

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 204

TUESDAY, 23 JUNE 2020

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. Message from His Excellency the Governor — Assent to Bills

The President reported the receipt of a Message from His Excellency the Governor assenting to the following Bills —

19 June 2020 — Message No. 25	Act No.
Procurement Bill 2020	No. 24 of 2020
Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019	No. 25 of 2020

3. Petition

Hon Nick Goiran presented a petition from 915 petitioners requesting the Legislative Council to inquire into any planning decisions being made in relation to the proposed redevelopment of the Glen Iris Golf Course. (Tabled Paper No. 3988).

4. Ministerial Statement — Implementation of the *Voluntary Assisted Dying Act 2019*

The Parliamentary Secretary to the Minister for Health made a Ministerial Statement with respect to the implementation of the *Voluntary Assisted Dying Act 2019*.

5. Papers

The following Papers were laid on the Table by —

President

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Minister for Regional Development*Notices —*

Fair Trading Act 2010 (Consumer Goods (Aquatic Toys) Safety Standard 2020 G.G. 16/06/2020 and Consumer Goods (Projectile Toys) Safety Standard 2020 G.G. 16/06/2020) 3985

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Parliamentary Secretary to the Deputy Premier*Orders —*

Public Health Act 2016 (Public Health (Notifiable Infectious Diseases) Order (No. 2) 2020 G.G. 19/06/2020)..... 3987

6. Shire of Augusta Margaret River Cemeteries Local Law 2020 — Disallowance

Hon Robin Chapple: To move on the next day of sitting —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Shire of Augusta Margaret River Cemeteries Local Law 2020* published in the *Gazette* on 24 March 2020 and tabled in the Legislative Council on 31 March 2020 under the *Cemeteries Act 1986*, be and is hereby disallowed. (Tabled paper 3720).

7. Suspension of Standing Orders — Variations to Order of Business and Sitting Times

The Leader of the House moved, without notice —

That so much of the Standing Orders be suspended as to enable the following variations to the order of business and sitting times as follows —

- (a) Tuesday, 23 June 2020:
 - (i) The sitting to be suspended for one hour, between 6.00pm and 7.00pm.
- (b) Wednesday, 24 June 2020:
 - (i) The Council to sit beyond the usual adjournment time and take Members' Statements at 9.45pm.
 - (ii) The sitting to be suspended between 6.00pm and 7.00pm.
 - (iii) That Consideration of Committee Reports be dispensed with.
- (c) Thursday, 25 June 2020:

- (i) The Council to commence sitting at 9:00am.
- (ii) The Council to sit beyond 5.20pm and take Members' Statements at a time ordered by the House.
- (iii) That Non-Government Business and Private Members' Business be dispensed with.

Debate ensued.

The motion requiring the concurrence of an absolute majority.

Question — put.

There being a dissentient voice the President ordered the Council to divide.

The Council divided.

Ayes (30)

Hon Martin Aldridge	Hon Alannah MacTiernan
Hon Ken Baston	Hon Rick Mazza
Hon Jacqui Boydell	Hon Kyle McGinn
Hon Robin Chapple	Hon Michael Mischin
Hon Jim Chown	Hon Simon O'Brien
Hon Tim Clifford	Hon Martin Pritchard
Hon Alanna Clohesy	Hon Samantha Rowe
Hon Peter Collier	Hon Tjorn Sibma
Hon Stephen Dawson	Hon Charles Smith
Hon Colin de Grussa	Hon Matthew Swinbourn
Hon Sue Ellery	Hon Dr Sally Talbot
Hon Diane Evers	Hon Dr Steve Thomas
Hon Donna Faragher	Hon Darren West
Hon Adele Farina	Hon Alison Xamon
Hon Colin Holt	Hon Pierre Yang (<i>Teller</i>)

Noes (3)

Hon Robin Scott	Hon Colin Tincknell
Hon Aaron Stonehouse (<i>Teller</i>)	

The concurrence of an absolute majority of the whole number of Members being met Standing Orders suspended.

8. Order of Business

Ordered — That Orders of the Day No. 1, *Eastern Metropolitan Regional Council Waste Facilities Local Law 2019 — Disallowance*, 2, *Shire of Coolgardie Parking Local Law 2019 — Disallowance*, 3, *Shire of Coolgardie Public Places and Local Government Property Local Law 2019 — Disallowance*, and 4, *Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2020 — Disallowance*, be taken after Order of the Day No. 29, *Family Violence Legislation Reform Bill 2019*. (Leader of the House).

