COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

INQUIRY INTO FIRE AND EMERGENCY SERVICES LEGISLATION

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 14 JUNE 2006

SESSION ONE

Members

Mr A.P. O'Gorman (Chairman)
Mr M.J. Cowper (Deputy Chairman)
Mr S.R. Hill
Ms K. Hodson-Thomas
Mrs J. Hughes

Hearing commenced at 9.50 am

McMULLEN, MR VINCENT
Director Planning Reform,
Department for Planning and Infrastructure,
469 Wellington Street,
Perth, examined:

HAYES, MR PAUL RICHARD
Senior Policy and Legal Officer,
Department for Planning and Infrastructure,
469 Wellington Street,
Perth, examined:

The CHAIRMAN: The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Have you completed the "Details of Witness" form and did you understand the notes attached to it?

Mr McMullen: Yes.

Mr Hayes: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

Mr McMullen: Yes.

Mr Hayes: Yes.

The CHAIRMAN: We have received your submission. Would you like to make any amendments to your submission?

Mr McMullen: Yes, please; if we could. The one overarching comment I need to make is that the references to legislation have largely been overtaken by the introduction of the Planning and Development Act 2005, which commenced operation on 9 April this year. Therefore, references to the Town Planning and Development Act require updating. We can go into that in more detail if you wish. I also want to correct a typographical error. On page 3, paragraph 12, a sentence reads -

> All of these reviews are now being carried out concurrently in the contest of the recommendations . . .

That should be corrected to read "context". I apologise for that error.

The CHAIRMAN: Is it your wish that the submission be incorporated as part of the transcript of evidence?

Mr McMullen: Yes, it is.

The CHAIRMAN: Before we ask any questions, do you wish to make any statement in addition to your submission?

Mr McMullen: We have referred to the change in legislation. Certain implications arise out of that. However, they are unchanged from the implications that arose under the previous legislation. However, I should mention, for completeness, that the submission refers to various operational policies of the Western Australian Planning Commission. It omitted to refer to one operational policy that is also relevant to the subject matter of the committee. That is the "Statement of Planning Policy in Respect of Agricultural and Rural Land Use Planning", which was gazetted in March 2002. I am happy to provide details of that to the committee.

The CHAIRMAN: In your submission at page 2, paragraph 5, you note the fact that WAPC planning policies developed under section 5AA of the Town Planning and Development Act - which continue under the new Planning and Development Act 2005 - do not have a binding effect, although there are various provisions within the town planning legislation that ensure that SAT and local governments give due regard to these. You go on to discuss development control policies, such as development control policy 3.7, "Fire Planning" - which is fire planning in subdivisions - which again has no statutory basis. Does the discretionary use of these policies pose any problems in terms of community safety or emergency preparedness?

Mr McMullen: It is difficult to answer that absolutely, because to say it poses problems is probably putting a quite categoric level on it. There are potential issues that arise in the implementation of planning policy, and it can sometimes be problematic. I will defer to my colleague Mr Hayes to give you some background on the status of state planning policies and how the provisions that are in the legislation came to be as they are currently.

Mr Hayes: I will outline how statements of planning policy, or state planning policies, as they are now called, have effect. I will also give some background as to some provisions that were in an earlier version of the Planning and Development Bill. I will first outline the position as it is. State planning policies, once made, are required to be given due regard by local governments in preparing or amending their town planning schemes. They are also required to be given due regard by the State Administrative Tribunal in determining any application for review in the planning context. Typically, there can be a delay between when a state planning policy takes effect and when it is articulated in a scheme because once it is made by the commission, it is necessary to wait until the planning scheme has been amended for it to be incorporated in a binding context, if you like. In preparing the Planning and Development Bill, this issue was focused on. A proposal was put that statements of planning policy be strengthened. The way this was to be achieved was set out in what was part 3, division 2, of the Planning and Development Bill. That division provided that state planning policies could have effect to be read as though they were part of a local planning scheme. It also provided that certain applications for development approval made under a local planning scheme be referred to the commission for determination. In the final analysis, that proposal was severed from the body of proposals in the Planning and Development Act. The reason for that is the obvious concern for local government autonomy if there was a provision that enabled a state planning policy to be read as though it formed part of a local planning scheme rather than allowing for it to have effect by local governments giving due regard to it. I say that simply to give the committee an illustration of how the issue was sought to be addressed.

