

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

LAND INQUIRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 19 AUGUST 2002**

SESSION 6

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**

[2.45 pm]

McCANN, MR JOHN
examined:

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting.

Mr McCann: I appear before the committee as a private resident of the Perth hills who has had personal experience of Department for Planning and Infrastructure processes. That experience has enabled me to be in a position to make certain observations, about both the ministry and the position of landowners in the Hills. I do not speak on behalf of any formal association or represent anybody in the hills.

The CHAIRMAN: Have you read and understood the Information for Witnesses sheet that you have signed?

Mr McCann: Yes.

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 that you refer to during the course of this hearing. Your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's hearing, 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 public evidence is finalised, it should not be made public. Premature publication or disclosure of public evidence may constitute a contempt of Parliament and the material published or disclosed may not be subject to parliamentary privilege. Would you like to make an opening statement?

Mr McCann: Yes. My statement is framed around the document I have given you. I understand that we might be pressed for time. Is there any limitation on my time at this stage?

The CHAIRMAN: As usual, we are running late. We are about half an hour late at this stage. We had scheduled a 45-minute session with you, but if we could do it in 30 minutes, that would be terrific.

Mr McCann: I will do my best. I do not propose to read the whole document that I have submitted. I hope that you might have a chance to read it later. I understand that it will be incorporated in its entirety in the public record.

The CHAIRMAN: That is not necessarily true. It is a submission to the committee. The committee determines whether to make that submission part of the public record in terms of its report. I cannot pre-empt any decision the committee might make, but I think that it would be the committee's wish to make all information public, unless it is deemed otherwise. Your submission will not become a public document at this point. The committee will determine, when it is deliberating on its report, what it will table in Parliament. We note the content of any submission.

Mr McCann: I will whip through the first part of my submission. I wrote it to provide a reference for my address.

I appear before the committee as a private citizen and will tell you about a circumstance that has affected me. I do not deceive myself that it is in your power to do anything about my circumstance. What I hope to achieve in telling this story is to give you some context to the proposals and observations that I would like to make for the benefit of the committee, Parliament and the people of Western Australia.

I have a profound belief that government, from the highest minister to the humblest filing clerk, exists to serve the people. I believe that the people who make up government deserve our respect for their dedication and service to the State, but I also believe that the positions they hold and the respect in which they are held demands that they strive to achieve the very highest level of competence and integrity. Nobody goes through life without making mistakes or errors of judgment and we nearly always fall short of perfection. Those who would improve themselves or their organisations acknowledge this, rectify their errors and always work to find better ways to do things. I welcome the hearings of this committee as evidence of the health of the parliamentary system in Western Australia, and I appreciate the opportunity to speak before it.

I will provide a short, general background of my circumstances, which will paint a picture. I have been affected by a proposal of the former Ministry for Planning and an Act of Parliament that changed the zoning of my property from residential to parks in 1998. This change was undertaken without notification either to the former owner of the property or me. Because the ministry failed to notify me of the proposal, I had no opportunity to hear the arguments for the rezoning or state any case against them, and its failure to notify me of the enactment of the legislation by this Parliament meant that I had no opportunity to use any of the available avenues to appeal against the decision. This rezoning effectively alienated me from my property. I could not continue to live there. I had promised my wife that we would build a real house. We had, through careful management, saved money to build, which the ministry's action now prevented us from carrying through. I could not ask my wife to continue living in what amounted to very basic accommodation for the rest of our lives. The Ministry for Planning said that I was not the owner of the property at the time of the proposal and subsequent processes, which is not entirely true. The ministry publicly claimed that the former owner of my property was advised of the proposal in writing, which is a lie. The ministry accused members of the public, who recollected telling it of the mistake in notification, of making false statements. It has come as close as possible to defaming the former owner of my property and his real estate agent by suggesting that they may have made decisions about the setting of the sale price of the property based on some knowledge of the rezoning proposal, which is as good as saying that they, or one or the other, kept this information from me.

This is, however, only incidental to what I want to draw to the committee's attention today. I believe that there was a profound lack of expertise in the Ministry for Planning, which is now a part of the Department for Planning and Infrastructure. I conclude that it fell short of even modest standards of ethical behaviour and good public administration. In a sense, I had the good fortune to see the ministry at its worst and can now report that to you. I have no intention of glossing over the mistakes of some parts of the ministry. I tend to see the acceptance of unavoidable bad fortune as a necessary part of life, but carelessness, malice or stupidity needs to be challenged; otherwise, we devalue ourselves and society. I have accepted the department's expressions of regret that I caused it so much inconvenience in reading and responding to my letters, and I note its sorrow that I have taken up so much of its

time and been such a difficult person. I acknowledge that the department may even regret the lies, deceit and potentially misleading report that the former Ministry for Planning, with its planning commission hat on, made to Parliament in 1998.

