

ORANGE GROVE — ASPHALT PLANT

Grievance

MR C.J. TALLENTIRE (Gosnells) [9.27 am]: My grievance is to the Minister for Environment on behalf of the Orange Grove community, which I note is a suburb in the Minister for Planning's electorate of Kalamunda. The communities in our Perth residential rural areas are under threat and are seen as an easy target for noxious industries. In this case the Orange Grove community is faced with the possibility of a very noxious industry, an asphalt plant, being located right in their area. The scale of this asphalt plant is enormous. I understand that it will be one of the biggest, if not the biggest, in Western Australia, producing some 350 tonnes of asphalt an hour. It will require 3.5 million litres of diesel, and will have huge implications for the road network because of the materials coming in and going out of the plant.

What is going on here? Quite correctly and legitimately, the community made a referral to the Environmental Protection Authority about this proposal. This is where the minister has a real problem, because when that referral was made under section 38 of the EPA act, the minister was shielded—he probably did not know it, but he was shielded. Somebody in the EPA's office made the decision to say, "We're not even going to accept this referral." I do not believe the act makes any provision for that at all. When we read section 38 of the act, anyone can make a referral and in section 39 it is very clear that the EPA must record whether it will or will not assess the proposal. The response given to the Gosnells District Progress and Ratepayers Association to its referral dated 10 December 2013 came up with wording that I have never seen before. It said —

... the EPA is not required to accept a referral of a proposal which is not significant and will not be giving further consideration to your referral.

It was dismissed; thereby avoiding what the EPA may have been contemplating doing—deciding not to assess the proposal. I acknowledge people from the Orange Grove community in the public gallery today. They were deprived of the opportunity to appeal the decision to not assess the proposal. They were deprived of that opportunity. They were deprived of the opportunity to have the Minister for Environment make the final decision on this proposal. That is a contortion of the legislation that I do not believe we have seen before; it is completely wrong. The minister may think that there is some question about the significance of this proposal, despite it involving vast quantities of diesel and many truck movements, which I know is a planning matter and I do not expect him to deal with it. I direct the minister to "Guidance for the Assessment of Environmental Factors: Separation Distances between Industrial and Sensitive Land Uses No. 3", which makes it very plain that as an asphalt plant is a noxious industry, certain buffer zone distances must be respected. The example in the guiding document is a 1 000-metre buffer zone, yet there are properties located well within that 1 000-metre buffer zone. I am aware of one property that is 750 metres from the proposed site. It also depends on how we define this buffer zone, because if it is taken to be property boundary to property boundary, it is zero metres; if it is taken from the proponent's suggested location of the plant, it may be a bit more. The issues with an asphalt plant include noxious emissions and odours, which must not be trivialised or dismissed. When the chemical receptors in our brains tell us something smells, it is for a good reason; often it is because there is a toxic, perhaps carcinogenic, impact on our health and wellbeing. The odour problem is just one aspect of the issue; there are also the air toxins and the size of the air particulates. It is known that diesel fuel has huge implications relating to particulates that can be measured at the PM10 or PM2.5 levels. There are serious implications.

Another issue raised in this letter of dismissal, which suggests that there will be no further consideration, is that there would be coverage under ministerial statement 170, which relates to a quarry where this asphalt plant will be located. But ministerial statement 170 dates back to the 1990s and it never contemplated an asphalt plant. It was for a totally separate issue—a quarry.

I think there is a way out for the minister; section 38(4) of the Environmental Protection Act enables the minister to make a referral to the Environmental Protection Authority on the basis of public interest. I point to the public gallery and the people of the Orange Grove community who were able to make it here this morning. They are a representative group; many more people are concerned about this. There is strong public interest in this issue, and the minister does have the power to make that referral to the EPA to assess this proposal, thereby ensuring that there is a process that will help allay the concerns of the community and determine, perhaps, whether there is a far better location. Perhaps it can make sure that the community's concerns are completely allayed. Fundamentally, the minister has to tackle the problem—I do not know whether it is in his office; I think it is more likely in the Office of the Environmental Protection Authority—of a decision having been made, someone has come up with the scheme, to shield the minister by dismissing referrals.

[Interruption from the gallery.]

The SPEAKER: Members of the gallery, you are quite entitled to sit and listen, but please do not clap or call out, thank you.

MR A.P. JACOB (Ocean Reef — Minister for Environment) [9.34 am]: I thank the member for Gosnells for the grievance. At the outset, I acknowledge the members of the Orange Grove community who have come along today to listen to this grievance. I recognise, respect and well understand the community's interest and concern in this matter, and I hope that I can address and allay some of those concerns today.

Environmental regulation is a very complex area of government, with many layers of assessment, and I can understand that there is sometimes confusion about the category under which an area is going to be assessed. However, I can absolutely assure anybody who is listening that this proposal will be required to go through full rigorous environmental assessment.

