

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION  
AND FINANCE**

**LAND INQUIRY**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
ON WEDNESDAY, 25 SEPTEMBER 2002**

**SESSION 5**

**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**

**STEWART, MR PETER**  
**The Springs Private Landowners Group,**  
**examined:**

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

**Mr Stewart:** 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. 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 the hearing. Please note that until such time as a 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 to the committee?

**Mr Stewart:** I am speaking on behalf of the Springs Private Landowners Group. About half of us are here this morning. Before I begin, and on a personal note, I must say that I concur with your remarks in the House yesterday with regard to the football grand final coming up. There are four fs in football - Fremantle, Footscray, Fitzroy and flipping Collingwood - so go the Lions! I realise we are running out of time. Mr Ryan has given us something of an introduction to the issue of the Springs, although he did speak about his land in Albany that is subject to a guided development scheme and his land in Augusta that has other problems with the cape to cape policy. Mr Ryan is also a member of the Springs Private Landowners Group. I make that distinction at the beginning.

I presume that you have our nine-page submission dated 12 February. I have written some notes as an introduction. Because we are short of time, I am caught between rushing through those notes and just opening up to questions, given that Mr Ryan has given us an introduction.

**The CHAIRMAN:** It would help the committee if you outline in point form just what the situation is.

**Mr Stewart:** In that case my opening statement will precis the submission in some regard. I hope that we have put before you the human faces of landowners and home owners in the Springs. Some have 40 years standing and other have 20 years standing; most of us have been there for a long time. We are due to have our homes and land taken under a compulsory acquisition scheme. They will be acquired by a government agency for a private development. You will see in the public gallery the faces of the people whose land will be taken. This is an inquiry into the impact of the local government's taking of land. We would really ask how it is that a government agency could use the instrument of a scheme manager, and we would say a public officer, to take that land.

Our submission talks about the need for clarity. It is a fairly dry subject if you want to go into the Land Administration Act and other mechanisms by which land can be taken. Section 13 of the Town Planning and Development Act allows for the taking of land for the purpose of a town planning scheme. Most of us, while we may have some concerns with the process, compensation or timing, were our land to be taken for a public works, such as a hospital, school or highway, would accept it would be for the greater good. There is some confusion in respect of a public purpose in the legislation. We are suggesting possibly the lowest public purpose you can think of would be to acquire private land or take homes from people and give them to a private developer as a public officer and so to a private development. That is one of the major problems that we have in the Springs. If you take section 13 of the Town Planning and Development Act through into individual agency town planning schemes, you then have 144 permutations of that same thing. That is what we have in the Springs with the City of Belmont proposed town planning scheme 13.

Just to define the Springs a little bit, it is basically a triangle of land between the Swan River, Graham Farmer Freeway and Great Eastern Highway. It is approximately 16 hectares. About 50 per cent of the land is held by Main Roads. We must go back through the history to see how Main Roads acquired that land. It comes off the back of the Stephenson plan and the northern bypass. Those acquisitions were made in the 1970s and 1980s. We are now being subjected to a different acquisition. I spoke to Bill Foy, who is in the public gallery behind me. Some of those people, whose properties were acquired by Main Roads in the 1970s and 1980s, applied to buy their properties back from Main Roads when the northern bypass scheme lapsed. They were asked to pay four times the price that the property was acquired for. Most of these things have interesting mechanisms. When we say "acquired", having gone through town planning scheme 13, the mechanisms are ones of compulsion, but there is the alternative of either compulsorily participating in a land pool or having the property compulsorily acquired. Those Main Roads acquisitions were acquired by negotiation with the threat of compulsory acquisition.

Mr Ryan has been talking about what is euphemistically called a guided town planning scheme. Make no mistake, they are not guided in any way, shape or form. These schemes contain compulsory acquisition clauses. That is the mechanism by which the government agency, the local authority, the council will acquire the land for what it deems to be a public purpose.