For my part, I have nothing to regret. I know that I did the right thing by my family, took all reasonable precautions when I purchased the property, and paid taxes and rates - mostly on time. I know that I have done my best to be a good neighbour and to look after my property and the wildlife and bush on it. I know that I took all reasonable steps to secure my property against the hazards of bushfire, assisted many to enjoy the surrounding parkland and discouraged others who would have abused it. I do not regret any of that, but I wish things had turned out differently.

I had pinned my hopes on the current Minister for Planning and Infrastructure and have held out for two years waiting for some fair result. However, since I last wrote to her in February this year, I have had no reply. I find that odd since, at the time, she seemed to suggest that she was outraged at the behaviour of my real estate agent and proposed to refer his behaviour to the appropriate bodies without delay. I cannot say that I believe that the enthusiasm expressed in her letter was based on any misbehaviour on the part of my agent, but I can perhaps conclude that it was motivated by a desire of persons within the department to deflect attention from their own behaviour. I am patient and I will wait for justice. However, in the meantime, I will share with the committee what I have learnt and hope to do some good in warning others. Perhaps it will also help the planning department to do its job better in the future.

I apologise for my slightly bombastic nature - I tend to get carried away.

I believe that some within the Department for Planning and Infrastructure pursue strategies that run counter to the best interests of the people and environment, particularly of the Perth hills. However, I believe that other people have a workable vision of a population living in and protecting the hills environment for themselves and as a gift for future generations. I will tell the committee how, with a little imagination, the Department for Planning and Infrastructure could work with these people to achieve these aims, but not without a change of attitude and processes within the department. As it stands, the department appears to have grown careless, even carefree, in the exercise of its considerable powers. My experience is that it believes that it has only one very blunt tool - that of zoning and acquisition - with which to manage the future of the Perth hills environment. It appears that the department does not hesitate to use that tool when it thinks that it can do so without incurring any undue public opposition. I have seen on its files and have heard from its staff that the department has a problem with all the privately owned land along Churchman Brook and in the Canning River valley. It appears that it believes that the appropriate solution is to rezone and ultimately bring that area under its management. We are talking about not just one property but potentially hundreds or thousands of properties. I do not recall that this was ever a policy of the current or the previous Government. One wonders whether an agency that contains a division that has responsibility for management and, presumably, the extension of parks and reserves, and another division wherein lies the power to convert privately owned land into parks and reserves and which also provides the bulk of staff and advice to the body that reviews its decisions, should be entirely trusted. Of course, in giving the department these roles and powers, the Government intended that Parliament would be a check and balance to it.

[3.00 pm]

Perhaps the Government did not anticipate that in the case of metropolitan region scheme amendment 993-33, the Western Australian Planning Commission would submit a report to Parliament which was supported and developed by the Department for Planning and Infrastructure and which had the potential to mislead. I paint a not entirely healthy picture. If my essentially optimistic nature suggests that the operation and attitudes within the Department for Planning and Infrastructure could be turned around to achieve better outcomes for the Western Australian public, I must also acknowledge that there is a deal of work to be done. What I can contribute here is only the smallest part of a major reform. I am encouraged that within the State Government there are people of immense drive, intellect and honesty who, if given the opportunity, proper direction and right tools, have the capacity to achieve great things for this State.

My document contains an analysis of the major areas of concern, which I believe is by and large in line with the terms of reference of this committee. My first observation is about the organisational structure of the planning department, particularly the role of the parks and recreation division within that department and its apparently anomalous role. My concern is that a group of people within the department have particular responsibility for managing and extending parks and recreation reserves. It is a slightly complex argument, and I hope it makes sense. It appears that there is an anomaly in the operation of the planning department in that there is a division with responsibility for developing and managing parks and recreational areas. I am not aware of equivalent bodies within the department for industrial, residential or rural-zoned areas. No doubt the rationale is that outside the department there are very powerful and competent interest groups - both government and private - that will initiate and press for planning outcomes in this area. I suspect that the parks and recreation division was set up a while ago to ensure an effective voice for the green bits on the map and to manage what was acquired until it could be vested in another government body. I guess that performance indicators within the department measure how much is acquired by the parks and recreation division and how much is under its management each year. I believe a fundamental part of the planning function is to develop and assess appropriate planning outcomes for the whole community. I also believe that there should not be any perceived or real problem in the degree of objectivity that the planning process has in any proposal initiated by its own people that would result in the acquisition or ownership of additional property under government control. For example, I imagine that if a substantial piece of land were available for either agricultural or recreational use, the planning department would receive proposals, on one hand, from farmers, the Department of Agriculture and perhaps even the Department of Industry and Technology, and, on the other hand, have proposals from the appropriate areas of the Department of Conservation and Land Management and the planning department's parks and recreation division. I suspect that there is not an equivalent area within the planning department to make the case for a particular piece of land to be used for agricultural development in the same way that the parks and recreation division would make the case for that land to become available for recreational use. I do not believe there are staff within the department who are responsible for managing the adjacent farmland or whose performance is measured in part by how much land is set aside for agricultural use; however, staff in the parks and recreation division have responsibility for managing reserves, and their performance is possibly measured in part by how large an area they manage.

