

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

**TRANSCRIPT OF EVIDENCE TAKEN
AT MARGARET RIVER, WEDNESDAY, 16 FEBRUARY 2000**

SESSION 3 OF 5

**Hon M.D. Nixon (Chairman)
Hon Ray Halligan
Hon Ken Travers**

WRIGHT, MR MICHAEL,
Chief Executive Officer, Voyager Estate Pty Ltd,
PO Box 319,
Cottesloe, examined:

CHAIR—On behalf of the committee, I welcome you to today's hearing. Would you please state the capacity in which you appear before the committee?

Mr Wright—I am chief executive officer of Voyager Estate Pty Ltd. I am here about matters of planning in general concerning my vineyard operation at Margaret River. I am also interested in the committee.

CHAIR—You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Wright—Yes.

CHAIR—These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. I remind you that your evidence will become a matter for the public record. If you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. However, even if your evidence is given to the committee in closed session, the committee can still report your closed evidence to the Legislative Council if it considers it necessary to do so, in which case your closed evidence will become public.

Mr Wright—Thank you, I understand that.

CHAIR—Would you like to make an opening statement?

Mr Wright—I have given the committee clerk a copy of a submission I made to the Western Australian Planning Commission on the recent agricultural and rural land use planning policy. I sent that submission to the commission today and it raises a number of points including the issue of compensation for land. I am particularly concerned about that because the Department of Environmental Protection is apparently pushing hard for a limit on the boundary area separating residential and viticultural areas. I quoted in the submission some estimated costs of compensation. If the planning commission chooses the 300 to 500 metre boundary area, the loss of land for some people like me who clearly bought for the future — and there are several other investors who have also done that — will be quite horrendous. Based on a one kilometre strip of land, it could up to \$1 million on the current values in Margaret River of \$17,000 to \$18,000 a hectare. The land in the Swan Valley area is closer to \$80,000 to \$90,000 a hectare and the cost rises to \$4 million a kilometre of boundary width. Not everybody will have one kilometre of boundary width but it is a hell of a lot of money. It was interesting to listen to some of the other witnesses talk about compensation, I have several suggestions the committee might consider. In my case of viticulture or horticulture, which is clearly highly intensive and a high turnover kind

of business, there could be two kinds of compensation — a straight out purchase compensation on a boundary area and that is the end of that or there could be partial compensation for the loss of productivity for that industry. In that case the land could remain under the original owner with a restricted use capacity.

I notice that nobody has made any reference to who should pay the compensation. The committee should give consideration to the idea that if the developers are responsible for having residential boundaries extended, they should be responsible for paying the compensation when the town boundary comes out to Michael Wright's vineyard and he has suddenly lost a couple of hundred hectares. That absolves the government because it is not a public need, the government does not have an interest in it and it is entirely different from public works. I generally have not had a problem in my limited experiences with the compensation mechanisms governments have had in the past. I have never had a difficulty with that. Another point the committee might consider is the land compensation and the possible need for demolition compensation. If one has to fill in a dam or demolish buildings, that should be part of the compensation factor.

I do not have any more to say other than I am very concerned about the issue. I will wrap my comment up by saying that the DEP's demand for a 300 to 500 metre boundary line is unreal. I do not see it in any other part of the world. Even the viticultural areas of Europe like to keep to very narrow boundary. In the Napa Valley, it is roughly 30 metres, the width of a road, and it can go up to 60 metres. In places like France it is the width of a road. I visited a little town called Broin just south of Dijon which is a big viticultural area and around the town the boundary varied literally between a six-lane highway on the south side of town to several minor roads on the east and west side of the town. I personally feel that the DEP's demand for a 300 to 500 metre boundary is unreal. The Shire of Harvey is the first council to put it up as official policy and the council will go to the government to look for approval. The council issued a document to that effect several months ago and the committee clerk has a copy of it; he has most of those details.

CHAIR—If somebody resumes a whole property, there is no problem — compensation is paid and you can argue about the value of it. The difficulty arises when one has a business and half of the property is taken which may make the other bit unviable. Do you have any suggestions about how that can be dealt with?

Mr Wright—That is the same issue. You come back to either taking the whole property and shutting it down or restricting its use. One of the problems with farming is if one returns to restricted use of sheep and cattle, one will not survive very well and that is what our potato farming friend inferred. I think it is a fair comment; it is consequential damage. If you take half a person's property and the other half is useless, it should be part of the compensation package.

CHAIR—Do you have any suggestions about the best way to determine the compensation package?

Mr Wright—Do you mean establishment of values?

CHAIR—Yes. What would be a suitable panel? Would you say the department should make a decision and landowners would have a right of appeal? How should it be dealt with?

