

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

**TRANSCRIPT OF EVIDENCE TAKEN
AT BUSSELTON
ON WEDNESDAY, 28 AUGUST 2002**

SESSION 8

Members

**Hon Barry House (Chairman
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

MILES, MR ALAN
AVC & PA Miles, and Selim Fisheries,
examined:

The CHAIRMAN: Welcome to the committee, Alan. Please state your full name, address and the capacity in which you appear before the committee.

Mr Miles: Alan Vincent Miles of Quindalup. I appear before the committee as a landowner, the owner of a lease at Windy Harbour, and on behalf of my family.

The CHAIRMAN: Thank you. You will have signed a document titled "Information for Witnesses". Have you read and understood that document?

Mr Miles: 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 you refer to during the course of this hearing for the record. I remind you that your 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 that part of the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement?

Mr Miles: Thank you for allowing me to speak to you. I will speak to you basically on the issue of land tenure and the problems that we seem to have. It was interesting for me to hear the previous speakers a minute ago. I sympathise with them, as I have done all the same things and been in the same places as them, but with a different shire. We own a property on Cape Naturaliste, which my mother's family settled back in the 1850s. For about the past 25 years we have endeavoured to do something about further subdividing that property, but we seem to be one of those groups that is experiencing problems - many people have found it hard to get to first base. I am trying to be constructive, but it always amazes me that various planners from private enterprise will give you various ideas about what you can do with a piece of land, and then a couple of statutory planners can come on-site and give you something entirely different. It always amazes me that professional people can be so far apart. That seems to be one problem that is recurring all the time in planning.

I would firstly like to highlight the problems with the Cape Naturaliste property. We have endeavoured to do something with that property for a number of years. We seem to experience what I call long-drop planning - if someone does not really like it, he manages to do something to stop it happening. This goes on and on and on. You eventually reach a stage at which, in some cases, progress catches up. This can occur at a time when there is no need or capacity for development. You suddenly find, after you have started, that there are hurdles that you have to get across. I refer to the map that I have circulated. We own the piece of land at the back, which is part of the old family property that was subdivided into three lots some time back. To get access to lot 50, as it is now called, we bought a little block of land that leads onto Eagle

Crescent. Some considerable time back we were asked, out of the blue, to become involved in structure planning. I think that is something to which the State Government will gradually move. At that time there was very little development in the rest of Eagle Bay, so we put forward this land to become part of Eagle Bay. I will explain the geography of the area. A creek flows through this area and there are two high hill fringes, so around Eagle Bay there is virtually an amphitheatre. One would have thought that if planners were progressive and looked to the future a bit, they would pick up on that topography and endeavour to do some forward planning. What seems to have happened to us, and obviously what happens to a lot of other people, is that planning has occurred by cadastral boundary. That is difficult in planning terms because it does not take into consideration a lot of other things that happen. As a result, we made various applications. At one stage we got approval for a certain amount of subdivision to be accessed from this lot, but somebody objected to the shire and the Ministry for Planning, so that decision was reversed and we were told that we could not access any further subdivision from that point. We had to find a different road route. To cut a long story short, about 70 per cent of the development comes out of these reserve areas, including the reserve zone around our property. That land is currently still our property but it has a reserve zoning over it, which is something that we objected to unsuccessfully at the time. We opted for road routes coming in from different directions, which turned out to be unacceptable for various good reasons. As noted on the map, we now have approval from the Department for Planning and Infrastructure and the shire to look at road access through a recently created subdivision. Interestingly enough, we now have to create that road through the reserve land, so in an area where many people have an interest in the environment, we now have to try to plan our way across all these so-called logs that have been dropped along the way.

I want to point out to the committee that there appears to be a lack of forward planning in many cases. I guess that there is some benefit in that because in recent years there has been a move towards structure planning. Structure planning is now being insisted upon by the Department for Planning and Infrastructure, and rightly so. I have some problems with that. I guess that will be highlighted when I comment on Windy Harbour. In order to do local planning strategies and structure plans, which they are termed, councils seem to sit very close to that. We tend to get a lot of stuff that happens behind closed doors and which comes out in the initial plans. Once a plan is advertised, it is very difficult for an individual to get it changed. Companies, corporations and others might have a better chance, but from an individual's point of view, once a plan comes out on a piece of paper for advertising, it is extremely hard to get any of it changed. That leads me to suggest -

Hon KEN TRAVERS: Sorry to interrupt you, but why did you say that it is easier for a corporation than an individual?

Mr Miles: That is purely my own perception of it.

Hon KEN TRAVERS: Is that because they have more money to spend on experts or is it -

Mr Miles: It is not money, but that they have more expertise and a greater ability to do those sorts of things. I could probably point out some areas, but not in this forum. That was a general observation. I do not want to point to anyone. I am trying to persuade the committee that we should be looking at some changes to the structure plan system which may, in the future, assist in giving people, for want of a better

word, a bit fairer go. It may also be more beneficial to the community as a whole. That is why I am saying that.