It is not that I do not think there is a place within government for a very strong body to champion the zoning of land as parks and recreation; however, I question whether it belongs inside the body that has the wider responsibility of developing and assessing planning proposals for the whole community. If the parks and recreation division were placed in bodies outside the planning department, such as CALM, the fire authority, the Department of Sport and Recreation or local government authorities, some balance and transparency that does not now exist could be established. This would not diminish the responsibilities of those who argue for the reservation of land as parks and recreation, but would enhance their function as those bodies that are essentially closer to the community would have more available expertise to develop proposals for submission to the Department for Planning and Infrastructure. The planning department would then be, and be seen to be, better placed to use its expertise to identify the needs of the State as expressed by the public and agencies of the State without any possibility of suggestion of self-interest or bias in favour of a particular group. Of course, I am sure that a culture of fearless and independent advice exists within the ministry. I believe that arrangement would create far more rigour in the development of proposals that could only benefit the planning process. There appears to be within the planning department a culture that tolerates absurd and poorly developed proposals from the parks and recreation area that I imagine would not be entertained if they came from anywhere else. In my submission I make some observations about the amalgamated Department for Planning and Infrastructure but dismiss them on the basis that I believe the new arrangement would mean that Main Roads or the transport department do not have any undue influence on the planning organisation. However, I wonder whether the planning department should have more independence and not be incorporated in the larger department. The department of planning seems to be not dissimilar to the Department of Treasury and Finance in that they are both tools of government and have a role in balancing, to some degree, the views of government agencies, the private marketplace and the community. The transparency and discipline of the interactions between the Department of Treasury and Finance and the rest of government are needed in the planning process. Both impact on all areas of government and the community, and both must consider the long-term future and the present as well as the term of the current Government.

I have not spoken about the Western Australian Planning Commission as a separate body from the planning department. My unfortunate experience is that the Planning Commission is staffed by planning department staff and all its advice comes from the planning department; they seem inseparable in every sense. I conclude my observation about the structure of the department by suggesting that consideration should be given to removing the parks and recreation function from the planning department and placing it in more appropriate bodies without diminishing its power. I also suggest that consideration be given to providing the planning department with a separate identity and existence within government, much along the lines as that of the Department of Treasury and Finance.

My submission contains a few pertinent and important legal observations that tie into the administrative and clerical processes. I will try to whip through them quickly. The review of my property was triggered by a letter from the Churchman's Bushland Association, a representation from Mr Fred Tubby, and a letter by Mr Rob Fidock offering the property for sale. Mr Fidock is a real estate agent who represented the former owner of my property, although in that instance he was not acting with his

authority. The ministry rejected Mr Fidock's proposal to purchase the property, but told him that it would investigate its merits. Mr Fidock heard no more from the ministry and assures me that he was not aware of the rezoning until I alerted him to it in July 2000. He later told me that when he showed me the property for sale in September 1997, he had concluded that as he had heard no more from the ministry, it had no interest in it, and therefore did not think to mention it to me. By that time the ministry was well down the road towards reserving the property; however, its confidentiality arrangements did not allow it to mention this to anyone. A briefing note to the Perth regional planning committee of 16 May 1997 says that the amendment must remain confidential for the time being and must not be presented to the public or media for consideration. I inquired with the ministry on 15 October 1997 - which the ministry disputes - whether any planning proposals affected the property I proposed to purchase, and was told that none existed. This is entirely consistent with the ministry's attitude towards the confidentiality of the development proposals; that is, that under no circumstance was anyone empowered to release to the public information about a proposal until it was advertised to every member of the public. That makes perfect sense. It is unfortunate that the proposal was confidential when I made the inquiry about the property.

Hon DEE MARGETTS: What was the date?

Mr McCann: It was during October 1997. The proposal was advertised on 22 October 1997. It was a bit of bad luck. There was a most unfortunate -

Hon ED DERMER: Did you make the purchase in the intervening two weeks ?