Mr Wright—I personally do not like the appeal process because it goes on. Divorcing the

government from the issue, my experience is several independent valuations are best, two possibly three but no more. That is the fairest way and it is general commercial practice when dealing with valuations between organisations which do not cover government acquisitions. There are often land and valuation disputes and they almost invariably come down to two or three independent property valuations by authorised people. That is the best way to establish a value. I would not bother bringing the Valuer General in unless one had to. He might be a good arbitrator because he is keen on values but if one could get two or three independent valuations and average them, that should be it as that establishes the value. Is that the question you asked?

CHAIR—More or less. Would you simply use ordinary sworn values?

Mr Wright—I would.

CHAIR—Say three and average them?

Mr Wright—Yes, I have never used more than two because I have never had to.

CHAIR—What would you do if these sworn values came up with a figure and either the property owner or the government, or whoever is paying the bill, is not happy with it?

Mr Wright—There are provisions in the various real estate laws which allow for independent arbitration on disputes and matters like that under the Real Estate Institute of WA. I would stick with that.

CHAIR—In other words, we could use the real estate rules.

Mr Wright—And the industry standards to achieve what you want.

Hon KEN TRAVERS—I am not sure what it is about viticulture that makes it necessary to impose a 300 to 500 metre boundary but I know that the history of a range of buffers is that they also protect the industry. We see it often when people move into an area and complain and governments go weak at the knees, accept the complaints and place unrealistic restrictions which could close down the vineyard. It sometimes works both ways but that is not to say that the viticulture should voluntarily pay for that process. I accept the need for compensation. Do you have any comments on that?

Mr Wright—I will move sideways a bit. In my submission I made reference to several things, one of which is right-to-farm legislation. Something which concerns me about the new committee on agricultural and rural land use is it is becoming counterproductive. It is a good approach, it is great to see that the government is suddenly realising that it needs to do something to protect agriculture but protecting land means nothing if one cannot farm it and right-to-farm legislation is something the government will have to accept sooner or later. In the three or four countries around the world I have looked at — the house report of 1991 says exactly the same thing — such legislation eventually becomes inevitable. I also made a second suggestion. Committee members may recall that in the contract of land sale document you receive when you buy real estate there is a supplementary green document which tells you the law of the land and the rules and when you sign your contract of land, it is acknowledged that you have signed that

document as well. In my submission I suggested that a second document be included and that it detail the activities of an area so you knew when you went in that there would be some inconveniences.

There are many contradictions in government policy, the Mining Act being one of them. Hon Ken Travers' point does not apply in the area of mineral operations. One can make all the complaints in the world but the law of the land allows the mining industry to have priority rights over anybody else's objections. If one wants to beat the mining companies, one might get them on a work safe program — that happens quite often and we read about it in the newspaper — or you might get them on some environmental program if it is tough enough. That same kind of protection is needed for agriculture. If this policy becomes law, it will partly fail if nuisance complaints prevail. Another document I have left with the committee clerk concerns a court case which took place in Melbourne, the Honnig v. Jeffery case. I will not go into detail but basically it amounted to a dairy farmer having two blocks of land separated by about 300 or 400 metres of road and the cattle would go from one block to the other. In between the blocks lived a family called Honnig, they had bought a country house there and came up for the weekends, typical of what they have there. They started complaining about the cow shit and everything else which went along the road. There are five or six issues in the case but only one, possible damage in relation to the road, may have had basis. The point is that had Victoria had right-to-farm legislation, much of that had not happened. If the Honnigs had had this second document in the contract of title arrangement, which I have suggested, they might have known about the cows before they got there and would have legally recognised that they might be living next to a dairy which stinks like hell in the morning.

They are two issues. The third point which I put in the submission which went over like a lead balloon when I spoke to the chairman, Mr Halthouse, was formal population control. Why are we so captivated by progress and expansion? We heard the gentlemen from the Potato Growers Association of Western Australia talk about water allocation to Dunsborough and the rest of it. The hypocrisy of all of this is that the very thing which makes this whole area such a wonderful attraction — agriculture — is the very thing which is being destroyed by the influx of people. In this highfalutin age where it is very easy to move around, is it not unreasonable to start to seriously consider some town boundary limits so the populations do not increase any more? Is there any reason for Bunbury to not be a major accommodation suburb for this area? If we widened Highway 10 like we have down the freeway to Perth, we could have people coming in and out very easily and quickly in very little time but still not live here. Forgive me for being patronising but we are getting to third world problems when we think in terms of influx of population. It is a tragedy that some of the dams in Perth have been four or five years without overflowing. We will have difficulties and eventually — I do not know when; it might not be until the next generation — we will have to front up to fact that we will need to control the movement of people in some areas. I am suggesting this is a good example. The idea has merit; it will solve many of these water problems and it will keep the agricultural industry alive as it must be. It is a compounding problem with the increase in population, particularly on the fringe areas of Perth and the horticultural, vegetable farming areas. More than anything else it would keep tourism alive because it is the rural atmosphere down here which everybody loves. It puzzles me because in Broin I came across a real estate agent and land values escalate more closer to the vineyard areas than they do in the city centre. People are happy to sit there with the beautiful outlook of a green vineyard and they do not mind having spray blown over their faces,