Mr S.R. HILL: To follow up on that, how many local town planning schemes are in excess of the five-year review date?

Mr Hayes: I am sorry, but I do not have those figures.

Mr McMullen: There are over 140 local governments, all of which have town planning schemes. We would need to provide the exact figure later, if you require that information. It is true to say that many local government schemes are beyond the five-year review date.

Mr S.R. HILL: So we could have a situation in which a town planning scheme was eight to 10 years overdue from its review period?

Mr McMullen: Yes. That situation does arise.

Mr S.R. HILL: So is it true that any of these policy statements that the commission puts out could be null and void for a period of up to 10 years until the scheme had come through the system to be signed off again or updated?

Mr McMullen: I would not use the expression null and void, but it is correct that the requirement in the Planning and Development Act is that due regard be given to statements of planning policy. That means that if councils are not reviewing or amending their schemes in a timely way, the due regard is not taking place.

Mr Hayes: If I could add to that, the provisions governing the review of local planning schemes have been amended from the previous provisions in the Town Planning and Development Act, in order to streamline the process. Also, schemes that are based on the model scheme text - the submission refers to the model scheme text - include a provision that requires that several matters be given regard to by a local government in determining an application for planning approval. Clause 10.2 of the model scheme text refers to any approved statement of planning policy of the commission. Therefore, although it is correct to say that it is conceivable that a state planning policy, once made, may not be incorporated in a local planning scheme until that scheme has been reviewed or amended, on the other hand it would be a relevant consideration in determining an application for approval under that scheme if the scheme is model scheme text based.

[10.00 am]

Mrs J. HUGHES: Some of the schemes could be well overdue. Is there no legislation to have local government step up to the mark? Do you not enforce the reviewing of these town planning schemes?

Mr McMullen: The commission attempts to be proactive in liaising with local governments, but it is nonetheless the case that it is difficult to secure, especially when local governments in many cases do not have adequate staffing and resources to deal with some of these issues.

Mrs J. HUGHES: Even though state changes are being made, they are not necessarily being implemented in decision making in local government unless they come through to you for a decision. Is that the case?

Mr McMullen: They are not being implemented, perhaps in an immediate sense; they ultimately are, because ultimately a council must review its town planning scheme, but there is this question of a timelag.

Mrs J. HUGHES: There could be years when they are not being implemented?

Mr McMullen: That is potentially the case, yes.

Mr Hayes: If I may just clarify that point, they are not being implemented in the sense that they are not being incorporated in local planning scheme provisions, but they are having an influence in a sense that it is a requirement under the model scheme text, and most local planning schemes are based on the model scheme text. It is a requirement under the clause 10(2)(c), to which I referred earlier, for local governments to have regard to any approved statement of planning policy in determining an application for planning approval.

Mr S.R. HILL: If I might follow that up, the planning policy comes into effect once it is gazetted in the *Government Gazette*, does it?

Mr McMullen: Yes.

Mr S.R. HILL: What sort of process does it go through before it goes into the *Government Gazette*? Obviously all other relevant government agencies and local governments are involved in preparing a planning policy. Does it then go to the commission?

Mr Hayes: The process for preparing an SPP involves consultation with affected local governments or the Western Australian Local Government Association. The SPP would then be approved by the Governor and then gazetted. The process has been expanded under the Planning and Development Act. It is required to be deposited and available for public inspection. The submissions are required to be considered by the commission. The SPP is then approved by the Governor. It becomes effective when it is published in the *Government Gazette*. There is a small point of difference between the previous Town Planning and Development Act, which provided that it became effective upon approval by the Governor; the legislation now states that it becomes effective once it is published in the *Gazette*.