9. Planning and Development Amendment Bill 2020

The Order of the Day for the further consideration of this Bill, in Committee of the Whole House, having been read.

The President left the Chair.

In Committee

(Hon Simon O'Brien in the Chair)

Clause 4.

Debate resumed on the amendment of Hon Alison Xamon, as follows —

Page 6, lines 23 to 25 – To delete the lines.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Planning moved —
Page 7, line 3 — To delete “*commenced* — the” and insert:

commenced — has the

Debate ensued.

Amendment — put and passed.

The Minister for Environment representing the Minister for Planning moved —
Page 8, after line 16 — To insert:

- (3) To avoid doubt, this Part is subject to section 5 of the EP Act.

Amendment — put and passed.

The Minister for Environment representing the Minister for Planning moved —
Page 10, after line 6 — To insert:

- (7) The Minister, within 14 days after the day on which a direction is given under subsection (5), must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

Debate ensued.

Hon Tjorn Sibma moved to amend the amendment as follows —
To delete the word “Minister” and to insert:

Premier

Amendment to the amendment — put and passed.

Amendment, as amended — put and passed.

Hon Alison Xamon moved —

Page 10, after line 7 — To insert:

- (7) The Minister must —
- (a) set criteria that the Minister will apply in deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274; and
 - (b) apply those criteria whenever deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.
- (8) The chief executive officer must ensure that copies of the following are publicly available on a website maintained by, or on behalf of, the department principally assisting in the administration of this Act —
- (a) any notification made to the Minister under subsection (1);

- (b) if a development application is referred to the Commission under subsection (3) — the referral and the application;
- (c) if a direction is given under subsection (5) — the direction and the development application;
- (d) the current version of the criteria set under subsection (7)(a).

Debate ensued.

Hon Alison Xamon, by leave, withdrew her amendment.

Hon Alison Xamon moved —

Page 10, after line 6 — To insert:

- (7) The Minister must —
 - (a) set criteria that the Minister will apply in deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274; and
 - (b) apply those criteria whenever deciding for the purposes of subsection (2)(b) or (4)(b) whether a development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.
- (8) The chief executive officer must ensure that copies of the following are publicly available on a website maintained by, or on behalf of, the department principally assisting in the administration of this Act —
 - (a) any notification made to the Minister under subsection (1);
 - (b) if a development application is referred to the Commission under subsection (3) — the referral and the application;
 - (c) if a direction is given under subsection (5) — the direction and the development application;
 - (d) the current version of the criteria set under subsection (7)(a).

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Hon Alison Xamon moved —

Page 15, after line 8 — To insert:

- (7) Despite subsections (3) to (6), the Commission must not grant approval for development if the Commission considers that to do so would substantially undermine the purpose and intent of a legal instrument referred to in subsection (2).

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Hon Alison Xamon moved —

Page 15, lines 14 to 20 — To delete the lines.

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Planning moved —

Page 15, line 22 — To delete the line and insert:

- (a) consult the CEO (as defined in the *Contaminated Sites Act 2003* section 3(1)) if the development is of land referred to in section 58(1)(a)(i) of that Act in respect of which a memorial is registered under section 58 of that Act; and

Debate ensued.

Amendment — put and passed.

Hon Alison Xamon moved —

Page 16, after line 13 — To insert:

- (d) have due regard to any submission made, or advice given, to the Commission in the course of a consultation under paragraph (a), (b) or (c).

Debate ensued.

Amendment — put and passed.

Hon Charles Smith moved —

Page 16, after line 27 — To insert:

- (5A) The Commission must —
 - (a) in the manner the Commission considers appropriate, advertise the development application, inviting members of the public to make submissions to the Commission within the period specified in the invitation; and
 - (b) have due regard to any submissions made by members of the public within that period in response to the invitation.
- (5B) The period specified in the invitation under subsection (5A) must be a period of not less than 28 days after the day on which the development application is first advertised.

Debate ensued.

Amendment — put and negatived.

