

**ABORIGINAL HERITAGE (ABYDOS–WOODSTOCK PROTECTED AREA)
VARIATION ORDER 2010 — DISALLOWANCE**

Motion

HON ROBIN CHAPPLE (Mining and Pastoral) [12.14 pm]: I move —

That the Aboriginal Heritage (Abydos–Woodstock Protected Area) Variation Order 2010 published in the *Government Gazette* on 12 October 2010 and tabled in the Legislative Council on 12 October 2010 under the Aboriginal Heritage Act 1972, be and is hereby disallowed.

I am awaiting my notes, which will come up from my room. I thought we were doing this at the end of the day. I am sorry about that, but I am prepared to go on.

The rationale for this disallowance is that this particular area, one of the most important protected areas in Western Australia, has repeatedly been targeted by rail infrastructure, not least of all the previous application by FMG, which was opposed by the Palku people. It was accepted by the Aboriginal Cultural Material Committee that the area should not be developed. As a result, the minister of the day overturned the determination of the ACMC. It was one of only three determinations by the ACMC to be overturned in the past. Indeed, Dr Sally Morgan and others, who are members of the Palku people, have quite clearly expressed a number of concerns about this.

I was briefed by Roy Hill Infrastructure Pty Ltd represented by a former member of the other place, Cheryl Edwardes. At that briefing we saw a map of the area proposed for the rail line. It showed that the original proposal was not for the rail line to go through the Abydos–Woodstock Protected Area but the Yandeyarra Aboriginal Reserve. When asked in a briefing why the rail line had been moved into the protected area from the reserve, it became apparent that it appeared to be easier to go through a protected Aboriginal heritage area and have impact on that than it was to negotiate with the Aboriginal people on the Yandeyarra Aboriginal Reserve. We are therefore finding decisions about rail lines being made based on the difficulties of negotiation as opposed to the heritage values of the area.

The Abydos–Woodstock Protected Area was established, I think back in 1972, as being one of the prime Aboriginal areas in the state. It has been subject to a number of concerns in the past, not least of which were concerns with the negotiations that were undertaken and that were matters before the Corruption and Crime Commission during the term of the former government, when transcripts of evidence under the CCC inquiry indicated that the then minister may have made decisions to affect the outcome of the negotiations with the Aboriginal Cultural Material Committee. It continues to be an area of some significant problems because of the way in which people deal with the site. I understand that it now has the BHP Billiton rail line and the FMG line running through it, and now it will have the Roy Hill rail line running through it. It is a protected area. The rail lines are not even in the same easement; they are in different easements. If there were any interest in protecting the heritage of the area, one would assume that the rail lines and infrastructure would have at least run through that area. The Abydos–Woodstock site was originally managed by the Western Australian Museum and had its own dedicated museum officer working there. The Abydos–Woodstock heritage area is covered by the Karriyarra people at the Port Hedland end and the Palku people of the east Pilbara region. The area is renowned for containing numerous cultural sites that caused the museums department to take over Woodstock homestead in 1972. Many years ago I assisted John Patterson and the museums department to record the many hundreds of thousands of carvings and scatter sites that exist in that area.

As to the previous rail line applications, it needs to be noted that under section 18 of the Aboriginal Heritage Act 1972, a developer was able to apply to the Minister for Aboriginal Affairs to destroy an Aboriginal site. It is really interesting that, as I have said, the minister previously overturned the very limited opposition of the ACMC to any site destruction in the area. Sally Morgan of the Palku people has previously raised considerable concerns about the application by Andrew Forrest to have his rail line through the area. She was concerned that the philosophy of the Pilbara Native Title Service is to prise money from mining companies and then control the money through what it calls charitable trusts and boards that they happen to sit on and then dole out the money to people, and this is not an incentive to improve position. Those statements were made by Sally Morgan previously. A copy of the government report obtained by the *Australian Financial Review* revealed that many of the concerns of the PNTS had been dismissed.

The problems around this site are long and detailed. The discussion that I had with the former Minister for Indigenous Affairs identified that the procedure of moving towards using this protected area was more to do with the difficulties associated with dealing with a native title claim and an area in which there is some defined native title compared with an area that is covered by a protected site and does not have native title ownership. The deliberations made by the company in this instance were based around what was easier, not what was best. I

refer to the original map of the original proposal which showed quite clearly that the rail line was going to go outside the protected area, which was supported by all the Indigenous people in the area. For ease of application, they then chose to use a route through the protected area. As such, this regulation sought to remove another sliver out of the middle of this protected area to enable yet another rail line to transverse the area.