Mr McCann: I made the offer on the property just before 15 October, and settlement took some months. In a strictly legal sense, I was in negotiation to purchase the property when the proposal was advertised.

Hon ED DERMER: I suppose the offer would not have been subject to a planning proposal or anything like that.

Mr McCann: The agent was obliged to make me aware of any issues. The clause 42 over-the-phone inquiry - which the ministry encouraged people to use - led me to believe that no planning proposals existed. The agent assured me likewise. I had every confidence that the now former owner of the property, Mr Quentin Donald, would be advised of any subsequent proposals. He was not advised. According to the ministry, that was an administrative error. The ministry had identified two private properties and several public properties for part of proposal 22 of the metropolitan region scheme 993-33, relating to Soldiers and Butcher Roads, Roleystone. The ministry used its maps to identify the street addresses of the two properties on Soldiers Road. I have the documents. It struck me as a little odd that it was possible for the ministry to correctly identify all the publicly owned land relating to that amendment, but I took its staff's word that it was a simple clerical error. The error was not, as the ministry initially suggested to me when I drew it to its attention, caused by the City of Armadale. It was caused by the former Ministry for Planning, although it took it some hours for it to acknowledge that. It was also up to me to point out and find on the ministry's file the clerical error. I am sure there was nothing untoward in the coincidence that the resultant mail-out of information that should have been sent to me and my neighbour - the owners of the two properties affected - were sent to two addresses in Butcher Road, Roleystone, about a kilometre and a half away. One of those two addresses was apparently owned by a member of the association that had suggested to the ministry that it should acquire the properties

belonging to me and my neighbour. I was aware of this possible circumstance, and drew no conclusion other than that it was a coincidence. The ministry also told me that there was no evidence that one of the two occupiers of those residences on Butcher Road had contacted the ministry to notify it that it had misdirected mail. Ministry staff suggested to me that the person who told me she had contacted the ministry had not done so. The ministry stood by its assertion that it made exceptional efforts to contact affected landowners when its initial efforts to do so by mail failed. I made an application under the freedom of information legislation and was able to observe that the cover sheet for the proposal - a structured document in which all the documents were filed - and the scheme amendments correctly identified the owners of the properties belonging to me and my neighbour, and listed in hectares the size of those properties. The cover sheet was undated but obviously was prepared prior to the process that led to the wrong identification of the affected properties. That process of wrong identification occurred when a document listing the affected properties was sent to the local authority for it to identify the owners of those properties. Even at that early stage - September 1997 - the file contained contradictory information about the properties affected by the proposal and their owners. I imagine that the folios were not kept very far apart at that stage.

Through my FOI inquiry, I was also able to observe a file note dated 28 October 1997 relating to the receipt of a phone call from one of the occupants of Butcher Road - just as I had been told. The gist of this file note was that the caller was told that her property was not affected. However, there was no acknowledgment that the caller had told the ministry she had received a letter and a very large document.

[3.15 pm]

It is curious that the caller was told, according to the file note, that the proposal did not relate to her property at lot 6 Butcher Road but, rather, to lot 6 Soldiers Road. The person making the file note did not mention lot 18 Soldiers Road, which was also affected.

I ask myself why the person making the file did not simply say to the caller, "Some properties on Soldiers Road are affected, but you are not", or mention both lot 6 and lot 18 Soldiers Road. Particular mention of lot 6 in Soldiers Road strongly suggests to me that the person making the file note knew there was confusion between the properties on Butcher Road, which were not affected, and the property on Soldiers Road, which was affected. It is more than a little extraordinary that the person making the file note could have had this knowledge, yet did nothing with it. The folios relating to the mail-out were not far away and it would have been clear from them that there had been a serious error in the direction of the notification.

I must say that if I were in the place of the person who received the phone call and wrote the file note - if it had escaped my attention that the person had not received a letter and so forth - and someone had said that he or she had received notification of a proposal with the same street number but a different street, I would have been very hard pressed not to have started making inquiries about whether there had been a misdirection of the mail, given that the incoming call happened within one day of the initial notifications being mailed out. I am left to conclude that the person who took the file note - which is, unfortunately, unsigned - was terribly unlucky not to have made those connections in his or her mind; I cannot make any other suggestion that would not be improper. As I said, the file note was unsigned and I cannot explain why ministry staff previously denied its existence. It appears to me that it would look better from their perspective if it had not been denied.