Hon Alison Xamon moved —

Page 16, after line 27 — To insert:

- (5A) The Commission must —
 - (a) on a website maintained by, or on behalf of, the Commission and in any other manner the Commission considers appropriate —
 - (i) advertise the development application, inviting members of the public to make submissions to the Commission within the period specified in the invitation; and
 - (ii) make the development application and other relevant documents publicly available throughout the specified period for the purpose of enabling submissions to be made by members of the public;
 - and
 - (b) have due regard to any submissions made by members of the public within the specified period in response to the invitation.

- (5B) The specified period under subsection (5A)(a)(i) must be a period of not less than 21 days after the day on which the development application is first advertised on the website.
- (5C) For the purposes of subsection (5A)(a) —
- (a) the advertisement must be maintained on the website throughout the specified period; and
 - (b) the advertisement, and the development application and other relevant documents, must be maintained on a part of the website that is specifically dedicated to advertising development applications under subsection (5A)(a).

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Planning moved —
Page 16, line 28 to page 17, line 7 — To delete the lines and insert:

- (6) The Commission must —
- (a) consult any person or body not referred to in subsections (2) to (5) whom the Commission considers it appropriate to consult; and
 - (b) in the manner the Commission considers appropriate, advertise the development application, inviting submissions from members of the public generally or from a class or group of members of the public that the Commission considers appropriate; and
 - (c) have due regard to any submissions made by members of the public in response to the invitation under paragraph (b).
- (6A) The Commission may do anything else that is not covered by subsections (2) to (6) and that the Commission considers it appropriate to do in order to obtain a document, information, an opinion or any other contribution from any person or body.

Debate ensued.

Amendment — put and passed.

The Minister for Environment representing the Minister for Planning moved —
Page 17, lines 8 and 9 — To delete “referred to in subsection (6)(a), (b) or (c),” and insert:

under subsection (6)(a) or (b) or (6A),

Debate ensued.

Amendment — put and passed.

Hon Alison Xamon moved —

Page 18, line 21 — To delete “Divisions 3 and 4.” and insert:

Division 4.

Debate ensued.

Amendment — put and negatived.

10. Questions Without Notice

Questions without notice were taken.

The Minister for Ports tabled a list in relation to major external businesses, consultants and contractors engaged by Westport to date, in response to a question without notice asked by Hon Peter Collier. (Tabled Paper No. 3989).

The Minister for Environment representing the Minister for Planning, by leave, incorporated into *Hansard* information in relation to State Planning Policies currently under review, in response to a question without notice asked by Hon Peter Collier on behalf of Hon Tjorn Sibma.

The Minister for Environment tabled a report by the Department of Biodiversity, Conservation and Attractions in relation to their review of the Old Growth Forest Dalgarpur block, in response to a question without notice asked by Hon Peter Collier on behalf of Hon Dr Steve Thomas. (Tabled Paper No. 3990).

The Minister for Education and Training, by leave, incorporated into *Hansard* lists regarding the number of demountable buildings and student enrolments at schools in Karratha, in response to a question without notice asked by Hon Jacqui Boydell.

The Leader of the House representing the Minister for Prevention of Family and Domestic Violence tabled documents in relation to the Western Australia Industrial Commission Order – dispute regarding industrial action by union members, in response to question on notice 2954 asked by Hon Nick Goiran. (Tabled Paper No. 3991).

The Minister for Environment representing the Minister for Housing, by leave, incorporated into *Hansard* information in relation to government owned, supported or operated social housing dwellings, in response to a question without notice asked by Hon Colin Tincknell.

The Minister for Regional Development tabled documents in relation to stakeholder groups invited to take part in a survey relating to a review of the status of the 2010 Fitzroy Catchment Natural Resource Management Plan, in response to question without notice 2945 asked by Hon Robin Chapple. (Tabled Paper No. 3992).

The Minister for Agriculture and Food tabled a map of the Department of Primary Industries and Regional Development new irrigation research area near Broome, in response to question on notice 2951 asked by Hon Robin Chapple. (Tabled Paper No. 3993).

The Minister for Regional Development representing the Minister for Mines and Petroleum tabled a list of companies that have lodged mining proposals since 15 September 2019, in response to question on notice 2949 asked by Hon Robin Scott. (Tabled Paper No. 3994).

11. Planning and Development Amendment Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item No. 9 above*).

The President left the Chair.

In Committee

(Hon Martin Aldridge in the Chair)

Clause 4.

Debate resumed.

The Minister for Environment representing the Minister for Planning moved —
Page 18, lines 34 and 35 — To delete the lines.

