

# **ECONOMICS AND INDUSTRY STANDING COMMITTEE**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT THE MIDLAND TOWN HALL, MIDLAND  
FRIDAY, 10 AUGUST 2001**

## **NINTH SESSION**

### **Members**

**Mr McRae (Chairman)**  
**Mr Day (Deputy Chairman)**  
**Mr Bowler**  
**Mr Masters**  
**Mr Murray**

**ERCEG, MR JOHN,**  
**Manager, Development Services, City of Swan,**  
**examined:**

**The CHAIRMAN:** The committee hearing is a proceeding of Parliament and warrants the same respect the proceedings in the House require. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. I welcome you and thank you for appearing today. Have you completed the "Details of Witness" form?

**Mr Erceg:** Yes, I have.

**The CHAIRMAN:** Did you understand the notes attached to it?

**Mr Erceg:** I did.

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

**Mr Erceg:** I did.

**The CHAIRMAN:** Did you understand all aspects of that information?

**Mr Erceg:** Yes.

**The CHAIRMAN:** For the record, the capacity in which you appear before the committee?

**Mr Erceg:** I appear on behalf of the City of Swan in the capacity of manager of development services.

**The CHAIRMAN:** We received your submission on 10 July. Do you propose to make any amendment to that submission today?

**Mr Erceg:** No, I do not.

**The CHAIRMAN:** Is it your wish that your written submission be incorporated into the transcript of this hearing?

**Mr Erceg:** Yes.

**The CHAIRMAN:** I now invite you to comment on any of the points in your submission or to make any additions. Then, if we have the opportunity, we will ask some questions.

**Mr Erceg:** With regard to the terms of reference, the two areas that I have focused on in the submission are the approval process and the enforcement process. On the approval process, when the City of Swan gets an application, it refers to the town planning schemes for the definitions and for what is permissible. An application is considered by an interdisciplinary team within the City of Swan. If an application such as this is made, it is referred to the relevant government agencies, such as the Department of Minerals and Energy and the Department of Environmental Protection. I have identified a number of shortcomings in the process. Dealing with the issue in the global context rather than with the specific details of this application, the first issue I identified is that the definition of hazardous industries is not uniform across local government. It is a problem with the model scheme text which needs addressing, so that the whole of local government is dealing with it in a uniform way. There is also a problem with the advice that local government should or does expect from the DEP, the Department of Minerals and Energy and other agencies when referrals are made. It appears that the guidelines under which the DEP operate when making assessments are a bit vague. The information it receives from local government about applications is also of various

standards. It is very difficult for it to make an authoritative assessment. The focus appears to be more on whether a formal assessment is required than on giving advice to local government about the appropriateness of a particular industry in a particular location. Local government relies on that advice in making a determination on whether or not a particular application should be approved, because it does not have the specialist expertise that is required to make an authoritative judgment on whether a particular industry is appropriate.

A further issue is that local government often approves a category - industrial or commercial use - without knowing what industry will be within those premises. That may be because the owner does not know when making an application or the information is provided to local government. A hazardous industry could be set up in a building without local government knowledge.

**The CHAIRMAN:** The owner might be the developer of a particular site, but not the operator of an activity.

**Mr Erceg:** Exactly. There can also be cases in which approval is not sought, particularly in cases of small industrial premises. When hazardous materials are involved in those sorts of situations, local government may not become aware of it; in fact, the State Government may not become aware of it.

**Mr DAY:** Do you have a solution to that?

**Mr Erceg:** There needs to be a much closer working relationship between state and local government departments. The roles and the expectations of the various departments need to be clarified. The City of Swan is recommending that a protocol be developed between local government and relevant state government departments. That would involve a lot of negotiation and discussion about the shortcomings that exist. There appears to be quite a lot of room for mistakes to be made in the system or the process under which we operate at the moment.

Another issue is health risk assessment. The DEP is focused on environmental risks. On health risks, the DEP's focus is more on the potential of deaths per number of population than on chronic, more acute health risks to the community which may exist. A health risk assessment process which runs parallel, not as an additional process, needs to be incorporated in the environmental impact assessment process. That would involve the Department of Health playing a greater role. As was mentioned earlier in one of the submissions, the Department of Health comes into situations, such as the Waste Control Pty Ltd fire, after the event. There is great potential for it to be involved in the prevention of risks when applications for approval are made. The Department of Health should be part of that assessment process, not just the Department of Minerals and Energy and the DEP, which are the licensing authorities.

In terms of the enforcement process, in years gone by there was provision in the Health Act for offensive trades to incorporate chemical works. That was removed a number of years ago and, since then, the DEP and the Department of Minerals and Energy have been the licensing authorities. That is fair enough, because they have the specialist expertise; there is no argument about that. The difficulty that arises is that removing local government from that process means that it is no longer aware of the issues that arise. In the Waste Control fire situation, several incidents on record were reported to the City of Swan. They were isolated incidents occurring over several years. The city was not aware of the serious nature of the ongoing problems that were occurring on that site. There must be a much closer working relationship between local government and the licensing authorities, because the community has an expectation that local government is acting in its best interests. As things stand, I do not think that local government is meeting that expectation.