The Springs was settled about 100 years ago. At the time it was quite a prestigious area in Perth. It is elevated land overlooking the river, and some of the residences there are, God forbid, listed on the local heritage inventory. There are about 90 land titles and about 28 owners. Of those 28 owners, three are government agencies, two are religious organisations and two are what we call overseas investment vehicles. The rest is made up of about 21 private landowners. The Springs Private Landowners Group membership fluctuates between 17 and 20-odd. We are a pretty hard core that represents the majority of the private landowners who are participating in the scheme. Mr Ryan used the words participating and non-participating when describing his property. That is not his choice. The decision of who is a participating or non-participating landowner is judged by the council. It is the determining factor. When Mr Ryan says that his property in Rivervale is either participating or non-participating, he is not vacillating. It is a negotiating tool that councils can use to say to people that they are in the scheme or, six months later, they are out of the scheme, which is an interesting concept.

We are trying to make the point about the purpose of section 13 of the Town Planning and Development Act. We have made the distinction between a public work under the Land Administration Act and a public purpose. If an agency, such as a council, wishes to deem it a public purpose for the greater sake of the planning gods, it can resume land for its own purposes. We might look through the mechanism by which it does that. One of the members has already opened a discussion with Mr Ryan about the mechanism of what people can or cannot do, so perhaps it should come up in questions.

The whole process is potentially fraught with corruption, improper conduct and the like, because basically the taking is subcontracted, for want of a better word. Legislation might be used to delegate it to the responsible authority under the Town Planning and Development Act, which would be the council. The council would then appoint a scheme manager, so it would subcontract its obligations, yet the scheme manager is empowered with all the council powers. The council is able to take land; the scheme manager is able to take that very same land. Here is one of the difficulties. There is then a scheme manager who is also a consultant, a developer and, as Mr Ryan has indicated, an investor in the scheme, unbeknown to us. There then seems to be a problem in respect of who is in control and for what purpose they are conducting activities, be they private investment activities or investment activities on behalf of the local council - one does not know.

The argument we would put is that the scheme manager is in fact a public officer, and that public officer is subject to the provisions of not only the Local Government Act but also the Anti-Corruption Commission Act and the Criminal Code. That is something that the division 8, part 2 inquiry, if it occurs into the City of Belmont by the Department of Local Government and Regional Development, may wish to investigate further.

Our point would be, what is the purpose of having section 13 of the Town Planning and Development Act sitting over the top of the Land Administration Act, which would allow the taking of land for the public work or the interpretation of a nefarious public purpose. From our point of view there needs to be a lot more clarity in the legislation or a lot less delegation to the 144 local governments or authorities of the power to resume land under their town planning and development schemes under the Town Planning and Development Act. We are caught up in quite a complicated situation that is very difficult to break out of.

We could open the meeting up to questions at this stage, but I hope that this committee would consider its findings on the taking of land under the Town Planning and Development Act and await the outcome of the inquiry by the Department of Local Government and Regional Development. At this stage it is a division 8, part 1 inquiry. That inquiry process is about to conclude, we think in October or November. A part 1 inquiry may recommend to the minister that a council be stood down and that a division 8, part 2 inquiry commence. The first part of the process will conclude in the next month or two. It is possible, were the minister to agree with the recommendation of the part 1 inquiry, that the council could be suspended and a part 2 inquiry begin which has the powers of a royal commission. It may be some time before it is concluded, but there is evidentiary material before that inquiry which goes to corruption, fraud and highly improper behaviour that perhaps is even induced by arrangements such as town planning schemes and resumptions. Basically, we are putting up a cherry tree, and people want to come along, pick the cherries and take them off us.

I am not too sure of the length of the committee hearings or of the report, but I suggest that the Department of Local Government and Regional Development inquiry may be a guide to these sorts of things.

**The CHAIRMAN:** If you would like to submit any further documents to the committee, please feel free to do so.

**Mr Stewart:** I would like to offer 10 copies of the media release from the Department of Local Government and Regional Development in regard to the inquiry, which I think was announced around 21 January of this year. The terms of reference are attached. You will see that town planning scheme 13 and the Springs feature in three of the five terms of reference. There are also some excerpts from *Hansard* on exchanges and timings, and also a briefing note by the Minister for Local Government to Hon Derrick Tomlinson, who is our local member, which gives some indication of the timing and progress of that inquiry.

**Hon SUE ELLERY:** At the top of page 7 of your submission you indicate that the owners were first advised by formal public advertising. Was that by means of a local paper, were signs put up in the streets or how was it done?

