subsidiary instruments that sit under it, with respect to that submission. Why does it necessitate a conflict resolution process? My thought is whether something is happening here that might lead to an ability for the commission to effectively undertake development that does not conform with the requirements under the Main Roads Act.

Hon JACKIE JARVIS: No, that is not the case. As I said, they are two separate processes. All that happens is the transport agency identifies any road or traffic issues. The relevant decision-maker incorporates transport-related information into the planning decision. The applicant still needs to go to the transport agency, but they will know up-front what they are required to do.

Hon NEIL THOMSON: Is the minister saying here that proposed part 11C effectively codifies in the act a process that might otherwise normally happen if part 11C did not exist?

Hon JACKIE JARVIS: This provision will bring transport to the table early, so a planning decision is not made in isolation from what Main Roads may require. It says that the transport agency comes to the table early. The applicant submits the development approval to the relevant decision-maker. At step 2, the transport agency identifies any road or traffic issues, which the relevant decision-maker then incorporates into the planning decision. Once that happens, the applicant still needs to apply to the transport agency for those matters that Main Roads has identified.

Hon NEIL THOMSON: I am still very perplexed as to why this is necessary in the legislation, only insofar as the normal practice of any decision-maker, whether it be a development assessment panel or otherwise. I do not think we have comparable provisions for conflict resolution in a DAP. I think the test is really whether there is a comparable provision. There might have been in part 17, but part 17 was put through in a bit of a hurry. Maybe it was put there because of some nervousness from within government. I do not know the motivation for part 17 to have that more broadly based resolution, because this is what statutory decision-makers do. They are required to broadly consult, engage and seek submissions. I would have felt more comfortable if there was something outlining that process, but instead we have this conflict resolution. I am trying to work out why we have a conflict when someone in the shoes of the decision-maker would already be engaging with Main Roads around policy. I would have thought the views of Main Roads were very important, given the real-world impact of not getting that right. Ultimately, the decision-maker, the commission, has to make a balanced decision on the basis of all the factors it is privy to and then assess it. I am confused why we need this and I wonder to what extent it is necessary. I am trying to ascertain whether I am missing something as to whether it is only necessary because of the broad powers under proposed part 11B. That is my question, but the minister may not have a response to it.

Hon JACKIE JARVIS: As I said, this will bring transport to the table early. The member is saying he does not understand why proposed part 11B is here. It is here because clearly stakeholders advised that, in the past, there have been conflicts between planning and transport regulatory agencies. My understanding is it has been possible

for a development to be approved without paying due regard to whether there should be a crossover or a slip-road. All this does is bring transport front and centre so it can get clarity for the proponent and everyone else. This was based on substantial feedback from stakeholders who used part 17, which quite often resulted in conflicts in the process. All it does is make sure that the Western Australian Planning Commission speaks front and centre to the transport agency to incorporate any transport-related information into the planning decision so that any conflict is resolved up-front rather than down the track.

Hon NEIL THOMSON: Are there any comparable provisions that apply to the exercise of decision-making within the joint development assessment panels?

Hon JACKIE JARVIS: It is worth remembering that the particular clause we are talking about is for complex and significant developments. Quite often, we are talking about large developments, and that is why it was thought to go with this process based on stakeholder feedback. DAPs consider transport as part of their normal decision-making process, but it is not as up-front and early on in the stage. This is a specific clause that will avoid conflict between transport for major, significant and complex developments.

Hon NEIL THOMSON: I remain unconvinced. As I said, I have not necessarily been satisfied with proposed part 11B as a general process. I think the government is yet to demonstrate that it will result in decisions around some of those complex and difficult areas, given the whole range of other instruments available. I think it is simply wrong to suggest that JDAPs do not consider complex and difficult projects—they do. They have a lot of conflict with not just transport, but also other referral agency recommendations, which then have to be weighed up and considered. Maybe this will be a model for something. Maybe it is important and necessary and, therefore, might be added as a model to JDAPs at some point. As I said, from the information I have been given, I am unable to ascertain whether this will provide better decision-making, and I remain concerned, given the massive challenges we already have. I refer to the information I have been given about the approval for the redevelopment of the Princess Margaret Hospital for Children site and the traffic modelling data provided to me through questions in Parliament. The traffic modelling data was restricted to ingress and egress to the site and the delays that will occur with motor vehicles entering and exiting onto Roberts Road and Thomas Street. For me that seems entirely unsatisfactory, given the aggregate effect of development across our city and the impact that has on the total traffic burden for our state. Those very important issues should be more transparently provided to the community as we move forward to achieve the higher levels of density we are seeking.

I am unconvinced as to why we need this provision. It may be that we do need it, but my concern is that this is merely defined as a "conflict resolution process", but it will go beyond the normal expectation of submissions and decision-making based on the evidence provided. It seems to me that the Western Australian Planning Commission might have a process by which it could effectively strongarm Main Roads Western Australia or vice versa when Main Roads might take a particular position. The Water Corporation, Department of Water and Environmental Regulation and a whole range of other agencies are a source of frustration to developers, sometimes for very good reasons and sometimes not so much. They have a job to do to ensure that all their objectives are achieved, so I remain unconvinced as to why it is necessary and to what effect it will have within the context of any non–scheme conforming development. I will leave it there because I feel I will not get a particular response today.

I will leave that as a comment and move to proposed section 171ZN. Proposed section 171ZN, "Direction is disallowable subsidiary legislation", is to do with conflict resolution. I have asked why it is necessary to insert proposed part 11C in the first place, and the minister said that it was necessary to bring in early—I am paraphrasing—collaboration and engagement between Main Roads and the commission. Why is it necessary for that direction under this process to be disallowable if it does not go beyond what the minister said was early engagement?

Hon JACKIE JARVIS: This disallowable instrument is based on drafting advice from the Parliamentary Counsel's Office. If a planned decision has been made, incorporating the advice of transport, and down the track, say a year or two afterwards, there is a whole-of-government reason for changing that decision, the Minister for Planning and Minister for Transport can obtain agreement from the Premier, which as we have discussed means cabinet, to ensure a whole-of-government solution if they need to disallow the previously agreed transport provisions within the development approval. For example, planning approval for a slipway may need to change because some other major roadworks or development is going on. This order will give the power to give direction to a government agency to do something that may not otherwise be considered appropriate. Essentially, it will ensure that there is a whole-of-government solution if a complicated development problem arises after the approval.