Through the freedom of information process, I also noted that there was no apparent documentation of the several extensive phone calls I made to Mr Fred Hainsworth of the ministry and no minutes of a meeting between three senior officers of the ministry, my neighbour and me, who were affected by these proposals. That information came to light in July 2000. I was told by the FOI people that any e-mails or electronic records would have been printed and incorporated on the files; there was nothing on the files. I can only conclude that this is a somewhat unusual attitude taken by the ministry to the requirement to document interactions with the public, particularly given that it should have been aware that the matter was fairly significant at that stage and involved two members of the public, not only one.

Finally, I note that the ministry was clearly aware all through the process that lot 6 was for sale. The ministry had letters from real estate agents at the point of trigger of the rezoning and had been told so by the Churchman's Bushland Association which pressed for the acquisition of the properties. Although that information had no bearing on the ministry's failure to correctly identify the property when it prepared the initial advice to affected landowners in October 1997, it had an extremely significant bearing on matters in September 1998 - virtually a year later - when the ministry used the same incorrect list of properties and their owners to notify the gazettal of the rezoning by State Parliament.

Given that Mr Noel Uhe, an officer of the ministry who knew the property had been for sale, had been told at the review inquiry on 13 March 1998 that a changeover had occurred in the property, it seems almost more than careless that the ministry did not check on the continuing relevance of the ownership information which would have revealed that in the first place, it had identified the wrong property and owner, let alone not found the correct owner at the time of the gazettal.

Unfortunately, more information came to light. I later learnt that the Supreme Court was told in October 2000 that in July 1996 - about a year prior to the rezoning of my property - the ministry had acknowledged a failure to notify affected landowners in another case due, it said, to complications introduced by the sale of the affected property during the scheme amendment process. The ministry staffer at the time said that the failure to notify was a one-in-a-million chance and that improvements to the ministry's processes were being investigated. That case would not have affected the gross error the ministry made in my case, but it should have alerted it to the potential for complications when a property which it knew was for sale was part of a process that extended for 11 months - that is, the time between the initial advertisement of the proposal and gazettal by Parliament - during which the ministry had been given direct information that it had changed hands. I must say, therefore, that I found all of that rather disturbing and felt I must share it with the committee.

From that, I suggest that consideration be given to the ministry's keeping a record of advice given to it in response to over-the-phone inquiries relating to section 42 of the scheme amendment. There are two methods of making inquiries about the ministry's intentions in the planning process: one is over the phone and one is by obtaining a certificate, which I believe costs \$25 or \$50 - but please do not quote me. The ministry told me that it encourages over-the-phone inquiries because it wants to get the message out about what it is up to and does not want people caught unaware. I believe even today the ministry continues to encourage the use of that service. I suggest that the failure to record the information given to people who make those inquiries is a very dangerous thing and would cost the ministry nothing to do so. Of course, the responsibility of people who answer those inquiries in complying with the

confidentiality agreement should be very clearly spelt out. Senior officers of the ministry maintained - and I dare to say continue to maintain - that the officer who took that inquiry would have breached the ministry's own policy of confidentiality in telling me about a planning process, if I had made an inquiry. The ministry continues to maintain that I did not make an inquiry and its records do not indicate it either way. I also suggest that the process include making reasonable endeavours to consult in respect of the amendment such public authorities and persons as appear to the commission to be likely to be affected by the amendment.

Part III, section 33 of the Metropolitan Region Town Planning Scheme Act 1959 relating to amendments to the scheme, which appear to cover the legislation controlling these processes, states that a proposal passed in Parliament will be gazetted and advertised publicly. Section 33(2)(e) states -

The Commission shall make reasonable endeavours to consult in respect of the amendment such public authorities and persons as appear to the Commission to be likely to be affected by the amendment and may take such other steps as it considers necessary to make public the details of the amendment.

The CHAIRMAN: How big is the property and is it farming or rural property?

Mr McCann: It is 10 acres with rural C zoning, which is basically an outer urban area in the City of Armadale. It has a cottage on it, a large dam and is basically native bush. Valuers who subsequently went through the area as part of the valuation process described it as almost unique and described Soldiers Road, on which it sits, as unique.

The CHAIRMAN: Can you paraphrase the rest of your submission?

Mr McCann: Yes. The reason I wanted to concentrate on that legal aspect is that the ministry and the minister have repeatedly asserted that there is no requirement to notify members of the public, except through the process of gazettal and publication in newspapers, of any proposed changes or amendments. I find it extraordinary that there is a section in the Act that the ministry and the minister have appeared to ignore. The only response I had from the ministry on that section was an observation from one of its senior officers that the ministry took reasonable steps to notify me; it was just that it sent the notification to the wrong address.