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [12.20 pm]: The house is considering the disallowance of the Aboriginal Heritage (Abydos-Woodstock Protected Area) Variation Order 2010. It is the government's view that the disallowance of the variation order should not proceed. In asserting that view as strongly and as positively as we can, I make the following observations. Roy Hill Infrastructure Pty Ltd is proposing to develop the Roy Hill iron ore project at an estimated cost of \$7.2 billion. It includes mines at Roy Hill in the central Pilbara, port facilities at Port Hedland and a 310-kilometre railway linking the mine with the port. The construction and operation of the railway comes under the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010. Some requirements in the agreement act were debated in this house prior to the act being enacted. The house has had an opportunity to consider the desirability of this project, firstly, being able to go ahead and, secondly, going ahead in the general manner being proposed. On that occasion the Parliament clearly came to the view that it should go ahead. The purpose of the matter that we are dealing with today is part of the process of ensuring that this matter goes ahead.

When Hon Robin Chapple gave notice of his intent to move to disallow this variation order, it set some concerns in train. The effect of having a disallowance motion in the offering for this matter meant that certain steps in the state agreement could not be proceeded with until the disallowance was removed. It is certainly the government's view that that matter needed to be progressed, otherwise it could have caused some very serious delays to this project, a project that we have already established is to the benefit of Western Australia to proceed. I first want to acknowledge and thank Hon Robin Chapple for his ready acceptance of the proposal that we deal with the disallowance motion today. He has the genuine view that this matter should be disallowed. I respect that view and his right to advance it in this place and be heard. He has had the courtesy and the sensitivity to adopt the view that it is probably in everyone's interests that the matter be dealt with by the house now rather than some months down the track. That is the first thing to note.

The second thing to note about this disallowance is that not only does it have to be dealt with, but also, as I have already said, the government is firmly of the view that it should not be supported. If the disallowance is supported, it would cast a significant shadow over this whole project. We would certainly have the delays that I have alluded to and the entire project may be placed in some further jeopardy. All of that would militate against the success of the project and it would certainly delay it in any case. That is why we need to deal with this matter now. We need to deal with it decisively and we need to do so with regard to the legitimate concerns that the honourable member has raised.

It is true that several other pieces of rail infrastructure are in this vicinity and in the protected area that the disputed part lies in. I notice that the honourable member had a copy of the map which I have viewed myself and which is available to other members. The current and proposed rail infrastructure is located to the west and the south west corner of the protected area. I have been advised that this area is well away from other parts of the entire protected area where items and locations of cultural heritage significance can be found. When a protected area is created, as this was on 16 May 1979—my nineteenth birthday, members will no doubt recall—it imposes a protection over a large area. That, however, does not mean that every part of that area is completely covered with areas of heritage significance or, perhaps more to the point, the locations of heritage significance do not cover the totality of the area. Some parts of the area are richer in heritage locations than others, and there may be parts that have no heritage locations.

Roy Hill Infrastructure Pty Ltd advises that it has undertaken a number of studies of all route options, that there has been extensive stakeholder consultation, and that Aboriginal heritage surveys have been conducted with the relevant people to identify all Aboriginal heritage sites within the proposed corridor to determine the most suitable centre line. Roy Hill Infrastructure advises that it is committed to making no impact on any rock art or engravings.

As recognised in section 25 of the Aboriginal Heritage Act 1972, while a protected area can be proclaimed, the orders may need to be varied or revoked, and in this case there is a public interest in doing so. The fact that there is other similar rail infrastructure in the immediate vicinity gives me a greater degree of confidence that this matter has been canvassed before and resolved in the same way that the government proposes this matter now be resolved. I remind members that it is a requirement of section 25 that the Governor, in agreeing to vary or revoke a portion of a protected area, needs to be satisfied that it is in the general interests of the community to do so, and not otherwise. Some significant hurdles must be got over to get to this point.

Having said that, it is legitimate for the honourable member to raise his concerns, and it is right and proper that they be aired; it is also right and proper that this Parliament should rule on this matter now. In closing, I

respectfully submit that the whole house should recognise that it is not in the general interests of Western Australia that this disallowance be agreed to; I urge the house to vote against it.