Hon NEIL THOMSON: Therefore, this disallowable instrument at proposed section 171ZN will apply to the direction at proposed section 171ZK. Is that correct?

Hon JACKIE JARVIS: As stated in the bill, it will apply to a direction under proposed sections 171ZK or 171ZM.

Hon NEIL THOMSON: Thank you, minister; I had not read that. I am refreshing my memory as we go through the bill. I will circle back to an issue around conflict resolution. Proposed section 171ZK, "Direction to decision-maker by Minister on notification of proposed performance of function", is specifically about conflicting functions. I have sort of had a crack at asking this before, in one way or another. If the commission wants to make a decision that

will conflict with a function of Main Roads—I think the legislation will be limited to only Main Roads, from what I can gather—or, say, if the Minister for Planning wants to make a decision that will conflict with a function of the Minister for Transport, will this provision cover those situations?

Hon JACKIE JARVIS: The conflict resolution provisions will not deny any other non-planning government agency its role. The provisions are to encourage any identified problems or challenges to be identified up-front in the planning approvals stage and therefore the provisions are to encourage integrated decision-making. If a conflict is later identified, the conflict resolution provisions seek to have that conflict resolved in a whole-of-government manner.

Hon NEIL THOMSON: The minister said earlier that conflict resolution was early engagement. Is she now saying conflict resolution is after an issue has been identified?

Hon JACKIE JARVIS: No, member. The member asked about the disallowable section. Earlier, I identified that the conflict resolution provisions are to encourage problems and challenges to be identified up-front in the planning decision. We are now dealing with proposed section 171ZN, which provides that if a conflict is later identified, that conflict can be resolved in a whole-of-government manner. Earlier, we discussed the fact that transport will be brought in early. The member asked why a direction will be disallowable subsidiary legislation; that is because if a conflict is later identified, this provision provides a way that the conflict can be resolved in a whole-of-government manner.

Hon NEIL THOMSON: That has provided some clarity. It can be used to bring together, in layman's terms, early engagement, prior to the decision being made. I question whether that is necessary. I personally do not think it is. I think it is an unnecessary provision, because I would have thought that it would be a matter of course for any decision-maker to do that. We then have the second piece. If we break it into two, one is when there is a disallowable provision after the decision is made, and that reflects the structure of proposed part 11B. I think there is a level of sympathy in the process of 11B, if you know what I mean. I am trying to think of the circumstances of the second part, in which conflict resolution may be applied to a decision after the event. That raises a few issues; for example, we may have had a decision made by the commission and 12 months later an issue has been identified. Has there been advice received on potential implications for a proponent that is seeking a compensation decision that may be restricted after initially gaining approval?

Hon JACKIE JARVIS: It is the opposite. This provision is aimed at preventing proponents being trapped between two conflicting approval systems. The whole idea is to integrate planning and transport. Currently, a major proposal could be approved and they could find when they go to transport that they cannot get access off the main road or the road is not wide enough, for example, and they have to construct a slipway. It is identifying issues early. The member seems to be dwelling on the disallowable. I imagine that there would be a very small number of circumstances. The main role of the proposed section we are talking about will be to assist major developments to have integrated approval whereby transport and planning are on the same page.

Hon NEIL THOMSON: If a developer received approval under proposed part 11B and then found at a later stage that approval was either difficult or impossible to deliver because of the decisions under the Main Roads Act 1930, what will the process be to trigger the direction by the minister under proposed sections 171ZK or 171ZM?

Hon JACKIE JARVIS: I am a little confused, because the whole point of this is that the developer would not find out that there are issues with transport down the track. When there is a significant development, they would know up-front, at the time of the approval process, because we are integrating planning and transport. The member's question was: what if someone got development approval and then down the track found out that the Main Roads component was too onerous? We are saying we are putting it up-front so that will not happen. It will be integrated, so they will know the transport provisions that are required, whether it is a slip-road or a crossover. They will know that because that will be included as part of the development approval process.

Hon NEIL THOMSON: Under what circumstances would the directions under proposed sections 171ZK and 171ZM, which could be disallowable under proposed section 171ZN, be triggered after a decision is made by the Western Australian Planning Commission?

Hon JACKIE JARVIS: Hopefully never. This approval might last for two or three years before they start construction. If there are major roadworks or some other unforeseen realignment of the road—that was not foreseen in the original approval—under the provision we are discussing, proposed section 171ZN, two ministers can come together and make an amendment to the original planning approval to facilitate what needs to happen. It would be a very rare circumstance and it is there under the advice of PCO. Although the idea is that it may be used in very rare circumstances, I do not think it is outside the realm of possibility that there could be major roadworks. There could be a reason to have to realign a road and there could be a tweak needed to the original approval so that Main Roads and planning stay on the same page.

Hon NEIL THOMSON: We use language like "tweak" and things like that. I do not think I am going to get any further clarity on this, other than what has been stated so far. I will not pass judgement on the clarity of any responses, minister; I am only saying that the provision in proposed part 11C raises more questions than it answers, particularly because it is limited to Main Roads. I do not think we have had a clear response to date about why it has been

restricted from part 17, where it was much broader, other than that the PCO has provided advice that it is necessary. I am not going to gain much by continuing in that vein. On that basis, I will move to another clause.

Clause put and passed.

Clauses 12 to 20 put and passed.

Clause 21: Section 257C inserted —

Hon NEIL THOMSON: We are making progress and I have no doubt we will have completed this by question time; that is my aim, given the number of questions I have. The opposition made it quite clear that we had the most challenges with clause 11. We hope that clause 11 delivers the outcomes that have been sought by the government and we look forward to reports on that in due course.

Clause 21 is to do with the performance of development approval functions for, in the main, single dwellings and some other configurations for approvals and delegations through to local government CEOs, from what I understand. My first question is: did the agency undertake an analysis of the need for this particular clause, given that my understanding is that a large percentage of local governments already have this delegation function in place?

Hon JACKIE JARVIS: This proposed section is to provide uniformity across all local government areas.