My concern is that there is a conviction in the ministry that the section has no effect and no bearing on its responsibilities. I suspect that its belief arises from a Supreme Court case some years prior in which a failure to notify was an issue, but the judge determined that it was not an overriding issue because the property owner in that case had learnt of the rezoning through another channel. I understand, therefore, the judge made the observation that the failure to notify was not relevant. I believe that the ministry staff, who perhaps lack experience in administrative law, believed that gave them a licence to disregard that section in all future considerations. It is very important that at some stage the ministry is asked to get a proper legal opinion on its requirements under that section. The implications of that are, of course, that anyone's property in the State of Western Australia might have been rezoned at any time in the past but they would be unaware of it and the local authority would continue to levy rates - as mine did, quoting my property as being zoned rural C and not alerting me to any change. That would happen to a property owner who had not seen the notice in the paper. I do not know whether the committee has seen such notices, but they contain zero detail about what is happening.

Hon KEN TRAVERS: Was it an omnibus amendment?

Mr McCann: Indeed, it was a very big omnibus. A property owner might be sitting on a property anywhere in Western Australia at the moment unaware that the property has already been rezoned and that all appeal periods have expired and, as in my case, possibly expired years and years ago. The key issue is about when a matter is brought to the attention of government. When I brought my case to the attention of Alannah MacTiernan, I was told by senior staffers in her office that this all happened years ago and it was not a matter that concerned them. The ministry has told us we have no rights, we have no redress and that it was under no legal obligation -

Hon DEE MARGETTS: At what point did you find out?

Mr McCann: I found out - after having scrimped and saved and cajoled my wife to put up with the property for a long time - when we finally got the money, contacted the builders, got the plans ready and went to the City of Armadale. That was on 4 July 2000, which for me was quite a memorable day. That was the same day I went to the ministry and the same day I identified the error on its files, despite its assertion at the time that the whole matter was the fault of the City of Armadale. From that point forward, I am afraid, I have had no occasion to have any confidence, as I said, in the operation of the Department for Planning and Infrastructure.

I make further observations about the process, which are included in the documents given to the committee. The next area, the notification process, hinges around the business of the legal requirement to notify. I make the observation that other States have similar legislation but no State uses the same wording; this is a peculiar WA thing, like many things we do. I do not believe that particular phraseology has ever been tested in WA law and I am afraid I do not have enough money to take it to the Supreme Court; I wish I did.

Examples from the Land and Environment Court of New South Wales, from the Queensland Planning and Environment Court and from the High Court of Australia - paraphrasing a lot of case history - suggest that judges generally observe that when there is a process for general and broad notification and a process for specific notification to landowners, it is, in fact, the specific notification that is absolutely pre-eminent. In a general sense, the notification in the broad public arena does not in any way negate the need to identify and notify affected persons. Frankly, it sounds like bloody commonsense to me.

It frightens me that the ministry maintains the line that because it has no legal obligation, it has absolutely no cause to apologise and there is no avenue for redress. It frightens me that the minister accepts that advice and has done so consistently over a period of about six months without any question. It alarms me and I wonder if she is actually aware that she is giving me this advice over her signature. I have not been able to establish that the Minister for Planning and Infrastructure is aware of the details of this case. At every turn, when I have attempted to identify who is handling this issue, I have come across repeated referrals of all my correspondence back to staffers in the Ministry for Planning - the very people who have the greatest interest in not seeing it proceed.

I will pass over notification. I will make a quick observation about the review process of these amendments, which is basically based on the concept that a person who is affected will make an objection. However, if no objection is made, there is no reason for a rezoning not to proceed. There is apparently an assessment of the proposal on its own merits only if someone objects to it. In fact, there are even crude methods of

counting the objectors and the supporters, which appear to play a great deal in the final recommendation of the review committee, which comprises two-thirds ministry staff and which is fully advised and informed by the ministry.

[3.30 pm]

My concern, which is evident in the documents I have put before you, is that there was extraordinary confusion within the review committee about the processes surrounding my property. In fact, one person who did not know me but who knew that I was in a similar situation to herself sought to represent my interest. She wanted to stand up and make a statement against what was happening. The conduct and transcript of that review committee meeting was almost absurd. The documentation makes less sense each time I go through it. What was apparent was that during the meeting people referred to maps, and their references to those maps were not included in the transcript. Consequently, virtually the whole sequence of comments, observations and so forth is meaningless. What was seemingly clear to me from the process was that there was an extraordinary effort on the part of the committee and the departmental staff who were at that review meeting to obscure the fact that two private properties were involved in this proposal and that there was a proposal to move them from private ownership to public ownership. Over and over again the clarity about that intent was lost within the transcript of the review process. It seemed that at every stage no attempt was made to directly address the process of moving those two properties from private ownership to public ownership.