Debate ensued.

Amendment — put and passed.

Hon Alison Xamon moved —

Page 19, line 12 — To delete “subsection; or” and insert:

subsection, which must be a period of 24 months or less beginning on the day on which the approval is granted; or

Debate ensued.

Amendment — put and negatived.

Hon Tjorn Sibma moved —

Page 19, line 14 — To delete “48 months” and insert:

24 months

Amendment — put and passed.

Debate resumed.

The Minister for Environment representing the Minister for Planning moved —

Page 24, after line 24 — To insert:

- (6A) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

Debate ensued.

Amendment — put and passed.

The Minister for Environment representing the Minister for Planning moved —

Page 26, after line 24 — To insert:

- (7) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

Amendment — put and passed.

Hon Alison Xamon moved —

Page 27, lines 12 to 15 — To delete the lines.

Amendment — put and negatived.

Hon Alison Xamon moved —

Page 28, after line 28 — To insert:

284A. Approval granted by Commission under s. 274 disallowable by Parliament where approval is contrary to certain advice

- (1) This section applies if —
- (a) the Commission grants approval for development under section 274; and
 - (b) the approval is granted contrary to —
 - (i) any submission made, or advice given, to the Commission in the course of a consultation under section 276(3)(a), (b) or (c); or
 - (ii) any submission made to the Commission under section 276(4) within the specified period.

- (2) The Minister must cause a copy of the approval, including the Commission's reasons for granting the approval, to be laid before each House of Parliament within 6 sitting days of the House after the approval is granted.
- (3) The approval is cancelled if —
 - (a) a copy of the approval, including the Commission's reasons for granting the approval, is not laid before a House of Parliament in accordance with subsection (2); or
 - (b) within 14 sitting days of a House of Parliament after the copy of the approval, including the Commission's reasons, is laid before the House, the House passes a resolution disallowing the approval.
- (4) The Commission's reasons for granting the approval must include an explanation of why the Commission did not follow the submission or advice referred to in subsection (1)(b).
- (5) That explanation must also be included in the reasons given to the applicant, and made publicly available, under section 274(7).

Amendment — put and negatived.

Hon Alison Xamon moved —

Page 29, line 21 to page 30, line 3 — To delete the lines and insert:

- (2) Without limiting subsection (1), Part 17 regulations may prescribe powers, duties, procedures or any other matters for the purposes of, or in relation to —
 - (a) applications, notifications, referrals or directions under this Part; or
 - (b) the consideration or determination of applications or notifications under this Part.

Amendment — put.

The Committee divided.

Ayes (21)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Jacqui Boydell
 Hon Robin Chapple
 Hon Jim Chown
 Hon Tim Clifford
 Hon Peter Collier
 Hon Colin de Grussa
 Hon Diane Evers
 Hon Donna Faragher
 Hon Nick Goiran

Hon Colin Holt
 Hon Rick Mazza
 Hon Simon O'Brien
 Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Dr Steve Thomas
 Hon Colin Tincknell
 Hon Alison Xamon (*Teller*)

Noes (13)

Hon Alanna Clohesy
Hon Stephen Dawson
Hon Sue Ellery
Hon Adele Farina
Hon Laurie Graham
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Martin Pritchard
Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Amendment thus passed.

Clause, as amended, agreed to.

Clauses 5 and 6 agreed to.

Clause 7.

Debate ensued.

Clause agreed to.

Clauses 8 to 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clauses 12 to 16 agreed to.

Clause 17.

Debate ensued.

Clause agreed to.

Clause 18 agreed to.

Clauses 19 to 22 agreed to.

Clause 23.

Debate ensued.

Clause agreed to.

Clauses 24 to 26 agreed to.

Clause 27.

Debate ensued.

Clause agreed to.

Clauses 28 to 54 agreed to.

Clause 55.

Debate ensued.

Clause agreed to.

Clauses 56 to 63 agreed to.

Clause 64.

Debate ensued.

Clause agreed to.

Clause 65 agreed to.

Clause 66 agreed to.

Clause 67.

Debate ensued.

Question, That the clause stand as printed — put and negatived.

Clauses 68 and 69 agreed to.

Clause 70 agreed to.

Clause 71.

Debate ensued.

Clause agreed to.

Clauses 72 to 88 agreed to.

Clause 89.