Hon NEIL THOMSON: That did not answer the question. It is a provision that the opposition supports in principle. We said there were some elements in this bill that we thought were more meritorious than others. In saying that, there are always unintended consequences of any uniformity that is applied across the board. Does the minister know which local governments are going to have different processes? Which local governments currently do not have these provisions?

Hon JACKIE JARVIS: I do not have a comprehensive list. Different local governments have different levels of delegation. It is quite a broad range of different delegations. As I said, the function of this proposed section is to provide uniformity across all local governments.

Hon NEIL THOMSON: Has the government received any feedback from the Western Australian Local Government Association or any local governments raising any concerns with this provision?

Hon JACKIE JARVIS: The Local Government Planners' Association is supportive. WALGA noted the change and noted that many local governments already had this provision but did not provide a strong view either way.

Hon NEIL THOMSON: Will the department be undertaking any analysis of the outcomes of this provision?

Hon JACKIE JARVIS: I would not have thought so.

Hon NEIL THOMSON: On any exemptions that might apply, under what circumstances would there still be a possibility for council to consider any single-dwelling approvals under a planning arrangement?

Hon JACKIE JARVIS: Heritage protected places, including houses on the state heritage list, on local heritage lists or within local heritage areas are where councils can determine the applications for a single house. It is if they are within one of those heritage protected places.

Hon NEIL THOMSON: Would that apply to any modification or demolition of any part or whole of anything that is on a heritage register? As a subsidiary to that question, does that include the local government heritage register?

Hon JACKIE JARVIS: Yes. As outlined, "structure" means "a building, structure, fixture or feature, that is ancillary or incidental to a single house", or a single house. Yes, as I said, it covers local heritage lists and local heritage areas, as well as the state heritage register.

Hon NEIL THOMSON: Is there any risk that it might encourage some local governments to include more dwellings on their local heritage register in order to somehow claw back planning functions?

Hon JACKIE JARVIS: My understanding is that there is quite an onerous process to classify somewhere as a heritage area. Local governments would need to go through that process and show that there is a genuine reason for something to be listed as a heritage area.

Hon NEIL THOMSON: I have a final question. As I said, in principle we support this provision. We think it is welcome in some ways having planning powers for a single dwelling, especially when they conform with the R-codes and the planning restrictions. In some ways, it may be unnecessary. That might be a subjective view, which not everyone shares. Because we will now have the delegation to the local government CEO effectively to make that decision based on the codes and within the process, was any consideration given at all to a complete exemption from decisions in relation to planning given that all developments will still require a building approval?

Hon JACKIE JARVIS: I am advised that many single houses are already exempt from planning approval. This provision is just to capture those dwellings that are not exempt already.

Hon NEIL THOMSON: That —

The DEPUTY CHAIR (Hon Sandra Carr): Hon Neil Thomson.

Hon NEIL THOMSON: Sorry, chair. I was a bit keen there! We must be getting towards the end of the year. Can the minister clarify whether that will apply only when the scheme specifically requires planning approval for a single dwelling? Is that correct?

Hon JACKIE JARVIS: It is in relation to the R-codes, member.

Hon NEIL THOMSON: Is the minister saying the R-codes require planning approval for single dwellings?

Hon JACKIE JARVIS: I am advised that it is when a house does not satisfy the deemed-to-comply provisions in the R-code. It might be a minor setback variation or something else that does not fit the stock-standard deemed-to-comply provisions within the current scheme's R-codes.

Hon NEIL THOMSON: Would this apply in every local government regardless of whether or not there was a requirement for planning approval for a single dwelling? Is that explicitly outlined in the scheme?

Hon JACKIE JARVIS: Every local government already incorporates R-codes, which has the deemed-to-comply provisions. This proposed section will apply only when a building is outside of that normal deemed-to-comply process.

Clause put and passed.

Clause 22: Act amended —

Hon NEIL THOMSON: This clause relates to the planning codes. I note that there was a very fulsome description of it in the explanatory memorandum. I convey to the officers present and those who are watching that I think the explanatory memorandum for this bill has been of exceptional quality. Please convey that via the minister.

Hon Jackie Jarvis: If we are moving on to planning codes, I may need to swap advisers.

The DEPUTY CHAIR (Hon Sandra Carr): Member, take a seat for a moment and we will cease proceedings until we have swapped the advisers.

Hon NEIL THOMSON: I will not spend too much time on this issue. I will pick up on the point in the notes for clause 22. The notes provided for the divisions for the planning codes, which is part 5, are useful. It was quite useful having that overarching information. That is some additional feedback. Sometimes when we have notes provided just for individual clauses, they do not necessarily make sense because of the challenges of the interactions between the various clauses and the part. We have to look at the part as a whole and try to understand the intent. That is elaborating on the feedback that I am providing to the staff at the department.

Hon Jackie Jarvis: If it is easier, I am happy to take questions on part 5 as a job lot.

Hon NEIL THOMSON: That might be the easiest way to deal with this. My questioning on this will not be particularly long. It seems that there was a requirement to tidy up some anomalies that are referred to in the explanatory memorandum that relate to section 32B and the commission referring planning code amendments to the Environmental Protection Authority. My understanding from reading this is that all codes at the present time must be referred to the EPA.

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: All codes are referred to the EPA. I am paraphrasing the explanatory memorandum. Under what circumstances might that duplication have occurred?

Hon JACKIE JARVIS: My understanding is that when R-codes are written, they are required to go to the EPA. The R-codes are then put into local planning schemes, which require a scheme amendment. When the R-codes are put into a local planning scheme, the scheme amendment also triggers a referral to the EPA. That is the duplication. It goes to the EPA when the R-codes are written and also when the R-codes are inserted into the local planning scheme through a scheme amendment. This looks to fix that anomaly.

Hon NEIL THOMSON: Is the minister saying that every scheme amendment effectively gets referred to the EPA?

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: Given that we are looking at trying to find ways of streamlining the process, was consideration given to exempting certain R-codes and whether or not scheme amendments, or both, could be exempted? The EPA probably has enough to do already. I am sure that the good minds at the Western Australian Planning Commission, if they had a provision that required them to do at least a preliminary assessment of an environmental impact, could undertake an assessment to further reduce red tape if they had the capacity.

Hon JACKIE JARVIS: I am advised that the 2020 act contained provisions for exemption by the Environmental Protection Authority for scheme amendments. However, an anomaly was picked up during the drafting process of the regulations and this clause will fix that anomaly.