yet here they object.

CHAIR—There is another side to this. There is one thing about right-to-farm; in other words, the dairy cows have always crossed the road and should be allowed to continue to do so. However, if you are not careful it becomes compulsory to farm. I quote the case of when I went to Wesley College there was a market garden on what is now Sir James Mitchell Park. It would not be viable to have that market garden on Sir James Mitchell Park today but if one had that property, one could sell out and go to Gingin and establish a 500 acre horticultural property. If we are not careful, we may limit the ability of agriculture to adjust.

Mr Wright—That is perfectly true. I made the point in my submission that there is a clear separation between right to farm and zoning — which is your point. I have no problem with that. There are areas which clearly are silly to farm. If you cannot farm, that is the end of it. Suppose you extend the domestic zoning area and suddenly the farm on the boundary ceases to be a farm, that is fine and I do not have a problem with that concept. The point I made in the submission is that while the land is agriculture it will continue to be farmed. Other reasons which have nothing with farming per se determine whether land will be available for agriculture.

Hon KEN TRAVERS—East Swan is going through that transition and they have the effects of suburbanisation on farming and the market gardens.

Mr Wright—We lost one case about gas guns because of nuisance case. A property across the road is divided into seven little possies and they do not like guns going off.

Hon KEN TRAVERS—Were the guns there before the new people came?

Mr Wright—Yes. I drew an analogy in an earlier submission that if you build a house next to a steel mill, do you expect the steel mill to shut down?

Hon KEN TRAVERS—You should not but people do. In your submission, do you expand on your suggestion about the developers paying the compensation?

Mr Wright—No, I did not mention that. I only just thought of it.

Compensation is always costing governments money. In the urban areas of Perth it has always amazed me that when one rezones land from rural to urban, people make an immense profit but other people have planning controls placed on their land and receive no compensation. We could come up with a mechanism whereby those who make a killing on the rezoning could help pay compensation to others.

Mr Wright—I agree with that but you must see it as opportunism.

To do what they want to do they need to pay a cost.

Mr Wright—If Homeswest feels it has a need to have housing, that is fine. If it has a responsibility for housing and has to charge ahead and resume some land for housing, then, being a government institution, that is its responsibility. However, half of the projects around here are

not Homeswest - they are just people who see an opportunity to build some houses. That is fine but they should pay the compensation if they want to upset my livelihood.

Hon KEN TRAVERS—With the stroke of a pen the neighbouring farm can become urban and will become a very valuable property compared with yours which is still zoned rural.

Mr Wright—There is a comment in the submission which says that in Quebec farmers have gone out of business because of nuisance complaints. I think the committee should given serious consideration to my suggestion because it keeps the Government out of it; there is no reason for the Government to be involved in any issue of compensation unless it has to do something and it has a mechanism that becomes automatic.

CHAIR—A suggestion was made by the Chairman of the Environmental Protection Authority that in land clearing concerns, if there is a rural title with 40 acres or whatever of bush on it, it should be able to be sold as a lifestyle block with a covenant that it can never be cleared. That is one way of compensating a farmer for some land he cannot clear and presumably he can buy cleared land elsewhere to help his business. What do you think of that suggestion?

Mr Wright—I did that sort of deal with one of the blocks I bought from an Italian dairy farmer. We did not arrange for his transfer but we cooperated with him while he found another block 20 kilometres from here. That was a swap. My experience with farmers is if you give them enough time and cooperation to understand the merit of the issue and feel that they will not be out of pocket and are not being taken advantage of, many of them will cooperate on issues like that. Of course, most of the land which is not cleared in this area is inaccessible. We have some inaccessible land and a lifestyle block would be a formality.

CHAIR—Do you have any idea of the property values for lifestyle blocks compared with productive blocks in this high value area?

Mr Wright—No, I do not. I can only tell you about productive blocks.

CHAIR—It is something we can check.

If anybody present wishes to make a written submission later, they should feel free to do so.

[The witness retired]