HON JON FORD (Mining and Pastoral) [12.33 pm]: The opposition does not support the disallowance motion for many of the reasons that the minister has raised, including that infrastructure already exists on the railway reserve. I do not need to go over what the minister said, but I will make some comments—the minister was much more generous with the mover of the motion than I will be.

On a number of occasions when I have been on both sides of this house, the Greens (WA) have had a good old whinge about not being given notice of matters. Only a few weeks ago we spent over a week discussing the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010, during which time none of this was raised. There was plenty of time to do so, and we could have gone on for another week.

Hon Robin Chapple: I did raise it.

Hon JON FORD: Well.

It is my view that this disallowance motion is an outright stunt. Hon Robin Chapple told me about it in the corridor about an hour ago, but, in fact, I found out about it during a discussion with members of the Labor Party this morning. That is not why we are opposing it; that is a general comment.

The minister and his advisers were in this chamber for ages during the Roy Hill bill and we could have talked about it then, and, as I said before, there is existing infrastructure in the area concerned. We have had the debate about whether we support the Roy Hill rail line, but as a matter of common courtesy to the proponent we could have discussed these concerns around the house to ascertain if the issue could have been addressed. This is, in effect, the Greens holding a gun to the head of a company that is trying to do business in this state—that is what it actually is. On that basis, I and the opposition will not support the disallowance motion. The arguments and concerns of the Greens are obviously genuine because they would not have brought them to the house if they were not, but there has been plenty of opportunity to discuss them to see whether they could be addressed. This is not the way we conduct the business of the house; it is not in the interests of Western Australians to do business in the house like this; and it is not what we are expected to do.

HON ROBIN CHAPPLE (Mining and Pastoral) [12.36 pm] — in reply: Firstly, I seek leave to table a map. The minister indicated that he had seen a map; that is not the map that I have in my hand. This map was created by Daniel Page on 19 October 2009 for the Roy Hill iron ore project. It is a map of the original rail line, which does not use the protected area.

Leave denied.

Hon ROBIN CHAPPLE: If anybody wishes to see the original map, it is available.

To firstly deal with Hon Jon Ford's comments: we are dealing with this matter today because I was spoken to by the Leader of the House. A disallowance motion normally applies to a process whereby the project or process continues until such time as the disallowance motion is either allowed or opposed. As a result of the Leader of the House speaking to me this morning, it became apparent that the state agreement contains a clause that states that if a matter arose before the house, certain sections the subject of ministerial decision in relation to the rail line could not proceed. So, by agreement with the Leader of the House, instead of dealing with this matter in February next year, it was brought on to be dealt with today. I agreed to that course to facilitate the rail line going ahead. The idea of moving a disallowance is to actually identify to the house some failings with the process when dealing with matters of this ilk, in particular in relation to the Abydos–Woodstock protected area.

One of the problems we have is that, historically, the Aboriginal Heritage Act has been misused. I will quote from a document titled "Trashing Heritage", which was written by David Ritter, the former president of the WA Society of Labor Lawyers. The paper states —

... a critical ... analysis of the *Aboriginal Heritage Act* demonstrates ... that the *Aboriginal Heritage Act* does not protect Indigenous interests ... It is legislation by non-Indigenous community for the non-Indigenous community that creates a superficial veneer of protection for Indigenous interests. The result is that the colonising power can continue to do with Aboriginal places and materials exactly as it wants. Far from being an instrument of Indigenous power, the *Aboriginal Heritage Act* is an instrument for the ongoing colonisation and subjugation of Indigenous peoples that denies the legitimacy and validity of Aboriginal people making political decisions about their own land.

We must remember that this particular site was previously subject to a Corruption and Crime Commission inquiry. I quote from some of the transcript that refers to what went on regarding some of the hearings about dealings in the other place, when the former minister, John Bowler —

Hon Jon Ford: It is a stunt!

Hon ROBIN CHAPPLE: It is not a stunt.

Hon Jon Ford: The member is not even talking to the motion.

Hon ROBIN CHAPPLE: I am going to talk very much to the motion, honourable member.

Hon Jon Ford interjected.

Hon ROBIN CHAPPLE: We did.

Several members interjected.

The PRESIDENT: Order!

Hon ROBIN CHAPPLE: The transcript says, Julian Grill to John Bowler —

How did Cabinet go? ... Good, good. Yes, deferred a couple of big decisions.

The recording at this stage was partially obscured.