Hon NEIL THOMSON: I trust that some work has been done. From what the minister said and from what I am reading, this is sensible reform. A level of duplication with EPA referrals occurs in a number of areas, so we have to trust the experts who have gone through this in detail.

I have one last question about this. Is it correct that without this amendment, every time a regulatory amendment is made to the R-codes, it will have to be referred to the EPA?

Hon JACKIE JARVIS: Yes, the member is correct. Without this amendment, every change to the R-code will have to go to the EPA.

Hon NEIL THOMSON: I note that part 7 of the 2020 amendment act dealt with the planning codes. The minister made the comment that that was yet to be proclaimed because these provisions have been drafted on the premise that they will be proclaimed before that legislation's provisions take effect. Is it necessary to make these amendments in order to proclaim that change?

Hon Jackie Jarvis: By interjection, yes.

Hon NEIL THOMSON: I have one last question. Sorry; I always have one last question. I must stop saying that because I end up with multiple last questions. We will take these questions as a collective. Will any codes other than the residential design codes be affected by this provision?

Hon Jackie Jarvis: By interjection, no.

Hon NEIL THOMSON: Thank you.

Clause put and passed.

Clauses 23 to 26 put and passed.

Clause 27: Section 48C amended —

Hon NEIL THOMSON: We are now really churning through this and getting close to hopefully that deadline of 4.30 pm. We move to the improvement schemes. On face value, these changes may be —

Hon Jackie Jarvis: Sorry, by interjection, are you referring to clause 28, because clause 27 comes under part 5?

Hon NEIL THOMSON: Yes, sorry. I will sit down.

Clause put and passed.

Clause 28: Act amended —

Hon NEIL THOMSON: The excellent drafting by the agency caught me out, because the very comprehensive advice and explanatory memorandum prior to the clause number just tripped me up a little there. I will now refer to part 6 of the bill. We may again attempt to deal with part 6 as one part, if that is possible.

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: Let us see whether we can roll it through on that basis. Part 6 deals with nonconforming uses. The explanatory memorandum states —

> … s.122C precludes the use of an improvement scheme to extinguish any non-conforming use. A non-conforming use means a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in conformity with a provision of that scheme.

Although I do not have any specific examples in which an improvement scheme has a nonconforming use, I am certainly aware of instances in which local planning schemes, structure plans and a whole range of other instruments have resulted in some level of conflict. My questions will apply those sorts of examples to a hypothetical scenario in which an improvement scheme is applied. For example, industrial use was mentioned. I am thinking of a rather infamous chicken farm that existed, or a piggery—I am not sure—at a time when urban development was occurring. There were long and protracted negotiations with the owner of that property in order to achieve a more conforming use of land around urban development. Those negotiations can be quite onerous and expensive. In saying that, they also provide a level of fairness, I suppose, to the person who is being encroached upon by the urban front or, in the case of an improvement scheme, might already be within the urban front. It might be that the development potential of a brownfield site is being uplifted and somebody might be operating within the urban environment in a perfectly legitimate way, but then finds that due to densification, that legitimate operation is no longer wanted in that area. I guess this goes to the heart of the issue of property rights, the payment of fair compensation and for those persons to be given the appropriate level of time and business continuity. Those issues come to mind, particularly for medium and small businesses that might be required to relocate at an expense.

There is scope in this provision for the introduction of what is referred to as "injurious affection", which is a process that I am probably more familiar with through past experience when somebody effectively has the scope of their land use reduced. They have gone from a rural land setting to a parks and recreation setting. A lot of that work was done in the last couple of decades as the Perth and Peel regions were developed under the metropolitan region scheme and the Peel region scheme in which considerable areas of land have had their land use reduced. Injurious affection seems to be quite a simple calculation in that case because the person affected is effectively allowed the

quiet enjoyment of that land within the concept of the new zoning, but they get compensated and paid the difference between the value of the land for parks and recreation use and the value of the land for rural use.

That was, and remains, a contentious issue for people who own rural land. Some of those people have the particular view that if not for the introduction of parks and recreation zoning, they might have been able to increase the zoning of that rural land. I just want to ask about the application of injurious affection for land that has effectively had an uplift in value. By definition of an improvement scheme, the land might have gone from R20 to mixed use and may allow for light industrial or some other use. That change has allowed a significant improvement in density and the landowner has to be effectively compensated. The normal situation that I have laid out—the one that I am familiar with, at least—is one in which there is a reduction in the potential use of that land for environmental purposes. How will injurious affection be applied to a landowner who has a lower land use that has been overlaid by an improvement scheme? I suppose, as part of that answer, will that landowner be compensated to the value that the improvement scheme might then bestow upon that land?

Hon JACKIE JARVIS: The member is correct. This section does deal with nonconforming land use. The member gave the example of a factory on land that used to be industrial, but has been rezoned to residential. The fact that the owner was there first gives them the right to keep using the land. However, if a planning authority decides to extinguish that nonconforming land use, the landowner can apply for compensation. I am advised that the normal principles for compensation would apply and nothing will change under this bill. I do not have that information on hand because this bill will not change anything there. The member asked about the compensation trigger in which the land use is going to a higher value land use. I am advised that in most circumstances, the owner of that land would normally elevate that land to the higher value land use. For example, if a factory block was now available for residential land use, I would think that the landowner would just convert their property to that land use and sell their property off as residential land and reap the benefits. The member is asking about them wanting to exit the property and be compensated. I have been told that there are normal compensation triggers and valuation processes. However, those will not be changed under this bill, so I do not have those details at hand.

Hon NEIL THOMSON: This is clearly going to be a situation in which some duress will be applied. It is not a situation of voluntary exit. If someone was operating a factory on a property that they owned and the improvement scheme applied to that property and increased the land value, they could clearly sell that property. They are always at liberty to sell it at the increased value. However, the only reason that injurious affection is included is for situations in which duress is applied and the rights of the landowner to operate on and enjoy that land have been extinguished. Up until now, there was not that capacity. My understanding is that the current arrangements under the act are that the rights granted prior to the introduction of the improvement scheme have effectively been grandfathered to enable a person to continue operation until such time as they choose not to.