This is a family property. After 20-odd years of trying to get it subdivided, it has gone beyond our financial resources. What may have been a relatively simple subdivision to start with has become quite an expensive subdivision following all the things that have happened and what we have to go through to get there. I am not saying that we feel harassed or anything like that, but that a fairer system of planning could be adopted to give people a better opportunity to be part of the initial plan before it is advertised. I might make some further comments on that in relation to Windy Harbour. I believe that Mr and Mrs Johnson will appear before the committee after me. They will probably give a more in-depth indication of what I am alluding to in that case as well. Those are the points I would like to highlight.

I will also comment on the past Leeuwin-Naturaliste region plans, of which there were a couple. In the process of those being adopted by the Government, there were a lot of grey areas. I became most concerned at one stage when I spoke to a councillor who was on the steering committee because he failed to understand what it was all about. I do not really blame him for that. It was probably of a bigger magnitude than what he believed was happening at the time. Once again, I feel that some better advice to the community on how these things are working - I am going back a little in time - would have helped. I think you probably will have heard about the Leeuwin plan in the process of your hearings, but even in relation to the balance of our land up here, the Leeuwin plan now places about three different zonings across that land in various sections. Basically, it is a 300-acre property, so it becomes difficult when we were basically farming. You can also look at what is happening next door with the development of Bunkers Bay. There are different zonings, but some of those areas are basically just open paddocks. Once a plan is advertised, it becomes difficult for smaller people to find someone who has the ability to argue that it is not justifiable. I was part of a couple of planning groups that provided input to various politicians on one thing and another, and also on the land uses that were envisaged and highlighted in the Leeuwin plan. It was extremely hard to understand where some of those land uses came from. Once again, when they were put on paper, it was difficult to try to have them changed. No doubt there will be another Leeuwin plan before that will happen.

The CHAIRMAN: By zonings, do you mean reservations over your land, such as landscape protection and conservation protection reservations?

Mr Miles: That is what I refer to as zonings. It is probably not the right word, but it is close to it. It creates a permitted use for that land, for which I do not think any other term could be used. The only thing is that it is outside the normal planning system, which basically now uses the R codes. It is the same sort of thing, but there is a different determination for that.

I want to highlight the point about getting things changed. One can look at the saga over Smiths Beach and the various things that happened with that. I will further comment on that process in my summary at the end. What I am saying probably supports what has been said by a lot of other people about the Leeuwin plan and other problems in planning. However, I would like to be objective. We need to look at the processes behind those problems rather than the individual arguments to make sure that people will not have to come along with the same problems to future hearings. I will turn to Windy Harbour -

Hon ED DERMER: I will just ask you a question before you do. You referred to the reserves on part of the property that you had hoped to subdivide. When were those reserves put in place?

Mr Miles: They were put in place as part of a structure plan.

Hon ED DERMER: Part of the Leeuwin plan?

Mr Miles: No, part of a council structure plan for that area.

Hon ED DERMER: When was that?

Mr Miles: It was probably about 1994 or 1996.

Hon ED DERMER: So it was after your original application for rezoning?

Mr Miles: Yes, it was. We had input. The process is a little difficult. Back then we had to apply for rezoning of the property. We asked for a subdivision of the property through the Ministry for Planning prior to these zonings being put in place. At the same time that the zone was put around there, it was indicated that this land would be able to be used for rural residential purposes, but it was subject to a guided development plan and various other aspects of the planning scheme. Although it has been earmarked for rural residential development, it is not possible to go ahead with that because it has to go through the guided development process, which is laid down in Busselton's planning scheme. That scheme is extensive and includes lot sizes, roadways and everything that goes with that. In the interim, they just plonked this zoning around there. It is 10 metres on the side and 30 metres on the top. Provided that the rest of the subdivision goes ahead at some point, it will be absorbed into that, but at the moment it is still a rural block. It is difficult to live with this zoning all the way around the property. At the time that it happened we discussed -

Hon KEN TRAVERS: How does that zoning impact upon you living on the property at the moment? You said that it was difficult to live there as a rural block with that zoning. How does that impact upon you?

Mr Miles: If one really looked at the shire's zonings, it would be impractical to run cattle on the property, which we are doing.

Hon KEN TRAVERS: Surely you would have an existing use right. Surely that would continue.

Mr Miles: No.

The CHAIRMAN: No, you lose that.

Mr Miles: We looked at claiming injurious affection because the zoning had been changed. We got some people to go through the exercise. However, when they worked out the values, we found that it would have cost us more to get the consultant to do that than we would have got back for it, so it just sits there. The same applies to the neighbouring land, which is not ours. It is his business. There have been some grey areas over that. It certainly creates a problem to us now that we have to try to get a road reserve across it.

Hon ED DERMER: You explained that earlier, did you not?

Mr Miles: Yes, and it is unusual. We could see that there was an emphasis on doing it at that time. In the process, we agreed to a subdivision or a rezoning, or something like that. At the same time, we might not have taken this large area down here around the creek and also down the side. Unusually, the title still stood in our name; it is

virtually delineated under a planning scheme. There are no caveats on it or anything like that.