Mr M.J. COWPER: I refer to point 12 on page 3. Would you provide an update of the joint Western Australian Planning Commission-Fire and Emergency Services Authority review of development control policy 3.7 for fire planning and planning for bushfire protection, as well as the review of AS 3959 for construction of buildings in bushfire prone areas?

Mr McMullen: The paragraph outlines that the commission commenced that review in 2003 in consultation with FESA. The project is not yet completed. It entirely depends on the successful completion of a number of related sub-projects by agencies outside the Department for Planning and Infrastructure. I will just list a few of those sub-projects. The review is pending. Most importantly it is a review of AS 3959, construction of buildings in bushfire prone areas by Standards Australia in conjunction with fire authorities in all states and territories; the completion of visual fuel load indicator guidelines by FESA; the completion of model fire prevention plan document by FESA; and the completion of the commonwealth-funded building protection zone research project by the UWA or ECU in conjunction with FESA. When those projects are completed the commission, in liaison with FESA, will go on and complete its review of the documents referred to in paragraph 12.

Mrs J. HUGHES: In light of the discussions we had prior to this question, and with the introduction of bushfire protection in 2001, and in light of the previous conversation we had about the implementation of different strategies through schemes and so forth, can you give some indication of whether these policies are being incorporated in decisions that local governments are making? Local governments are making those decisions based on their town planning schemes. If these strategies are not integrated into those, and it is not a controversial decision, what sort of impact are these policies making on the ground?

Mr McMullen: I should differentiate in answering that between the sorts of decision making that is going on. Almost all subdivision applications in Western Australia, apart from a few minor strata matters, are dealt with by the Western Australian Planning Commission. It has obviously close regard to the policy. There are between 5 000 and 6 000 subdivision applications.

Mrs J. HUGHES: It is a huge number do go through.

Mr McMullen: That is right. Of course, there are regional offices and so on. In relation to subdivision proposals where the assessment of bushfire risk is a particular issue that looms large, we can be confident that the policies are properly regarded. The other category of decisions that are of interest include development decisions and building applications, which are dealt with, especially outside the metropolitan and Peel regions, by local government. In that case there may be issues that arise as to whether or not there is adequate attention given the full contents of the policies.

The CHAIRMAN: I refer to point 13 on page 3. Could you provide an update of the statement of planning policy on natural disasters, which is SPP 3.4, which was in draft at the time of the lodging of this submission?

Mr McMullen: It has now been completed. It was gazetted on Tuesday, 11 April 2006 in *Government Gazette* number 67 of that date. I am happy to hand up a copy, but you might have access to it anyway.

Mrs J. HUGHES: On page 3 of policy number DC 3.7, you refer to FESA's guidelines for plantation fire protection. It is the committee's understanding that the enforcement of these guidelines by local governments is at present discretionary. FESA has proposed that it be empowered to request the development of fire management plans from landowners when the land is CALM-managed land, plantation land or land used for pastoral or grazier purposes. The fire management plan would only be requested if FESA considered this to be necessary to mitigate the risk of fire to life and property. In many senses, this would enable the enforcement of those guidelines in respect of plantations. Do you have any comment?

Mr McMullen: I need to stress that neither Mr Hayes nor I is an expert on risk assessment or fire issues. Our expertise is planning policy and planning legislation. I think I need to clarify that.

Mrs J. HUGHES: Can you comment from a planning perspective?

Mr McMullen: Indeed. When the commission is making planning decisions, it is very interested in ongoing operational issues. It may be that CALM and plantations are not particularly matters that come before the commission for its decision making, but, of course, the issues are similar to some others that arise. I can see that the preparation of fire management plans, where desirable, would be advantageous. That is similar to the approach that the commission takes with subdivision proposals, especially over land where there is a need for attention to it at the time of the establishment of the subdivision. I can see that the situation is analogous to that, and we would support it from that planning viewpoint.

Mrs J. HUGHES: Somebody might intend to plant a huge plantation of Tasmanian blue gum or whatever. I am a little ignorant of this, but I know that in local government, for example, if somebody digs a hole to for a patio, it is considered that a development application is needed. In this instances, hundreds of thousands of trees may be planted. Does that matter come before you?

Mr McMullen: It would not come before the commission as a development application. It may be that in certain circumstances some categories of decisions for leases of land come before the commission.

Mrs J. HUGHES: The planting of trees is not considered a development, is it?

Mr Hayes: Yes, the commission is the responsible authority for applications for subdivision approval. A development of the type to which you have referred would be considered to be an application for development approval, which would be considered by a local government as the responsible authority rather than the Western Australian Planning Commission. The commission does consider certain applications for development approval where there is a region scheme in place. There are two presently; they are the metropolitan region scheme and the Peel region scheme. Under those region schemes and the relevant instruments of delegation made under them, the commission does consider certain applications for development approval.

[10:10 am]

Mrs J. HUGHES: We see in some plantations that some companies have quite comprehensive fire management plans and some have none at all. The Fire and Emergency Services Authority are now saying that fire management plans should be across the board. Is that in any of the Western Australian Planning Commission's policy at this stage in any way, shape or form?

Mr McMullen: It is very similar to policy DC 3.7, which, I believe was an attachment to the commission's submission. Paragraph 5.2.4 contains references to zoning or rezoning of land for intensive development, and it goes on to list issues relating to bushfire protection that require addressing. Your comment is very similar to that.

Mrs J. HUGHES: So the planting of trees would be considered as development?

Mr McMullen: No; I think you asked me -

Mrs J. HUGHES: I understand, but what I am getting to with the question I asked about plantation land is that there is obviously not going to be a huge number of buildings constructed or anything like that. It is obviously development in a different form. Is there anything in your policies that relate to that?

Mr McMullen: In some circumstances, rezoning for these plantations under a local government scheme is required, because it will depend upon the exact provisions of a scheme whether a plantation can be carried out or not. If a rezoning is required, it will be necessary for it to go through the commission and, indeed, the minister. The commission, in making its recommendation to the minister, and in forming a view about the merits of the rezoning proposal, will have regard to its policies, which will include the content I have just referred to.

Mrs J. HUGHES: So they are dealt with on an individual basis.

Mr McMullen: Yes, that is correct.

Mr S.R. HILL: The New South Wales Country Fire Association has planning officers in its organisation to deal with applications or developments. Is there any thought of that happening in Western Australia, given the impact that would have on the Western Australian Planning Commission?

Mr McMullen: Not to my knowledge; however, the situation in the legislative context is that the organisational arrangements in New South Wales are quite different from those in Western Australia. There is no equivalent of the Western Australian Planning Commission in New South Wales. Many more of the planning powers are exercised by local governments there. In Western Australia - for example, in the subdivisions I have referred to - a lot more of the decision making is carried out by the state government. So, the situation is not exactly comparable. For that reason, as far as I am aware, that suggestion has not arisen here.

Mr M.J. COWPER: The Bush Fires Act currently empowers local government to order private landowners to install firebreaks. However, this provision does not apply to state government-owned land. Should this act bind the crown so that the state government is bound by the same provisions as landowners? Why or why not?

Mr McMullen: To some extent, that question is outside the portfolio with which we are involved, so we should go only so far in answering it, but I will give an answer from a planning perspective. In dealing with subdivision proposals, especially in urban areas, where a reserve, for example, for conservation of land, is required, planning standards require that where roads are created, they form an interface between the open space reserve and the area being subdivided. The primary reason for that is for the management of the open space reserve. I do not think it would be necessary in all cases for there to be firebreaks on government land, because in some cases the planning provides for some appropriate interface between, for example, an urban area and an open space reserve. Flying from that comment, obviously the issue is much more important in relation to urban areas than rural areas and other areas throughout the state, and the state is very largely composed of government lands. I am not sure, from a planning perspective, that it would be appropriate to simply make it mandatory across the state. If attention is being given to that proposal, I suggest that focus should be upon urban areas.

The CHAIRMAN: We have had a couple of fires throughout the state. The coroner and the Auditor General, after investigation of those issues, both expressed concern at the current fire control arrangements in Western Australia, and both have criticised the fact that local government-which could comprise 144 different authorities - the Department of Conservation and Land Management and FESA could all be in control of a fire at the same time, particularly when the fire is crossing different land tenures. It has been suggested that FESA be empowered to take control over fires from local government or CALM when FESA considers it to be necessary to do so. It is anticipated that that power would be used only two or three times a year. CALM has suggested that

control be available to FESA and related to local government, but not CALM. Do you have a view on that? I am aware that it falls outside your portfolio.

Mr McMullen: For that reason, I do not believe it appropriate for me to comment.

Mr S.R. HILL: My hot topic and the City of Geraldton's hot topic is fire hydrants, Mr McMullen. Currently the City of Geraldton is undergoing its foreshore redevelopment. What is the Western Australian Planning Commission's stance on fire hydrants and the level of service to them? If the commission has any direction in this matter, who should be responsible for the maintenance of fire hydrants in the system?

Mr McMullen: I refer to section 5.3, particularly section 5.3.2, of DC 3.7. It refers to the commission imposing conditions on subdivision applications. The first dot point refers to the provision of water supply and fire hydrants. The commission's policy position is that -

Mr S.R. HILL: That is fine with newer subdivisions, but if, for example, a development application comes into a local authority to redevelop backpacker accommodation, involving redesign of the building and additional accommodation, does the commission have any involvement at all? Obviously, the City of Geraldton is having difficulty in getting these approvals through.

Mr McMullen: The commission would not see a development application like that, but the tests of a planning condition are well understood. There would be no reason, if the need is coming about because of a particular development, that it would not be appropriate for the decision making authority to impose the condition that there be upgrading or provision of fire hydrants. Obviously, in respect of risks attendant upon backpacker accommodation, and issues that have arisen in the past, particularly a situation in Queensland, it would be highly appropriate.

Mr Hayes: I concur with that view, and the nexus, in a policy sense, is paragraph 5.3.3 of DC 3.7, which refers to the local government applying similar conditions based on the considerations set out in the preceding paragraph. Again, I refer to the model scheme text, which requires local government to have regard to the environmental strategic plan and programs.

Mrs J. HUGHES: On the same subject, I understand where the commission may come in with applications for firefighting needs. Some urban local governments have an what we call an inner and an outer zone, so when these hydrants are in place, maintenance becomes an issue. Some are looked after by the career firies. The ones in the outer zone become the sole responsibility of local governments. In some country areas, we find that local government is burdened with the need to keep hydrants in proper working order. The WAPC is obviously allowing these things to go in and is involved with maintenance; does it have a view about whether the Water Corporation should have responsibility for maintenance, considering hydrants become the corporation's asset?

Mr McMullen: I do not believe we should express a view on the Water Corporation's responsibilities. To make a general comment on that issue, if the scale of the subdivision merited it, there would be nothing to prevent the commission imposing some requirements for ongoing operational maintenance for a period of time.

[10.20 am]

From time to time, planning conditions are not just about the provision or construction of fixed assets or infrastructure. They also relate to management and maintenance. If the scale merits it, there would be nothing to stop the commission from seeking such a condition.

Mrs J. HUGHES: Would you then seek the condition on the developer or local government or would you be looking at a state authority? Is there a possibility of looking at a state authority?

Mr McMullen: The commission's condition would have to be on the applicant for the approval.

The CHAIRMAN: If there are no further questions, I thank you very much for coming in. Thank you for your contribution to the committee's inquiry. A transcript of the hearing will be forwarded

to you for correction of typographical errors or errors of transcription or fact. New material cannot be introduced, in the sense that the evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, you should submit a supplementary submission for the committee's consideration. If the transcript is not returned to us within 10 days of receipt, we will deem it to be correct. Again, thank you for coming in.

Hearing concluded at 10.21 am