We are saying that we are going to change that. Under what circumstances will this new provision be triggered to extinguish the rights of a landowner? Assuming that a landowner is not seeking to have their rights extinguished, will they be fully compensated to the uplifted market value of their land?

Hon JACKIE JARVIS: It is quite a complicated issue. I have been told that compensation triggers and evaluations are already outlined in section 174 in part 11 of the Planning and Development Act. That will not change. There is very detailed information about how that evaluation is worked out. It is not actually dealt with in this bill. Does the member want me to repeat what is already in the existing act? As I have said, nothing has changed. As I understand, the member is talking about the betterment provisions when the value of the land goes up. Is that correct?

Hon NEIL THOMSON: Maybe I will ask another question. I have a simple question to ask. Injurious affection usually infers that some injury has been done to a landowner, and compensation is normally paid to the landowner. In many circumstances, it does not result in the forced acquisition of land; compensation is usually paid to a landowner and the landowner retains ownership of the land. We are talking about Metronet provisions. Are we proposing to insert a provision that will relate to a landowner operating within an area to which an improvement plan will apply? Are we suggesting that a landowner will be paid only partial compensation, to the extent that they were injured and injurious affection applies, and that they will retain ownership of the land?

Hon JACKIE JARVIS: The member is dealing with matters and using terms that are not included in this bill, and wants to delve into matters that are already dealt with within the existing act that are not changing. I do not have the advisers here to provide that advice.

Hon NEIL THOMSON: That response is wholly unacceptable because we will be inserting a new provision to apply to land over which an improvement scheme will be applied for injurious affection. That currently does not exist. There are already provisions within the Planning and Development Act for the acquisition of land by the Western Australian Planning Commission; in fact, it was a major part of my role when I was the secretary of the Planning Commission. On a weekly basis we would purchase, with partial compensation, little parcels of land within the red zone off roads. This is a regular thing that happens within the Department of Planning, Lands and Heritage as part of an officer's responsibility because that is part of the role. That land was acquisitioned so that

in future, the land could be utilised for roads et cetera. We need to get to the bottom of whether we will somehow diminish the rights of landowners who might be undertaking a particular activity that does not conform with the improvement scheme or the wishes of the government, to such an extent that they will be partially compensated but which will not result in full compensation for the land that they might own and operate in a particular area.

Hon JACKIE JARVIS: I think the member is asking why these provisions have been introduced. In answer to his question, no, but provisions have been introduced. Improvement schemes exist to help implement projects and infrastructure of state and regional significance. If nonconforming use rights cannot be extinguished, it undermines the ability to effectively implement improvement schemes. When uses that are inconsistent with the purpose of the improvement scheme exist—for example, industrial uses in an area identified for residential development—there needs to be capacity for these uses to cease operation. For example, improvement schemes are currently being used to facilitate appropriate development, including housing, around Metronet stations, as the member noted. Importantly, when a nonconforming use right is extinguished, the landowner is able to be compensated in the manner that exists within the current act. It is a longstanding part of the planning system that nonconforming use rights can be extinguished. Nonconforming use rights provide for land use or structure to continue its ongoing use despite the change in scheme or zoning. The planning act already allows state or local governments to extinguish nonconforming land use rights to allow projects of particular importance to proceed. However, the landowner is compensated under the provisions that are set out, as I said, at sections 174 to 180 under part 11 of the Planning and Development Act. This amendment seeks to extend the ability of the WAPC in improvement scheme areas.

Hon NEIL THOMSON: Will the application of injurious affection to land within an improvement scheme mean that a landowner will be compensated merely for the injury that the improvement scheme has been applied and not be given the potential to, effectively, sell that land to the WAPC?

Hon JACKIE JARVIS: As previously advised, there are no changes to compensation in the current act. Compensation triggers and evaluation processes are outlined in section 174 under part 11 of the Planning and Development Act, and nothing has changed.

Hon NEIL THOMSON: We are just going around in circles.

Hon Jackie Jarvis: Indeed, we are.

Hon NEIL THOMSON: This is actually an important issue, and the minister is not answering my questions because it is easy to say that nothing has changed in part 11. What is happening is that part 11 will now be applied by a requirement under an improvement scheme. I have not even got to questions about business continuity and all those issues for somebody who is operating a business. Maybe I am wrong, and I will hopefully get an explanation. It is a duty of being in Parliament that we get an answer. Effectively, for someone running a small business, such as a small engineering workshop, in an area where an improvement scheme that says it will now go to nine to 12 storeys, this provision will effectively give power to the commission to say that person's right to operate their small business will no longer exist, effectively, by decree the state, through the commission, but it will give them injurious affection and some sort of compensation. What is not clear to me, which is the answer that the minister owes to the community—she can say she is representing the minister—is to what extent that person or owner will be able to get fully compensated for their business continuity and relocation expenses? They will have to move their business and may choose to divest themselves of that land to seek to sell it. To what extent will that occur? Maybe I am missing something here, but the minister owes that answer.

The government is inserting a new provision and when improvement schemes were put together in the very first instance, thoughtful heads would have got together. That would suggest that that an injurious affection provision did not apply, because there were probably other provisions within the Planning and Development Act that enabled for a full acquisition process and negotiation, a full compensation package that may have been more generous. I do not know. Will this provision apply to landowners within the improvement scheme, and is there any scope for a diminished compensation—whatever form that takes place—by the mere act of introducing this provision for landowners who are currently operating certain businesses within areas that may be affected by an improvement scheme?

Hon JACKIE JARVIS: All the things the member talked about with the cost of moving a business et cetera will be part of the valuation process. As I said, a landowner affected by an improvement scheme provision that extinguishes their nonconforming use will have the right to claim compensation in accordance with the existing part 11 of the act and all the matters the member talked about. The member gave a scenario for a small business with a factory on land that is suddenly rezoned to go to nine storeys. If I were that small business owner, I might be inclined to sell my land to a developer at a high profit. However, if the landowner wishes to go through the process and the valuation process—what was the bit about what was diminished?