Last year, a proposal was made to provide services to Bunker Bay. We were approached to allow the services to come up and along here because there is an existing firebreak that is being cleared all the time. We proposed that instead of cutting across the property, the service providers follow the boundary road within that reserve area. Some matters were raised in conjunction with us doing that, but ultimately the water authority overrode that proposal, because it has the power. Some of that area has been turned into a water authority easement on the fence, which creates a flow-back effect. Until the developers were able to talk to the water authority about its powers, some funny sorts of things started to happen.

Hon KEN TRAVERS: Where does the water to Bunker Bay go now?

Mr Miles: It comes in through adjoining land up the inside of lot 50, and it then goes down the side of the swamp and into Bunker Bay. Power, sewage, water and Telstra services go through that area. These log drops come out of left field and eventually it is difficult to get it all together. Planning proposals are first seen when they are advertised, and it is damned hard to stop them after that point.

I will refer to Windy Harbour. I might take some time away from my neighbours' submission, but I want to support what they will say. Windy Harbour is owned by the Department of Land Administration. It is a reserve that is leased to the Manjimup shire on the basis that it has the power to sublease it. That arrangement has been in place for many years, although I cannot tell the committee exactly when it started. Seven of the 200 or so lots have been given fishing leases and were delineated under a management plan many years ago. They were separated from the original development. In 2000, a gentleman who had lived there for about 50 years wanted to sell the lot he owned and the beach licences that went with it. My family and I purchased it as an addition to our fishing business. At the time we understood that the lease arrangements for the whole of Windy Harbour, which were annual leases, were to be changed to 20-year leases. However, because there were some problems relating to the seven fishermen's leases, the council elected to conduct a review before allowing the 20-year leases to become part of the balance of the fishing leases.

We bought the fishing lease on the basis that it was an annual lease. At that time, we did not realise that a review would be conducted; however, we later believed that it would be conducted only because of some anomalies. In May 2002, the Manjimup shire released a local planning strategy that we did not know much about until August. That planning strategy has some very serious implications for how we can use that land. We will be relocated and will have to move all the infrastructure. There was and still is a reference to the possibility that the 20-year lease may be used as a trade-off for that land. That is unacceptable to us because we believe that we paid the appropriate price for the land in accordance with what people paid for other leases in Windy Harbour. All of our infrastructure may have to be shifted, although it is only a private boat. Currently, that plan is only a local strategy. However, as I said, once planning proposals have been advertised, it is hard to change them. The implication for the value of the lease is that we now have a lease that no-one will want to buy, essentially because no-one knows what will happen to it. There is a considerable amount of infrastructure on the land, which we have bought. That infrastructure may have to be shifted, probably at our expense.

I would rather let Mr and Mrs Johnson give their version of what is happening. They have examined the issue in more depth than I have because I spoke on both issues. Some thought must be given to how and when future planning strategies are put together. It must be considered whether planning strategies should be left to the shires or whether it would be better if they were driven by the Department for Planning and Infrastructure, which has a broader outlook of local issues and agendas. When planning is undertaken, more thought should be given to overall planning rather than to national planning, because that only presents problems, as it has done at Eagle Bay. I reiterate that planning strategies should be left to the Department for Planning and Infrastructure, in consultation with the shires.

I have lived in Windy Harbour and have gotten to know some of residents in a short time. The leasing structure whereby people can lease the property, pay rates and build a house on the property is a good way of allowing coastal development by people who may not be able to afford to buy a block of land at Eagle Bay, for example. Governments should give a lot of consideration to that matter. I recommend that DOLA should have control of the land, the boundaries of the land and the lots. Obviously, it would then be under the control of the State Government. If that occurred, local councils would have opportunity to take over the land and get the rates and the various community benefits that go with it.

The CHAIRMAN: You have proposed that planning should be undertaken on a broader scale involving topographical features and those types of things rather than on cadastral boundaries. A map of Africa and interfering people springs to mind. I agree that in a perfect world that is what should happen. However, if that proposal is taken up - we hope it will be in some way - opportunities would have to be opened for land swaps to cut through some of the anomalies that have occurred in the past. How could or should that occur?

Mr Miles: It would depend on whether it is government or freehold land. In the case of freehold land, private enterprise would negotiate those matters within the bounds of being directed by the Government. Logically, those matters would be sorted out as part of the planning process. I will refer to local planning strategies because they seem to be the beginning of the planning process, although there are also state regional plans. In my view, local planning strategies are drawn up behind closed doors. It seems that a few meetings are held in the district before the strategy is submitted to the Department for Planning and Infrastructure. That is one of the anomalies to which I have referred. When those plans are being considered, they should be open to public comment before they are finally decided upon and distributed for public comment. Everyone would then be given an opportunity to know about what is being considered and could have some input at an earlier stage. That would correct a problem in the past whereby there is not much chance of getting a proposal changed after it has been advertised for the final time.

The CHAIRMAN: That is consistent with some evidence we heard yesterday from another group of people.

Mr Miles: That is good. Maybe different structures for local planning strategies should ultimately be considered; for example, at the beginning of regional plans. That would be better than a top-down approach like the Leeuwin plan.

The CHAIRMAN: Thank you for your very constructive suggestions.