JOHN BOWLER: Now, Woodstock-Abydos, apparently Carps (Alan Carpenter) says he's happy ... the way that it's going. That, although they said, you know, the decision of the, of that committee ...

David Weber reports at this point —

Fortescue wanted land excised from the Woodstock-Abydos protected area, to aid its railway project.

The Aboriginal Cultural Materials Committee decided against the railway variation ...

Against the railway variation —

One month later, the Indigenous Affairs Minister announced she was overturning the decision.

The transcript goes on —

JOHN BOWLER: Sheila understands ... they have to say that and that she will now overturn it.

JULIAN GRILL: Ah, all right so, if I can just take a note on this.

JOHN BOWLER: So it's expected that, um, Sheila will overturn the APMC decision.

A number of other conversations go in.

Point of Order

Hon JON FORD: There is an issue of relevancy here. The member is clearly casting imputations on the reputation of a former minister of the Crown and a sitting member of the other house. That is what the member is attempting to do in this place and that is clearly out of order.

The DEPUTY PRESIDENT (Hon MATT BENSON-LIDHOLM): Order, members! For starters, I certainly would like Hon Robin Chapple to identify what he is quoting from. Secondly, I remind the member that imputations and inferences are being made from what he is saying and that is something he needs to desist from immediately. The member should return to basically what I would consider to be an in-reply speech. Could the member please identify what he is quoting from?

Hon ROBIN CHAPPLE: Certainly. I am referring to *AM*, Tuesday, 23 February 2007, at 8:11:48. The reporter is David Weber and it is a Tony Eastley interview on the matters that were before the Corruption and Crime Commission.

The DEPUTY PRESIDENT: Is this a transcript of the program *AM* on ABC radio?

Hon ROBIN CHAPPLE: Yes. The transcript relates to playing the recordings of the CCC intercepts.

The DEPUTY PRESIDENT: I still put it to the member that the imputations and inferences that he is suggesting members draw from the transcript is a significant issue as far as I am concerned. I still believe that the member needs return to basically what amounts to his in-reply speech.

Hon ROBIN CHAPPLE: Certainly. Would the Deputy President like me to table the document?

The DEPUTY PRESIDENT: The member can attempt to seek leave to have that document tabled. The member seeks leave to table that document. Is leave granted?

Hon Robin Chapple; Hon Simon O'Brien; Hon Jon Ford; Deputy President; Hon Simon O'Brien:

Hon SIMON O'BRIEN: I have a further point of order. I will suppress my view that I was quite enjoying the summary of that transcript. My point of order is that this is meant to be a closing speech and none of us have the opportunity to address this new material that is now being introduced. If Hon Robin Chapple wanted it to be debated, he should have introduced it during his earlier remarks. I do not think he should entertain any more of this new material, tabling it or otherwise.

The DEPUTY PRESIDENT: The reason for me saying that this simply needs to be an in-reply speech is exactly Hon Simon O'Brien's point. No new material should be introduced at this particular stage. I was particularly concerned about the imputations and inferences likewise being made. Does the member still wish to seek leave?

Hon ROBIN CHAPPLE: The key issue I suppose is —

The DEPUTY PRESIDENT: No, I am asking you a question: do you seek leave?

Hon ROBIN CHAPPLE: I have sought leave.

Leave denied.

The DEPUTY PRESIDENT: Leave is not granted. Could the member please return to his comments?

Debate Resumed

Hon ROBIN CHAPPLE: The key issue here is that this particular protected area has repeatedly been in the interests and aspirations of Indigenous people in this area, even though the Aboriginal Cultural Material Committee addressed it as not being a suitable site, and has consistently been overturned. Instead of using land to either side of the site, which is readily available, there has been a continued push to go through the Woodstock–Abydos area, which is one of the very few limited, protected areas in the state. My concern is that in the conversation I had with Cheryl Edwards and staff from Roy Hill on this matter, it became apparent that it was easier to use a protected area site than it was to use the land either side, because of the associated tenure of the land either side by Indigenous people.

Hon Simon O'Brien: That is quite an irony, is it not, that it is prepared to have infrastructure placed on a protected area rather than negotiate realistically to have it placed on its own.

Hon ROBIN CHAPPLE: That is the very point that I was making, minister, thank you. In finalising, that is the key issue of my concerns; we should be looking at better outcomes for the very few protected areas we have in this state.

Question put and negatived.