Hon NEIL THOMSON: I am asking for some comfort about the introduction of this provision. Say a business is operating very profitably within the context of some land use that is deemed to be nonconforming and they will have to be uplifted and moved. Let us put aside the fact that we will effectively force that business to move, because that is what this provision will do. It will effectively force that business to be moved to another location if that

business owner chooses to continue their business. To what extent will this provision provide for adequate and fair compensation? I think that is the question I am asking. I think we can live with the fact that in some circumstances there has to be a circuit breaker for government in order to achieve a certain outcome that enables for a wider development to occur, because sometimes there might be a small factory located in a place that might not allow for a development next door due to the nature of that particular business. My question is genuine, because I want some comfort that there will be full compensation, more so than the partial compensation that is normally the case. That is why I gave that other P&R example of a partial compensation normally being the case. Will we get full compensation to the full value of the land, along with other aspects that might be considered in any way injurious to that business?

Hon JACKIE JARVIS: It perhaps might assist to go through the valuation process as it exists in the act. This is under "Division 2 — Compensation where land injuriously affected by planning scheme". Section 182 states —

(1) A Board of Valuers is established.

(2) The Board consists of the following members appointed by the Governor —

(a) a chairperson nominated by the Commission; and

(b) 3 other members nominated by the body known as The Real Estate Institute of Western Australia, an incorporated association under the *Associations Incorporation Act 2015*.

(3) Each of the persons appointed to the Board is to be an Associate or a Fellow of the Australian Property Institute, an association incorporated under the laws of South Australia.

(4) Judicial notice is to be taken of the signature of the chairperson on any finding of the Board.

(5) Schedule 9 has effect.

Section 183, "Valuations by Board", states —

(1) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under a planning scheme for a public purpose who gives notice of intention to sell the land and claim compensation is to, unless the responsible authority waives the requirement, apply to the Board of Valuers in the prescribed manner for a valuation of the land as not so affected and the Board is to make the valuation.

(2) Subject to subsection (4), a valuation made by the Board under subsection (1) is to be communicated to the applicant and to the responsible authority and, for the purposes of this Division, a valuation so made is final.

(3) Upon receipt of a valuation made by the Board under this section, the responsible authority is to advise the owner of the subject land of the minimum price at which the land may be sold without affecting the amount of compensation (if any) payable to him or her under this Division.

(4) Where any land with respect to which a valuation has been made under this section is not sold within a period of 6 months from the making of the valuation, the Board may, at the request of the owner of the land, if in the circumstances of the case it thinks it just to do so, review the valuation and either confirm the valuation or vary it.

(5) Where the Board reviews a valuation under subsection (4), it is to notify the owner of the land and the responsible authority accordingly and upon that notification subsection (3), with such modification as circumstances require, applies to the valuation as reviewed by the Board.

Hon NEIL THOMSON: The minister mentioned when land is reserved under a planning scheme. Is that consistent with the approach of the application for an improvement scheme?

Hon JACKIE JARVIS: What I did there is read a section of the act that is not changing and therefore is not relevant to this bill. I am happy to take questions that are relevant to this bill. I indulged the member by going through the valuation process. However, I am not sure whether his current question relates to the bill before us.

Hon NEIL THOMSON: Likewise, I am not sure whether it does, and that is why I asked the question. The issue here for me is that the minister explained a valuation process, which I explained in layman's terms earlier, if I could use that term. I explained the valuation process when land is reserved under a planning scheme. What I do not have, and have not yet been given, is any description of how the land might be valued, including how the business arrangements of an owner might be valued under the imposition of an improvement scheme. I think that goes to the heart of my problem. I have that concern on behalf of the community out there in terms of this issue. I think the community requires some level of confidence that this is not some sort of land grab by the government beyond the normal scope of compulsory acquisition. The state has that capacity, and in that situation, land is usually compulsorily acquired with a solatium, which is an additional 10 per cent allowance. My understanding is that an additional amount of money is paid on the valuation when land is compulsory acquired. That is why the Western Australian Planning Commission has been so effective over many years. It had a willing seller–winning buyer arrangement based on market value in which land is transferred

for those important road reserves, as people sold off their front yards along Main Street, Guildford Road and so forth. In this case, I am worried, and I want an assurance from the minister that this will not result in the diminishment of people's property rights. These are hardworking business people who, in particular, have operated successful businesses and will suddenly find themselves in front of a Metronet station and basically being forced to either move or shut down their business in a way that results in a diminished outcome that might otherwise be achieved.

Hon JACKIE JARVIS: To clarify, the purpose of this proposed section is simply to enable improvement schemes to be treated just like normal planning schemes and for the same compensation process to apply. As I said, all this proposed section would do is enable improvement schemes to be treated in the same way. It will fix an anomaly in the act. I read out the valuation process. A claimant may also apply to the State Administrative Tribunal to determine any question about whether the land is injuriously affected. We are going down a rabbit hole here about how valuations are done. Nothing changes. All this part of the bill will do is enable improvement schemes to be treated like normal planning schemes and for the same compensation processes to apply.

Hon NEIL THOMSON: Clearly, I do not think I will get a straight answer about whether there will be any disadvantage by introducing proposed part 6. It incorporates a number of provisions, but I think there seems to be no guarantees about its introduction. I put on the record that we are not opposing this bill. We think there are elements of this bill that are good, there are some that we did not really know and others that we had concerns about. This is yet another element that I have concerns about. Only time will tell.

Hopefully, there will not be any situations in the future when some hardworking local business—for example a small engineering workshop or some other business—finds an improvement scheme overarching it and discovers it is a result of what we have done in this place today, and that somehow that business is now going to be a lot worse off. The minister has given absolutely no comfort in respect of that. I do not even know whether the minister is in a position to provide any comfort. As she said, she is the representing minister. Unfortunately, the Minister for Planning is in the other place. Unfortunately, the complexity of this bill is probably to such an extent that this will no doubt at some point play out in either SAT or the courts. No doubt, the law applied here will have an impact one way or another for the future of those persons. On behalf of the opposition, I put on the record that I cannot support this sort of outcome. We are not opposing this in the sense of the broader bill, but this is the government's bill. This is not unlike our position on the Aboriginal Cultural Heritage Act; we said that that was the government's bill. Yet again, this is a complex piece of legislation and I do not think we have necessarily had forthright answers. I hope the outcome will be similar to the Aboriginal Cultural Heritage Act, which was repealed. In this case, probably only a few people will be affected, so I hope the outcome here will be fair, but I am not convinced that it will be.