**Mr Stewart:** We believe the advertising of town planning scheme 13 took place correctly.

**Hon SUE ELLERY:** There was no direct communication with people by means of letters or anything like that, was there?

**Mr Stewart:** That is correct. The consultant, who has gone on to become the scheme manager and, we say, public officer in this, was acting for the city from 1992. There is an interesting step in the process of the town planning scheme. In 1995 amendment 75 to Belmont town planning scheme 11 was proposed, and in 1996 it was adopted. That effectively sterilised the area. We have talked about the triangle of land between Great Eastern Highway and the river. The properties there, although generally used for homes, light industry or offices, were given a plot ratio of land of 2 000 square metres, subject to what was known as highway development. If a property was in a busy place in a commercial area on the highway, it was zoned for highway development. Town planning scheme 11, amendment 78 - I need to check that - expunged all the zonings and made it a special area; it effectively sterilised it. A question was asked earlier about what would we like to do. We would like to do lots of things.

**Hon SUE ELLERY:** When did that sterilisation occur?

**Mr Stewart:** It occurred in 1996 via an amendment to town planning scheme 11, which existed prior to town planning scheme 13. Various million dollar proposals for development have been put up in the Springs, which have all been knocked back.

**Hon ED DERMER:** Is that automatic because of the grant of the development scheme?

**Mr Stewart:** No, it is because of town planning scheme 11, amendment 78, which sterilised the area, so there is not really a zoning.

**Hon ED DERMER:** Therefore, was every development proposal automatically knocked back?

**Mr Stewart:** No, they automatically go to council and are then knocked back. There is no zoning, so people do not have a case to put.

**Hon ED DERMER:** Does it give the council complete discretion to deal with it as it wishes?

**Mr Stewart:** That is right. There is a point here that Mr Ryan has not mentioned. It relates to the council's acquisitions of property. The council was in the market in 1995, 1996, 1997 and 1998 to buy properties. It was acting as a developer in a scheme of its own construction. It is madness really.

**Hon ED DERMER:** You referred to football at the beginning of your evidence. The council was an umpire as well as playing for one of the teams at the same time.

**Mr Stewart:** That is very good.

**Hon DEE MARGETTS:** What is in it for the shire?

**Mr Stewart:** The shire council would say that it was planning for the better organisation of the district. If you look at the history of the area, the Springs was called up in about 1990 as part of the Burswood peninsula plan. There would be the casino and the golf course, and the Springs was part of the lakes development. The council has shown a propensity to be a developer. You must then look at a thing called IP20, which is the improvement plan. That is another section of the metropolitan region town planning scheme development.

**Hon DEE MARGETTS:** Is the council hoping for improved land value revenue?

**Mr Stewart:** It appears to be a commercial participant.

**Hon DEE MARGETTS:** The council will get a direct revenue flow, will it?

**Mr Stewart:** That raises other aspects. We have asked the council over the past two years where is its business development plan, because according to the Local Government Act, if people embark on a major land transaction costing above \$500 000, they must have a report and certain processes in place or a business plan, as opposed to what the council is doing with this scheme. The council's land-holding is not insubstantial at, depending on how people value it, \$1.5 million to \$3 million at the moment.

**Hon DEE MARGETTS:** Therefore, the council is a landowner in the scheme, is it?

**Mr Stewart:** Yes. Next to my property is a place called Clinic Park. It was called Clinic Park because a baby clinic was established on it in the 1940s just after the War. The council has taken the park zoning off that and put the area into the figures for the development, so it immediately gets 2 000 square metres of park, which can be sold into the development. Since about 1998 it has acquired other properties from private people in the area.

**Hon JOHN FISCHER:** What was the time gap roughly before people who had their land resumed by Main Roads tried to buy it back?

**Mr Stewart:** I cannot be precise on that. I guess that generally it was in the 1970s and 1980s.

**The CHAIRMAN:** If the Public Works Act were used to resume the land in the first place and if the land were not used for the original purpose of the resumption, a section in the Act would allow the original owners the opportunity to buy it back at virtually the same value. Has that been pursued?

**Mr Stewart:** It has been pursued. Those people are no longer in the area because they sold in the late 1970s or early 1980s. We understand that they did pursue the

option of purchasing the land back. They were told they could but it would be four times the price. