

**SELECT COMMITTEE ON THE
RESERVES (RESERVE 43131) BILL 2003**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON THURSDAY, 25 SEPTEMBER 003**

SESSION 1

Members

**Hon Peter Foss (Chairman)
Hon Robin Chapple
Hon Jon Ford
Hon Louise Pratt
Hon Derrick Tomlinson**

Committee met at 9.26 am

SEARLE, MR GRAHAME
Acting Chief Executive Officer,
Department of Land Information,
examined:

The CHAIRMAN: On behalf of everyone, I welcome you to the meeting. You have signed a document entitled information for witnesses; have you read and understood that document?

Mr Searle: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document referred to during this hearing for the record. Please be aware of the microphone and try to talk into it - that is for recording purposes, not for amplification. The transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your evidence is finalised, the transcript should not be made public. I advise that premature publication or disclosure of your transcript may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

How many meetings did you attend relating to the decision about the Swan Valley Nyungah Community camp?

Mr Searle: Probably three or four. There were about five meetings over the course of a week.

The CHAIRMAN: When were they held? Is this after the strategic meeting?

Mr Searle: Yes.

The CHAIRMAN: What was your purpose in being there?

Mr Searle: To provide technical advice about the Land Administration Act and the options that were available to the Government in achieving its policy goals.

The CHAIRMAN: What was your advice?

Mr Searle: Over the course of a number of meetings, a range of issues and options discussed. My suggestion was that they actually use a reserves Bill to achieve the goals they wanted.

The CHAIRMAN: Why was that?

Mr Searle: I thought it put the discussion and the debate in the right place and about the right issues.

The CHAIRMAN: What was that?

Mr Searle: Well, the options were primarily to revoke the management order, which would create a whole series of issues and the debate would have been about administrative process rather than the goals that the Government had in terms of the individuals in the camp. By putting it into Parliament, it enabled the debate to take place in a public forum about the issues. So it was my suggestion that putting a Bill before the House was the appropriate way to do that.

The CHAIRMAN: Was it your understanding that the Bill would be passed through with minimal debate?

Mr Searle: That was not an issue that I was involved in. The Bill was actually taken over and run by the Department of the Premier and Cabinet, not our department.

The CHAIRMAN: So as far as you were concerned, it was just going to be an ordinary reserves Bill?

Mr Searle: I understand there was some priority. One of the Government's objectives was to resolve this issue as quickly as possible.

The CHAIRMAN: Apart from having priority, it would be a debate on a reserves Bill?

Mr Searle: Yes.

The CHAIRMAN: Were you aware that it subsequently became a Bill that was passed through as an urgent Bill?

Mr Searle: No, I was not because we had nothing to do with it after the drafting instructions were prepared for the Bill. It was not a Bill that was handled by our minister.

The CHAIRMAN: Right. When the amendments were made to the reserves Bill, were you consulted on those?

Mr Searle: One of our officers was there to be consulted. I was not involved.

The CHAIRMAN: Do you know who that officer was?

Mr Searle: I think it was Ms Eckert, but I am not sure.

The CHAIRMAN: The solicitor?

Mr Searle: Yes.

The CHAIRMAN: Yes, she was. So at no stage have you had to comment on the amendments that were made and what the impact would be on the administrative procedures?

Mr Searle: No, not at all.

The CHAIRMAN: Can you recall the first meeting you were at?

Mr Searle: Yes, I can.

The CHAIRMAN: Which one was that?

Mr Searle: From recollection, it was held on the afternoon of the strategic management council meeting. It was probably around 1 May. It was called at very short notice.

The CHAIRMAN: Who was present?

Mr Searle: A significant number of people were present. Primarily at the director general and chief executive officer levels - it was a very senior meeting.

The CHAIRMAN: Did you keep notes of that meeting or did anybody keep minutes?

Mr Searle: I did not keep notes of the meeting. A lot of people were keeping personal notes. My understanding was that all the meetings were about exploring options and those sorts of things -

The CHAIRMAN: Who chaired that meeting?

Mr Searle: Sean Walsh.

The CHAIRMAN: What was the general nature of the discussion at that stage?

Mr Searle: The general nature of the discussion focused around the fact that concerns had been raised with the Premier about the safety of the people in the camp and, more particularly, the ability of the government departments involved to perform their role in the current environment and the need to do something about it, and to do something about it rapidly.

The CHAIRMAN: At what stage did you make your suggestion that the only safe way to do it was by a reserves Bill?

Mr Searle: It was probably at the second or third meeting. It is hard to tell.

The CHAIRMAN: Did they have a different set of people at that meeting or was it similar?

Mr Searle: It was a bit of a moving feast at some level. Different people brought different advisers with them to different meetings. Primarily there were the same principal players at each of the meetings.

The CHAIRMAN: Were you involved in the new management order that was imposed?

Mr Searle: Yes.

The CHAIRMAN: How was that done?

Mr Searle: As part of the previous set of inquiries, a new management order was put in place. That was done with the involvement of our minister. Part of that was the development of a management plan by the community. At about this time that had just been completed -

The CHAIRMAN: Sorry, I am asking whether you were involved in the actual making of that order.

Mr Searle: I oversaw it. I was not personally involved in the writing up of the order.

The CHAIRMAN: I was really asking this: by what legal process was that put in place?

Mr Searle: The minister is entitled under the Land Administration Act to put in place a management order by agreement that that order can be changed, and the new order was done by agreement with the community. However, that was about five or six months before the date we are talking about.

The CHAIRMAN: Who developed the terms of that order?

Mr Searle: It was done by our officers in conjunction with the minister's office and the community.

The CHAIRMAN: Can you give us the names of the officers?

Mr Searle: I would have to go back and check. Primarily, it would have been Larry Fouracres and probably Ms Eckert, but I am not sure.

The CHAIRMAN: Do you know anything about how the agreement was reached?

Mr Searle: I was not involved in that agreement.

The CHAIRMAN: What class of reserve is the land?

Mr Searle: I do not know off-hand; I just know it is a reserve.

The CHAIRMAN: But it is not an A-class reserve?

Mr Searle: I think it is a C-class reserve but I do not know.

The CHAIRMAN: So that can be changed by a ministerial order at any time to some other purpose.

Mr Searle: Yes, but the minister would need to revoke the existing management order.

The CHAIRMAN: It is now with the Department of Indigenous Affairs.

Mr Searle: But that was done by the Act and that was one of the issues.

The CHAIRMAN: Yes, in what way?

Mr Searle: That in revoking the management order it would create a situation in which people may choose to take court action at all sorts of levels from denial of natural justice through to whatever else -

The CHAIRMAN: Incorrect facts.

Mr Searle: A raft of issues, which would cause the focus to be on administrative procedures rather than the objectives that were trying to be achieved. I thought that would be unfortunate.

The CHAIRMAN: There are another three Aboriginal communities. Do you know anything about the land tenure of those?

Mr Searle: No, I personally do not. In terms of the meetings I went to that were to discuss the issues at hand, they were mentioned only briefly in those meetings.

Hon DERRICK TOMLINSON: You have made reference a couple of times to the objective that was trying to be achieved. What was the objective?

Mr Searle: As stated in the early meetings, it was about trying to put the government departments into a position where they were confident that they could protect the safety and welfare of the people who were in the community.

Hon DERRICK TOMLINSON: How does that translate to a decision for a reserves Bill to revoke the management order?

Mr Searle: The view was that the management order and the arrangements that were currently in place under that management order restricted the access and the means of access that the departments had to such a level as to make it impossible for them to do their job.

Hon DERRICK TOMLINSON: How did the reserves Bill change that?

Mr Searle: It took control of the reserve out of the hands of those people who were currently controlling it.

Hon DERRICK TOMLINSON: Who were they?

Mr Searle: The discussion at the meetings was that effectively the Bropho clan in the broader sense was controlling access to the women and children in the camp on the part of the government agencies and that when they had access, it was in such a way as to inhibit discussions of issues that were of interest to the government departments.

Hon DERRICK TOMLINSON: Did the management order not give management of the land to the Swan Valley Nyungah Community Aboriginal Corporation?

Mr Searle: That is my understanding, yes.

Hon DERRICK TOMLINSON: And they are primarily the Bropho family?

Mr Searle: There has been considerable discussion about who is actually part of that community and who in fact are members of the association. One of the difficulties at the time was trying to determine just who was or was not and what were or were not the processes that that group followed.

Hon DERRICK TOMLINSON: So there is no reference in the management order and the management plan to the persons involved?

Mr Searle: The management plan was never actually put in place under the new management order. When the plan was forwarded to what was then the Department of Land Administration, we forwarded the plan to all the government agencies involved and said, "This is the plan we have been presented with under the new management order. Can you please comment on whether this plan is adequate or sufficient to meet your needs in terms of access etc?" That process was happening virtually in parallel with the discussions we are talking about.

Hon DERRICK TOMLINSON: Did you receive any feedback from the agencies to which you sent the management plan for comment?

Mr Searle: We received some that said that it was not satisfactory.

Hon DERRICK TOMLINSON: What would have been the next stage had it not been interrupted?

Mr Searle: We would have gone back to those departments to have further discussions about what changes they would have wanted to see, but it was overtaken by events.

Hon DERRICK TOMLINSON: In normal processes would that also mean going back to the Swan Valley Nyungah Community and talking about changes?

Mr Searle: Yes.

Hon DERRICK TOMLINSON: So that process was interrupted?

Mr Searle: Yes.

Hon DERRICK TOMLINSON: You said that the Bill was run by the Department of the Premier and Cabinet, not your department. However, you were involved in the drafting instructions.

Mr Searle: My staff were, yes.

Hon DERRICK TOMLINSON: Having only ever sat on the back bench of Parliament, not knowing the processes, what would the drafting instructions contain?

Mr Searle: More particularly the details of the major clauses and provisions of the Bill. They are meant to outline to parliamentary draftsmen the principles that are trying to be encompassed and the goals achieved so that they can then draft the legislation.

The CHAIRMAN: Can we have those please?

Mr Searle: I personally have not seen them, but I will try to get you a copy.

Hon DERRICK TOMLINSON: The Bill contains a revocation of the management order.

Mr Searle: That is my understanding.

Hon DERRICK TOMLINSON: Denial of natural justice?

Mr Searle: I would not say that. My understanding is that the Bill was about having a debate in Parliament about the issues involved, and having Parliament make the decision on behalf of the people of this State and put in place an appropriate regime.

Hon DERRICK TOMLINSON: Did the drafting instructions include an instruction for the exclusion of natural justice at the absolute discretion of the administrator?

Mr Searle: The authority of the administrator was certainly something that was discussed at some of the meetings, but I have not seen the drafting instructions so I cannot comment in terms of your question about whether that was in the drafting instructions.

Hon DERRICK TOMLINSON: Until we get those drafting instructions, you would not be able tell us whether the nature of the discretion, the immunity from judicial supervision or protection from liability were part of those?

Mr Searle: No, I would not, but it would be unusual for them to be in the Bill if they were not part of the drafting instructions.

The CHAIRMAN: You would not normally put those things in a reserves Bill. It was not an ordinary reserves Bill, was it?

Mr Searle: It is certainly stronger than most reserves Bills.

The CHAIRMAN: I have never seen a reserves Bill with any of those things in it.

Mr Searle: I am not aware of too many reserves Bills that have revoked existing management orders, but that is not to say that they have not happened.

The CHAIRMAN: However, you understand what I am saying; that is, a reserves Bill does not normally contain things that deny natural justice and refuse you access to the courts. That is an unusual reserves Bill.

Mr Searle: It is. However, it is my view, and it was my view leading into the meeting, that if the Government wanted to take fairly immediate and urgent measures, the appropriate place to take that was in fact in Parliament, where the people are represented.

Hon DERRICK TOMLINSON: What were the other options available to government to revoke the management order?

Mr Searle: The minister has the power under the Act to revoke the management order.

Hon DERRICK TOMLINSON: Under what circumstances?

Mr Searle: There is a list of them in the Land Administration Act. I do not have a copy of the Act with me.

The CHAIRMAN: Public interest?

Mr Searle: Yes, there are a few. As I said, I would rather not quote without having the Act beside me. It was my opinion that what that would do was just create a forum in which people would appeal to courts and have a range of debates about administrative processes, whereas the prime issue in this matter was the safety of the women and children involved in the community.

The CHAIRMAN: Public interest is not an administrative matter, is it? Was that not really the only ground left to the Government - public interest?

Mr Searle: The minister can also revoke management orders if people are in breach of the order. There is a range of issues in there such as using the reserve for the wrong purpose and those sorts of things.

Hon DERRICK TOMLINSON: You said that it was your view.

Mr Searle: Yes.

Hon DERRICK TOMLINSON: Your personal view?

Mr Searle: My personal view.

Hon DERRICK TOMLINSON: And that was your advice to the committee?

Mr Searle: Yes, it was.

Hon DERRICK TOMLINSON: Because that was the most effective way of meeting the Government's objective?

Mr Searle: Yes.

Hon DERRICK TOMLINSON: Of taking control away from the so-called Bropho group?

Mr Searle: My understanding of the role of the meetings was to advise the Government and, more particularly, the Premier of the best way to achieve the outcomes he was concerned about in terms of the safety of the women and children. In terms of the discussion that was had and the issues that were outlined by people like Jane Brazier at the meeting, I thought that was the most effective way to pursue the debate and to get the resolution of the issues to the Government's satisfaction.

[9.45 am]

Hon DERRICK TOMLINSON: Was it part of your view that the community should be closed immediately?

Mr Searle: That was not the issue I was involved in. That issue was an issue for the Department of Indigenous Affairs, Family and Children's Services or community development or whatever the department was called at the time. They were issues for them. Mine was the issue about how you actually handled the land tenure that relates to the community.

Hon DERRICK TOMLINSON: Was it discussed in any of the meetings?

Mr Searle: Certainly the future of the camps was discussed in a couple of the meetings and issues about, "Well, if the camp were to close, how would we relocate these people, how would we provide accommodation?" Those sorts of issues were certainly discussed in at least one of the meetings.

Hon DERRICK TOMLINSON: Was there any discussion that indicated that it might be best to keep the families there and remove the powerbrokers?

Mr Searle: It was certainly discussed.

Hon DERRICK TOMLINSON: All of those options were canvassed?

Mr Searle: Yes.

Hon ROBIN CHAPPLE: We obviously hope that we will get copies of the drafting instructions. Do you know who issued those drafting instructions?

Mr Searle: I have no direct knowledge. Once the decision was made to proceed with the Bill, I presume it would have gone to Cabinet, that Cabinet would then grant permission to draft and it would then go to parliamentary counsel, which is the normal process.

Hon ROBIN CHAPPLE: So it went to Cabinet?

Mr Searle: I would assume so.

Hon ROBIN CHAPPLE: At the afternoon meeting on 1 May you obviously proffered the view that legislation was the way to go. That has been identified by other witnesses. Was it just the notion of legislation or did you discuss in any detail what the legislation should contain?

Mr Searle: There were a series of meetings, as I said, over the course of a week - there may have been four or five in the course of the week.

Hon ROBIN CHAPPLE: You had another on the fifth.

Mr Searle: I think it was something like the Thursday, Friday, Monday, Wednesday, Friday; I think about five meetings over the course of about eight days. The discussion moved quite freely through a range of options over that period of time, ranging from revoking the management order, which is where we started, through to the legislation, which is where we finished up. At various times over the course of that week various positions were taken and a range of issues discussed, including the powers of the administration and those sorts of issues.

Hon ROBIN CHAPPLE: At the 1 May meeting in the afternoon you put forward the idea of -

Mr Searle: I do not know that it was at the first meeting. It was in the early meetings but it was probably in the second meeting that I suggested it. It might have been the third or fourth before it was actually taken up as the option to be pursued.

Hon ROBIN CHAPPLE: My colleague has raised points relating to clause 8. Were they ever discussed by you as a way of ensuring that there would be no legal challenge?

Mr Searle: They were certainly something that was discussed in the course of the meetings.

Hon ROBIN CHAPPLE: Were they proffered by you?

Mr Searle: I expressed some concerns in the early days about making sure that what we created was not a platform for people to go to court to argue about process rather than to focus on the issues. I certainly proffered that opinion at the meetings.

Hon ROBIN CHAPPLE: Going back to the 1 May meeting in the afternoon, do you have the ability to articulate who was at that meeting?

Mr Searle: There were a range of people there, ranging from the police commissioner, Greg Joyce, Jane Brazier, Richard Curry, Sean Walsh, and a couple of those people had advisers as well. There would have been a group of about 12 at most of the meetings - that sort of size.

Hon ROBIN CHAPPLE: Was Kieran Murphy there?

Mr Searle: Kieran was certainly at a number of meetings. At most if not all of the meetings that I attended, Kieran was present, yes.

Hon ROBIN CHAPPLE: On a slightly different tack, a statement was put out by Clive Brown on 14 April 2003, in relation to the Pyrton site, in which he talked about changing the vesting of that land from the Town of Bassendean and the traditional owners to being organised by DOLA. What is your knowledge of that?

Mr Searle: I had no knowledge of that press release.

Hon ROBIN CHAPPLE: It was distributed to the community. I am just wondering what your department had to do in relation to the vesting of that site.

Mr Searle: We would have been involved in the vesting of that site. That was one of the roles of the then Department of Land Administration. Officers of our department were certainly involved in ongoing discussions about the Pyrton site for quite a while.

Hon ROBIN CHAPPLE: Can you provide us with information that outlines where that decision-making process came from?

Mr Searle: I can certainly endeavour to.

Hon ROBIN CHAPPLE: You also had a meeting on Monday, 5 May at which you met with John Lyon, the Deputy Crown Solicitor and CSO, regarding the management order and the power over the reserve. By Monday, 5 May you had started getting down to the nub of what you were going to do with the legislation. Were you aware of clause 8 at that stage?

Mr Searle: No. In the first of the meetings, the first three or four until about the Wednesday, there was still a range of options being explored in parallel. It was not "we are going to do this or we are going to do that"; it was "let us work our way down the path of all the various options" and then try to be in a position to recommend to government what the best options were to achieve their goals. As I have said, there were parallel activities going on to explore each of the options and identify what the strengths and weaknesses of the various options were.

Hon ROBIN CHAPPLE: You indicated that there was correspondence from the department seeking changes to the management order. Could you provide that to the committee?

Mr Searle: I will certainly try to access it. I need to add that at this stage I am no longer responsible for those parts of the former department. That function has gone back into planning and infrastructure. There are some administrative niceties involved in it.

The CHAIRMAN: Perhaps you could identify what it is and then we can chase it up with the DPI.

Hon LOUISE PRATT: You put forward certain options and you have stated how they were canvassed. Did the meetings that you participated in reach agreement as to the most appropriate options?

Mr Searle: Yes they did. I do not know that it ever got so far as saying it as a formal process, but the ideas coalesced over a period of time.

Hon LOUISE PRATT: There was a clear sense of advice from that series of meetings that went forward to the Government based on the group's deliberations that that was the most appropriate way forward.

Mr Searle: Yes.

Hon LOUISE PRATT: In the context of the perception of the group that the memorandum of understanding had failed, what was the nature of the discussions about that issue that caused that shift in terms of the identification of the mechanisms that might be available?

Mr Searle: A lot of time at the first one or two meetings was taken up with the Departments of Indigenous Affairs and Community Services talking about the issues they were having in terms of the camp, the sorts of practical threats they saw, and the repercussions that was having for some of their officers in trying to carry out their duties. So a lot of the early meetings in particular were spent in terms of that discussion of the issue and trying to sort out a way forward in terms of improving those issues.

Hon ROBIN CHAPPLE: At any of the meetings, while there was this general perception that access to the camp was an issue, was any evidence provided by any of the departments citing particular incidents that caused concern, and what was the nature of those incidents?

Mr Searle: There were a number of issues that were specifically raised by particularly Jane Brazier's department. They were around particular instances, people being threatened in terms of having their dwellings burnt. There were allegations about a number of young people who had either been abused or threatened or certainly intimidated, and the unwillingness of people to talk candidly with them in the environment of the camp. There were probably five or six different instances raised by those departments in those meetings.

Hon ROBIN CHAPPLE: Were issues of a young man having his legs broken raised?

Mr Searle: It was certainly mentioned.

Hon DERRICK TOMLINSON: May I go back to your statement that at a couple of meetings particularly the DCD canvassed a series of issues. Coalescing from those discussions came your view that the best way to proceed to meet the Government's objectives was a reserves Bill to revoke the management order and to protect against ongoing legal challenge.

Mr Searle: Yes.

Hon DERRICK TOMLINSON: In that process of transition from protecting women and children to revoking the management order, did the discussion come to focus on the actions of any persons in the camp to prevent service providers from entering or having access to clients?

Mr Searle: That was certainly mentioned as part of the discussions.

Hon DERRICK TOMLINSON: Was it an important part of the discussions?

Mr Searle: Yes, absolutely.

Hon DERRICK TOMLINSON: Was that the key to your coming to the conclusion that the best way to proceed was legislation to revoke the management order?

Mr Searle: I think the key for me was the issue about if the Government's objective was to change the control, was it in order to protect the safety and welfare of the women and children in the camp. It was the view of the departments concerned that the control of the camp by certain individuals was a major issue in that discussion. That view came from service delivery agencies. Given that as a starting point, my role in the discussion was therefore to find a way, in terms of the Land Administration Act and the options the Government had open to it, to put a different management regime in place over that particular parcel of land.

The CHAIRMAN: You provided the legally safest route.

Mr Searle: I provided advice as to what I thought was the legally safest route for the Government to achieve the outcome it required.

The CHAIRMAN: Given a particular outcome, what was needed was to change the management. You said that the legally safest way was a reserves Bill.

Mr Searle: Yes.

Hon DERRICK TOMLINSON: You have said this, but the purpose was the change control within that reserve.

Mr Searle: My understanding is that the purpose was to try to improve the safety and welfare of the women and children in the camp.

Hon DERRICK TOMLINSON: To achieve that -

Mr Searle: It was deemed to be the appropriate way to proceed.

The CHAIRMAN: You were told that breaking control was necessary. If you were told about slowly approaching the camp with a memorandum of understanding, then your particular suggestion would not have been relevant, would it?

[10.00 am]

Mr Searle: Correct.

The CHAIRMAN: It was premised on the suggestion that what was needed was to change the management project.

Mr Searle: Yes.

The CHAIRMAN: To what extent was your suggestion of a reserves Bill - as the safest legal method of doing it - motivated by the fact that Mr Bropho was the person at that camp?

Mr Searle: To the extent that any other course would have been potentially a range of court actions and challenges. It was my view that this course of action -

The CHAIRMAN: The reason you said you contemplated there would be court challenges was because the person involved was Mr Bropho.

Mr Searle: Mr Bropho has been known to use those sorts of challenges.

The CHAIRMAN: Yes, he is notorious for it.

Mr Searle: Indeed. However, people other than Mr Bropho have also used those sorts of challenges so I may well have recommended it in other circumstances.

The CHAIRMAN: It certainly figured in your concerns.

Mr Searle: Yes.

The CHAIRMAN: Were you involved in the original grant to the group?

Mr Searle: No, I was not in the State at the time.

The CHAIRMAN: Thank you very much. A copy of the transcript will be sent to you. When you receive it will you go through it to make any corrections that are necessary; not changes of meaning but changes where you have been incorrectly recorded. Please try to return it to the committee as soon as possible.

Mr Searle: Certainly.

Proceedings suspended from 10.01 to 10.33 am