By way of quick background, the Environmental Protection Authority received a letter on 10 December from a community group about Boral Resources (WA) Ltd's asphalt plant to be located at Boral's Orange Grove quarry. In the referral, the community group raised environmental matters concerning gaseous, particulate and odorous emissions and associated separation distances from sensitive land uses. The EPA advised the community group by letter on 24 December 2013 that the EPA did not accept the letter as a referral as it did not consider the proposal likely to have the sort of effect on the environment that would put it into the EPA's assessment category level. Remember that there are other assessment category levels under the Environmental Protection Act 1986, and I will get to those in just a moment. Section 38(1) of the Environmental Protection Act provides for the referral of proposals to the EPA, particularly proposals that generally sit within the category that the EPA would assess. However, for a proposal to be valid, it must pass the threshold test for that category, and only when there is a valid referral does the EPA decide whether to assess the proposal. The member for Gosnells is absolutely right; the role of the EPA in making this decision is completely independent from the minister. The process has been set up that way; the EPA is an independent body and quite appropriately does not operate under the directive of the government of the day. It is a decision for the EPA itself. The EPA has to guide anybody who may be interested, proponents and opponents alike of projects. It has published administrative procedures on its website that provide further information about the principles and practices of the EPA to ensure that they are consistent with the requirements of the Environmental Protection Act 1986. The EPA's administrative procedures also state that the EPA is not required to accept a referral of a proposal that does not fit within its assessment categories. However, as I said right at the beginning, this process and this proposal are absolutely subject to assessment. It will be subject to assessment through approval and licensing requirements under part V of the Environmental Protection Act.

Mr C.J. Tallentire: It is not the same.

Mr A.P. JACOB: It is not the same; there are two different streams through which these can be assessed. They can be assessed through the Environmental Protection Authority or —

Mr C.J. Tallentire interjected.

The SPEAKER: I do not want to hear you shout out again, member for Gosnells.

Mr A.P. JACOB: I think this is where there is some confusion. We are only at the very front end of the process; all that has been done is a decision has been made on which stream of environmental assessment will be done and there was a decision of the independent EPA —

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: Member, please!

The SPEAKER: Thank you very much. Member for Gosnells, I call you to order for the first time.

Mr A.P. JACOB: I recognise that there is significant community concern about and interest in this issue, and I really want to use my time to explain it properly, so could the member for Gosnells please desist from interjecting.

As a part of the process, through part V of the act, through the Department of Environment Regulation, the potential environmental impacts will still need to be assessed, regulated and managed. It is also important to note that this process will allow for community input along the way and for appeals.

On 6 December 2013, the Department of Environment Regulation received a works approval application for a prescribed premises category 35, which is an asphalt manufacturing proposal, to be located at the quarry operated by Boral Resources (WA) Ltd. It is important to note, right at the front end, that this application will also require relevant planning approvals from the Western Australian Planning Commission as it is located on land that is reserved for parks and recreation purposes under the metropolitan regional scheme. It will also require input from the Department of Health, and the City of Gosnells will participate. The City of Gosnells is currently undertaking public consultation to assist in formulating its recommendations to the WA Planning

Commission. In a nutshell, environmental regulation under part V of the act clearly provides for the assessment, regulation and management of all of the identified environmental impacts of emissions, waste, noise and odour. This is typically the area of the Environmental Protection Act in which those concerns would be addressed.

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: Member, all of those —

The SPEAKER: Thank you very much. Member for Gosnells, I call you to order for the second time. I advise you to stop shouting out.

Mr A.P. JACOB: Thank you, Mr Speaker.

I am trying to explain this for members of the community. I understand why environmental regulation can be a complex area. It can sometimes be a difficult area to understand. There are two main streams. This proposal is being assessed through this stream, and it will go through a very vigorous process, and there will be many opportunities for community input along the way.

As I said, part V of the act, through environment regulation, typically deals with impacts such as emissions, waste, noise and odour. All these were the matters raised in the letter to the Environmental Protection Authority. It is also worth noting that, as the member said, the asphalt plant is located next to an existing quarry, and that is a whole separate issue. The EPA and the Department of Environment Regulation operate under the Environmental Protection Act, so it is the same act and to the same objectives. The Environmental Protection Authority's consideration of the proposal and its consideration that it should be managed under part V of the act instead of part IV does not carry any presumption by the EPA in relation to the decision of the Department of Environment Regulation. It makes its own decision to grant or refuse an application for works approval or for a licence. If it approves a licence, the conditions of the licence can, as the member said, be open to appeal.

In summary, there is one Environmental Protection Act.

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: Yes, but it still has to make a decision about where it will be put. I think this is absolutely the right decision. The waters here can be muddied a bit, but the proposal is being dealt with in a very proper way. It is being managed under the correct area of the act. I want to allay community concerns. We absolutely hear its concerns. This was a —

Mr C.J. Tallentire: Why were other cases like this subject to —

Mr A.P. JACOB: Member, that is incredibly rude. It is not fair to —

The SPEAKER: Thank you. Member for Gosnells, I call you to order for the third time.

Mr A.P. JACOB: I do not think it is entirely fair to play on community concerns and continue to interrupt while I am trying to outline what is a very complex process so that members of the Orange Grove community can better understand.