Another comment I want to make about the review committee is that having set itself up to look at objections, there was no requirement in legislation or in process for the committee to ascertain or assure itself of the notification process. There was no obligation on it to check that people had been notified and had sufficient information to make that objection to the committee. The attitude of committee members seemed to be that they were paid to sit back while someone else worried about arranging people to come forward to the committee, and that their responsibility stopped at the committee room. If someone came to them to make an objection, they would hear it, but they had no responsibility for ensuring that that happened. They had no responsibility for checking that someone else ensured that that happened. It seems to me that a review committee that does not take any responsibility for ensuring that its processes are publicised so that people can appear before it is doing only half its job. It amazes me a little that the committee can consider a proposal related to two private properties and not raise any question whatsoever about why there was no representation from the two owners of those privately owned properties in the review process.

Hon DEE MARGETTS: Is it a standing review committee or is it convened for that purpose?

Mr McCann: It is convened under the processes of the Department for Planning and Infrastructure to hear objections to each amendment proposed.

Hon DEE MARGETTS: In which case, if it received no objections, there probably would not have been a review.

Mr McCann: From my understanding - I am not a lawyer - the committee has to exist, but the process of inviting objections must happen. I suspect the committee would meet in an empty room, have a jolly luncheon and then disperse for the day if no-one arrived. In this case only three people objected in person to the whole omnibus amendment, which was quite a huge amendment. In every case in which

other private properties were mentioned in the omnibus amendment, private landowners made submissions in writing or in person. Only in relation to this proposal in Roleystone, in which the properties were misidentified by the department, were no property owners represented either personally or through submissions to the review committee. Given what I have seen of its attitude within the review process, I find it curious that it did not make any inquiry of the eight departmental staff who were present at the review about whether the process of notifying the landowners had gone through and whether they had made any reaction to that process.

Hon KEN TRAVERS: You have an extract of the transcript of that hearing in your prepared submission.

Mr McCann: I have extracted bits of it. That has not lent any more logic to it.

Hon KEN TRAVERS: The transcript indicates that they were talking about the land having already been taken, which in a resumption process has a particular meaning.

Mr McCann: I will add to that. It appears that on hearing that, Mrs Moulin, a gallant soul who stood up in my defence, drew that conclusion. I intend to be a bit more generous. I have an understanding of public servants, having been one for 15 years. I imagine that the person who uttered that comment was pointing at a location on a map that was not my property. As the conversation proceeded, the comment about those properties already being resumed probably can be linked to a finger that was planted on some other part of the map. However, I can only speculate about that. From my discussion with Mrs Moulin, I know that by that stage she was utterly and thoroughly confused and felt completely dissuaded from pursuing the matter any further. Because the maps were laid out on a flat table, it was not clear to her what was going on and she simply felt overawed by the whole process.

Hon DEE MARGETTS: There has been a lot of detail about whether you were advised. What process are you asking for now?

Mr McCann: I feel that the committee should be bound by process to make inquiries of the notification process and how people are notified of the committee's review role, to assure itself that all those persons have been notified.

Hon DEE MARGETTS: Given all that and given that that has not taken place, if the Department for Planning and Infrastructure said that it made a mistake, what would be the potential remedy? What process do you think should take place now ?

Mr McCann: I am not here to talk about my case.

Hon DEE MARGETTS: No, in general.

Mr McCann: In general, I believe major reforms are required of the processes within the department. That is why I flagged it up-front. The process that I have been through has given me a wonderful opportunity to shine a very bright torch into some very dark corners of the operations of the department. The fundamental failure of the review process to require that people know of its existence and can come to it seems utterly central to an administrative process.

Hon DEE MARGETTS: Has your property been purchased yet ?

Mr McCann: I have held onto it at vast expense to myself. I am paying two mortgages. My wife will not live there; she will not even go into the neighbourhood without getting very upset. I have held onto the property through sheer pigheadedness and bulldog obstinacy. I have great affection for the property. I have very little faith now that the minister will do anything to overturn that decision. Frankly, I wanted to

use this opportunity to talk to you about the major issues that I believe need addressing, and I hope you are in a position to do some work towards addressing them.

Hon ED DERMER: Your other strong suggestion was to have a record of the telephone inquiries and the advice that was given.