Hon JACKIE JARVIS: The comfort I will give the member is that nothing in this amendment bill will change the compensation processes that exist in the current act. The purpose of this part of the bill is to enable improvement schemes to be treated like normal planning schemes and for the same compensation process to apply, which, as I outlined, will have a board of expert valuers and the ability to appeal to the State Administrative Tribunal. Nothing has changed. The planning minister is in the other place and the member's colleagues had adequate time to ask the same questions of that minister. As I said, the comfort I give to the member is that the purpose of this bill is simply to fix an anomaly and enable improvement schemes to be treated like normal planning schemes. Nothing has changed with the compensation matters.

Clause put and passed.

Clauses 29 and 31 put and passed.

Clause 32: Act amended —

Hon NEIL THOMSON: My bad. As I read the bill, part 7 is under clause 31, but I have both clauses open now and I am back onto the bill. Part 7, "Subdivision of land", refers to strata titles. If we could discuss the whole part, that would be useful. The matter here appears to be commendable. From what I can gather, for subdivision applications, there have been some challenges in the termination of strata titles schemes, which can be extraordinarily difficult. My understanding was that reforms went through in relation to the number of owners who might need to consent to a strata title amendment to their tenure. This issue becomes more important into the future because of the legacy strata title developments, particularly those less dense strata title developments that might exist. For example, the smaller, older, walk-up type apartments and small strata developments that were a theme over the last 20 years—developments with three to eight strata units that occurred throughout our city. Going forward, with the intensification of land, they may no longer fit for purpose, so I think this is something we support.

On behalf of people out there who might own strata title units at the moment, can the minister explain to the community to what extent this process might limit the rights of existing strata title owners? My understanding of this is that it will not in any way affect them, but it will simply improve the ability for the Western Australian Planning Commission to undertake a subdivision, given the controls that exist under the Strata Titles Act. I seek some reassurance on behalf of the community. Is there any extent to which the bill might impact on the rights of strata title owners in order to retain or control their strata title units?

Hon JACKIE JARVIS: As the explanatory memorandum states —

> … this proposal does not impact or undermine existing statutory safeguards (under strata titles legislation) that Landgate oversees in relation to the termination of strata schemes …

Currently, there is a requirement for proponents who wish to terminate a strata scheme, firstly, to apply to create a freehold lot, which Landgate considers a type of subdivision, and, secondly, to lodge a subsequent application to the commission for subdivision approval. This has created a two-step process rather than a single process. As part of the red-tape reduction, the bill will basically eliminate that two-step process as it is unnecessary red tape and discourages development. This clause will not impact or undermine existing statutory safeguards.

Clause put and passed.

Clauses 33 to 37 put and passed.

Clause 38: Sections 10 to 13 replaced —

Hon NEIL THOMSON: Maybe we can deal with this as part 8—it is probably not essential—because it relates to the Western Australian Planning Commission, but it is quite a large clause, so we can probably just proceed with clause 38. Clause 38 will replace sections 10 to 13. If the minister recalls, I raised the issue about the removal of the three directors general from the Department of Transport, the Department of Water and Environmental Regulation and JTSI. I will not try to say what the acronym stands for because I do not know. I think one letter stands for "jobs", but I will not try because I will probably get it wrong. Anyway, JTSI covers those development areas within the government and has a key role in coordinating major projects. I think the major projects stream sits within JTSI, which has a very important role in that. Google can be a very good thing! Those members who are looking askance can quickly check on their phones. It will be something else to look at in these last dying minutes of the 2023 parliamentary session.

My point is that there was some commentary on this. I appreciated the minister's response yesterday—I have lost track of time; I think it was yesterday—when we talked about the new group that was being set up to help coordinate specific issues around infrastructure. I cannot remember the title of it, but a new coordination group was being established and I think that is important. The minister mentioned that an infrastructure coordinating committee had been disbanded when Infrastructure Western Australia was established and took over that role. We all know that Infrastructure WA has a more strategic role in major projects. It focuses on things like the Kwinana port, for example, and major infrastructure projects around the state. The role of the infrastructure coordinating committee is to provide advice, to a certain extent, to the commission, on those major developments but it also has an important coordination role. Given the ongoing challenges we have in our state with the delivery of things like wastewater, water, electricity and the transport piece, which we have spoken at length about, within the significant development pathways, that piece is often a form of conflict. From my recollection, there seems to be a decline in participation by those directors general. I think the machinery-of-government changes possibly impacted that to some extent. I recall that the Department of Communities was the other agency that had a representative on the Western Australian Planning Commission. I think there has been a significant workload put on some of the directors general because they now control larger agencies. Prior to that, the department of housing would have been more specifically related to housing delivery. I think the Department of State Development was the agency that was previously there. What was the rationale for the removal of those directors general from the WAPC?

Hon JACKIE JARVIS: The decision to remove directors general was done at the request of the WAPC. A restructure of the WAPC board was requested after a review was conducted in 2022. Directors general will still be permitted to attend and participate moving forward, but as observers, not voting members. The feedback was that WAPC was sometimes criticised as being too much of a creature of government. New sections of the bill emphasise WAPC's impartiality and independence. In line with that, it is better for other government agencies to attend as observers that assist discussion but do not formally vote.

Hon NEIL THOMSON: I will put the significant development pathway aside. In a general sense of the planning commission's duties, would there be a requirement to seek those directors general to come together if there was a stand-off? The minister noted they would be there as observers, but would there be any expectation to invite them? I doubt that any director general would ever attend a WAPC meeting again if they were just invited as observers, unless they were requested to by the chair. That is my view.

Hon JACKIE JARVIS: Yes, of course. The WAPC can invite relevant directors general. I remind the member that the state referral coordination unit will be made up of other agencies, including Main Roads, the Public Transport Authority, Western Power, the Water Corporation and the Department of Education, to name a few. Agencies will be able to send representatives, be it the director general or other experts, as required.

Hon NEIL THOMSON: The state referral coordination unit is the name that escaped me during my preamble. I think that will provide a potential buttress against any weakness that might occur from the removal of those directors general. It would not be a reform that I would put through if I were a minister. In fact, if I am the minister in 2025, I expect the Mettam Liberal government will have to review the performance of the WAPC going forward. I look

forward to that review, along with other things, to make sure that the state is back on track. It is getting to that time, folks, and we are going to end it with a bang. Sorry, I am being a bit disorderly there, chair.