Debate ensued.

Clause agreed to.

Clauses 90 to 105 agreed to.

Clause 106.

Debate ensued.

Hon Nick Goiran moved —

Page 94, lines 28 to 32 – to delete the lines.

Amendment — put and passed.

Clause, as amended, agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendments.

Hon Simon O'Brien moved, without notice —

That the *Planning and Development Amendment Bill 2020* be recommitted for the purpose of reconsidering Clause 4.

Question — put and passed.

The Acting President left the Chair.

In Committee

(Hon Adele Farina in the Chair)

Clause 4, as amended.

Hon Simon O'Brien moved —

Page 6, line 26 to page 7, line 3 — To delete the lines and insert:

substantially commenced, subject to subsection (4), has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 as in force at the beginning of the recovery period;

Amendment — put and passed.

Clause, as amended, agreed to.

The Acting President resumed the Chair.

Bill reported with a further amendment.

The Minister for Environment representing the Minister for Planning, by leave, moved, That the report be adopted.

Report adopted.

The Minister for Environment representing the Minister for Planning moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Planning and Development Amendment Bill 2020* to be read a third time.

Debate ensued.

The motion requiring the concurrence of an absolute majority.

Question — put.

The Acting President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

The Minister for Environment representing the Minister for Planning moved, That the Bill be read a third time.

The Acting President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

12. Residential Parks (Long-stay Tenants) Amendment Bill 2018

The Order of the Day for the further consideration of this Bill, in Committee of the Whole House, having been read.

The Acting President left the Chair.

In Committee

(Hon Adele Farina in the Chair)

Clause 5

Debate resumed on the amendment of Hon Nick Goiran, as follows —

Page 10, line 9 — To delete the line.

Debate ensued.

Amendment — put and negatived.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 10, after line 20 — To insert:

- (3A) An agreement or class of agreement cannot be prescribed under subsection (2)(d) unless the Minister is satisfied that —
- (a) the agreement or class of agreement to be prescribed is sufficiently regulated by another Act; or
 - (b) the accommodation provided under the agreement is not accommodation that should be regulated by the Act.

Debate ensued.

Amendment — put and passed.

Debate resumed.

Clause, as amended, agreed to.

New Clause 5A.

The Minister for Regional Development representing the Minister for Commerce moved —

Page 11, after line 20 — To insert:

5A. Section 5B inserted

Before section 6 insert:

5B. Residential parks

- (1) A *residential park* is a place, including a caravan park, where there are —
- (a) sites on which relocatable homes may be parked, assembled or erected in accordance with a tenancy; and

- (b) shared premises for the use of long-stay tenants in accordance with a tenancy.
- (2) However, a *residential park* is not one of the following —
 - (a) a place established as a retirement village under the *Retirement Villages Act 1992*;
 - (b) a prescribed place or class of place.
- (3) A place or class of place cannot be prescribed under subsection (2)(b) unless the Minister is satisfied that —
 - (a) the place or class of place to be prescribed is sufficiently regulated by another Act; or
 - (b) it is not appropriate for the Act to regulate the accommodation provided by the place or class of place.

Debate ensued.

Hon Nick Goiran moved to amend the amendment as follows —

- (1) In subsection (2) — To delete “one of the following — ”.
- (2) Delete paragraphs (a) and (b) and insert:

a place established as a retirement village under the *Retirement Villages Act 1992*.

Debate ensued.

Amendment to the amendment — put and negatived.

Question, That New Clause 5A be agreed to — put and passed.

New clause agreed to.

Interruption pursuant to order.

13. Members’ Statements

Statements were taken.

14. Criminal Law (Unlawful Consorting) Bill 2020

The President reported the receipt of Message No. 200 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House representing the Attorney General moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Leader of the House representing the Attorney General moved, That the Bill be read a second time.

The Leader of the House representing the Attorney General tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper No. 3995).

Debate stands adjourned.

15. Aquatic Resources Management Amendment Bill 2020

The President reported the receipt of Message No. 201 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Regional Development representing the Minister for Fisheries moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Regional Development representing the Minister for Fisheries moved, That the Bill be read a second time.

The Minister for Regional Development representing the Minister for Fisheries tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper No. 3996).

Debate stands adjourned.

16. Adjournment

The Council adjourned at 10:38pm until Wednesday, 24 June 2020 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council