Mr McCann: Every dot point in this document is a very important recommendation. I have left out a thousand small ones. I think some very fundamental processes within the department are wrong. Having been a public servant at one stage with a very antiquated federal government department, I know how ministries tend to decay. They fall into bad habits. Over a long period they develop rather bizarre internal processes that are designed for their own use and have no bearing on their role in serving the State. That is a little bombastic. To find so many fundamental administrative disasters in the short experience that I have had with the department makes me wonder just how much has gone wrong in that organisation in relation to thousands of other people over all these years. Every time the ministry told me that it was a one in a million chance and I looked at the files, I found other cases, and I was not looking for them.

The CHAIRMAN: In terms of verifying its notification process, what sort of process do you have in mind, such as a mail-out and a response, and if that is not followed up, a personal contact system?

Mr McCann: The department will tell you that it has the most marvellous process in its documents, web site and letters. The minister's advice to the Cabinet was that all persons were advised. The advice to Parliament about these proposals has been repeatedly, with absolutely no reservation or hesitation, that all affected persons were notified. In fact, the processes within the department appear to be aimed towards that end. It does have vast mail-outs. In my case it made a mistake. The key to that seems to be that it makes no distinction between public land and privately owned land within all its processes. There is a much graver danger in the way it deals with privately owned land than if it stuffed up transferring something from the Water Corporation to the State Energy Commission. Fifty per cent or more of its omnibus proposals relate to public utility land changing from one zoning in a public field to another. There is no particular and exceptional mention in those documents of privately owned land.

One of the key points is that if it put a big flag on every proposal that incorporated privately owned land, all the subsequent processes would repeatedly draw attention to those cases. People would pick up those cases through the notification process. Throughout the review process, the review committee would say that some privately owned land is affected in this proposal and it would pay a little more attention. In relation to my proposal, it was said in Parliament - I will paraphrase it - that it was mostly crown land and there were no objections and consequently it was proposed to be accepted. The exact wording is in here. Fundamentally that is what was said. There was no mention of any privately owned land. If it was not deliberate, it was extraordinarily bad luck that the wording that was chosen did not allow anyone in Parliament to think or to be aware that privately owned properties were affected by the proposal. If those properties were flagged from the moment they were identified, and if the department were required to do so as part of the process, when my member of Parliament heard that there was a proposal involving two privately owned properties in Roleystone, he or she might have listened a bit more closely, particularly

if the review committee had said that it was mostly crown land. Consequently, there were no objections and it was approved. I hope that my member of Parliament has a little bit of nous and suspicion to see that that looks damned odd. By flagging those proposals with the "private property is involved here" flag, all those opportunities can be created throughout the entire process. That is one of the fundamental things that the department needs to address, but it is not the only thing that I refer to in my submission.

Another issue relates to the hills environment. This blunt tool that the department is using to rezone and ultimately acquire properties that it believes are in fire hazard areas or in environmentally sensitive areas is working against the interests of fire management and the environment in the hills area, as well as against the people who live there. The reason I say that is that people who live in those zones are the most effective fire management tools the State has. They are the most effective environmental management tools the State has in those areas. There are groups now within the hills, and there are formal programs within those groups, that take care and custody of the environment on their properties and adjacent reserves. Local governments and the State Government, through other agencies, are encouraging these people to take on that role to become super-citizens, to stop waiting for the Government to do things and to do things for themselves in cooperation with others and with the expertise and assistance of the Government. On one hand, there is an incredibly intelligent and imaginative approach from the fire and the environmental authorities in enrolling people to work with government to manage fire hazards and environmental issues in the hills. However, on the other hand, there is this dinosaur agency of the Government that has told me - it is on file - that it still believes that the best way to manage issues in the hills is to rezone and ultimately acquire land so that it can "manage" that environment in the absence of people. It made that particular remark about my property. I believe that is an extremely dangerous position for one agency of the State to hold, because it tells people who are making an effort in other areas that after they have improved the environment in their area to the nth degree, this agency will come along and take it from them, thank them very kindly for what they have done to restore it to its pristine condition and then say goodbye. I do not think that this is what good environmental management is about. I appreciate that there are certain areas in which people and the environment cannot coexist, but I do not see the hills as a people-free zone.

[3.45 pm]

The people working on these projects see it as a place where people can live together with the environment. They hold this view not only for themselves but also for all Western Australians, including future generations. It worries me that the blunt tool still being wielded by the ministry will discourage people - as it discouraged me - from doing anything further on their properties. In my case, I cannot do anything further on my property because my wife cannot tolerate the thought of me being there. She finds that prospect absolutely dismal. The situation has been created by some rather blunt and thoughtless approaches within the Ministry for Planning, which still exist. The document I handed out to the committee summarises the proposals. As I have said, even matters of a minor nature are fundamental. I am sorry I have had to impose upon the committee.

The CHAIRMAN: The committee appreciates your comprehensive submissions.