The DEPUTY CHAIR (Hon Dr Sally Talbot): I am sure you were about to ask a question, honourable member.

Hon NEIL THOMSON: Yes, I am. The minister made the comment that the WAPC is seen as an instrument of government. It is an instrument of government. Which stakeholders lobbied the government for these changes?

Hon JACKIE JARVIS: As I stated, a review of the WAPC board was conducted in 2022, which informed this decision.

Hon Dr BRAD PETTITT: I have a question that has come from speaking to local governments in the area. There are two parts to the question. Firstly, there was a concern about having a smaller number of members on the Western Australian Planning Commission. Will there be the same number of members for regional development applications versus urban applications? That is noting that there is a sense that there may be different skill sets. There was also a concern around the quorum and how we can ensure that this new, smaller WAPC does not lead to a backlog of approvals.

Hon JACKIE JARVIS: There is a requirement that, of the new membership of seven to nine people, at least one has extensive regional experience. I note that the WAPC is able to establish committees to focus on specific issues, so that may be another mechanism. With regard to the quorum, a quorum is set by regulations, but 50 per cent should be achievable. Remember, these are professional board members. There are lots of government boards and agencies that have a similar number. It was thought that the current membership of 17 people was too unwieldy.

Clause put and passed.

Clauses 39 to 41 put and passed.

Clause 42: Section 17 amended —

Hon NEIL THOMSON: I think this is a welcome change so there is a bit more clarity around the directions that the minister can give. I will mark that on the record. The long-held view that positions and directions can only be procedural has been pushed around a bit by various ministers. I can say, without outing any particular ministers—I would never do that—that I think this is a good thing to proceed with. Are there any examples of concerns raised or advice provided by the chair of the Planning Commission about the independence of the WAPC?

Hon JACKIE JARVIS: This reform merely confirms and clarifies a longstanding view that the minister's directions can be procedural or administrative in nature. It reflects the Western Australian Planning Commission's independence in that the minister cannot give operational direction to the WAPC. It does not interfere with the minister's own independent powers. It just supports changes to section 13, again reflecting the WAPC's independence.

Clause put and passed.

Clauses 43 to 63 put and passed.

Clause 64: Part 9A inserted —

Hon NEIL THOMSON: This is another welcome change, potentially, in relation to an extension of time in which to review instruments. There has certainly been some feedback from local government over the years that they are forever reviewing local planning schemes. In some circumstances, at least, five-year reviews are probably not required. Under the proposed 10-year process, if a local government chooses to go through with a review on the tenth anniversary, to what extent will there be any additional vulnerability for that local government? My question is in relation to the significant development pathway. My recollection is there was capacity for a trigger after five years. If a local government were to apply the review only every 10 years on the anniversary, would there potentially be a problem that it would still effectively be open to more, I suppose we could say, interference by the Planning Commission in relation to specific development applications?

Hon JACKIE JARVIS: I am not sure what the member's question is. He is saying if someone —

Hon Neil Thomson: A local government.

Hon JACKIE JARVIS: If a local government —

Hon Neil Thomson interjected.

Hon JACKIE JARVIS: Yes, so what is the member's question?

Hon Neil Thomson: Noting the provisions under the —

Hon JACKIE JARVIS: I am going to sit down because I am afraid we do not understand the question.

Hon NEIL THOMSON: I understand that, under the significant development pathway provisions, there might be some interaction after five years where there might be particular scope. I see an adviser nodding, so I might be right. Maybe I am wrong, but could the minister explain?

Hon Jackie Jarvis: I am still not clear what the question is.

Hon NEIL THOMSON: Under the significant development pathway, my understanding is that after five years, there is an additional provision for a level of interaction—it is not the right word—with the commission.

Hon Jackie Jarvis: By way of interjection, that will change to 10 years.

Hon NEIL THOMSON: Will it change to 10 years?

Hon Jackie Jarvis: Yes, we discussed that yesterday.

Hon NEIL THOMSON: The clarification is that if a local government strictly adheres to that 10-year period, there will be no additional impact on them in any way from the significant development pathway; is that correct?

Hon Jackie Jarvis: That is correct.

Clause put and passed.

Clauses 65 to 70 put and passed.

Clause 71: Part 13 Division 4 inserted —

Hon NEIL THOMSON: I am dealing with part 10, "Powers of entry and inspection". There seems to be an extraordinary amount of powers of inspection. I will try to finish on time because I understand there are other imperatives. My understanding is that there might have been a problem. Given that we have a development assessment and application role, we are standing in the shoes of the decision-maker in some cases. Was it necessary to include these powers of inspection because, in fact, the role of the Planning Commission has fundamentally changed? The role of the commission is such that it now operates more like a super local government in the sense that it now has officers from the Department of Planning, Lands and Heritage who go out and assess conditions that the commission is applying to these developments. Is that the reason we are introducing these new powers of inspection?

Hon JACKIE JARVIS: The reason for these new powers of entry is that there are currently no contemporary, fit-for-purpose powers of enforcement for DPLH officers to enforce state planning laws. In fact, local government officers have greater enforcement powers than the state itself, and this will fix that anomaly. These enforcement powers reflect contemporary community standards, including the rights of occupiers and requirements to obtain a warrant. They are based on similar provisions set out in the Heritage Act.

Hon NEIL THOMSON: I will keep to my word and make this the last question. Of course, the commission does not have the same powers as local government because the commission did not undertake this sort of process until the introduction of part 17. It was not part of its job to do these development applications in the same way, and it was to a lot more limited extent. As I said earlier, my understanding is that it was only in some cases where there was crown land, for example. For the record, the issue is that the commission's role has been fundamentally changed. It has gone from having a purely more strategic rule-keeping role as the arbiter of the rules in our planning system and managing those strategic processes across local government, to including a development application and assessment role that had not been previously the case. It still leaves me with a level of concern that there are some opportunities here. In lieu of my contribution to the third reading debate, I will just make my last comment that although the opposition is not opposing this bill, I think it is going to significantly change the working environment of the Department of Planning, Lands and Heritage and the role of the Western Australian Planning Commission.

Clause put and passed.

Clauses 72 to 82 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Jackie Jarvis (Minister for Agriculture and Food)**, and passed.