There is also a gap in the focus. The Environmental Protection Act is focused on abating pollution and on the conservation, preservation, protection, enhancement and management of the environment; whereas the Health Act is focused on disease prevention and management. The Health Act is 1911 legislation. It is hopelessly out of date and does not deal well with the potential

health risks associated with developed urban environments. Also, the Health Act needs a head of power provision to give local government powers when dealing with health risks on a particular site as opposed to potential pollution risks, which the DEP deals with. The DEP is not authorised to deal with health risks and the legislation does not give it that power. Because of the limitations of the Health Act, the Department of Health cannot deal adequately with health risks except, perhaps, when a nuisance exists. The legislation needs to be improved.

**The CHAIRMAN:** Can the Department of Health deal with potential hazards under the Health Act?

**Mr Erceg:** No. It can deal with nuisances.

**The CHAIRMAN:** That is, hazards that exist, but not potential hazards.

**Mr Erceg:** Yes.

**Mr DAY:** The provision to deal with potential hazards would be covered by the Environmental Protection Act - is that correct?

**Mr Erceg:** I am not sure about the Environmental Protection Act in relation to that issue. To clarify the Health Act issue, when there is reasonable suspicion that a health risk exists, the Health Act gives powers to deal with that issue. However, in terms of the nature of and the risk associated with this type of industry, the Health Act does not have sufficient power to enable local government to deal with it.

**The CHAIRMAN:** The scope of the Act does not allow local government to deal with it, or the scope of the Act does not include hazardous waste facilities?

**Mr Erceg:** The latter is right. It refers to nuisances. The Act has a definition of nuisances and there are different categories of nuisances. It does not deal very well with hazardous industries. It is deficient in that area.

The submission recommends that there be a much closer working relationship and, indeed, a protocol between local government and the DEP to bridge the gap and to address the shortcomings of the present process. It is noted that Queensland has such a protocol, which appears to work quite effectively from discussions I have had. Western Australia operates very much on the basis of an unclear understanding of what the respective roles are. It is clear that significant gaps exist.

**The CHAIRMAN:** Does that effectively address the six recommendations?

**Mr Erceg:** It does. I think I have covered the recommendations in what I have said.

**Mr MASTERS:** On a positive note, the six recommendations you have put forward are very sensible and are ones that I will be supporting. Recommendation 6 might need some minor changes, but the principles you are establishing are pretty good. I want to ask you a number of questions, because I am not clear on some of the background or on some of the powers that may or may not sit with local government.

**The CHAIRMAN:** Can you target those questions at something we can finish with today?

**Mr MASTERS:** I will invite Mr Erceg to give us a further written submission in relation to some of my questions.

**The CHAIRMAN:** I am sure we will ask him to appear again, and soon.

**Mr Erceg:** If some of those questions are technical questions about planning matters, the principal planner was to appear today but was unable to attend. It might be a good thing if it is adjourned to a later stage.

**Mr MASTERS:** That is a good suggestion. I suggest that we invite both Mr Erceg and the principal planner to appear, because I have a reasonable number of questions.

**The CHAIRMAN:** That is a sensible idea. Before we close, is there anything else that you want to add to today's hearing?

**Mr Erceg:** No.

**Mr DAY:** Were you here when Michael Bennett from the Environmental Defender's Office spoke?

**Mr Erceg:** I did not know who it was, but someone was being asked about the Environmental Protection Act when I walked in.

**Mr DAY:** He was suggesting questions that the committee may consider or raise, including some with the City of Swan. Most of them probably have been dealt with in your submission, which makes some useful suggestions and is very comprehensive. I will not go through the points he raised, but perhaps a copy could be given to you. The research officers could liaise with you and clarify that we have the answers to those questions.

**Mr MASTERS:** How long have you been employed by the City of Swan?

**Mr Erceg:** Twenty years.

**Mr MASTERS:** In a capacity that would allow you to have experience in the general history of the Bellevue site?

**Mr Erceg:** My background is in environmental health. In terms of that professional background, yes.

**Mr MASTERS:** What about the city planner?

**Mr Erceg:** The city planner has been at the City of Swan for a couple of years.

**Mr MASTERS:** You are the man we need to talk to for some history.

**The CHAIRMAN:** Thank you, Mr Erceg. I now adjourn this hearing of the Economics and Industry Standing Committee inquiry into the Bellevue toxic waste facility fire. I thank all of the witnesses who have appeared before us today and the people who supported them. They have done an extraordinarily detailed and intelligent job of presenting evidence to the committee. Indeed, I look forward to catching up with a number of those people at a later date.

[The witness retired.]

**Committee adjourned 5.01 pm**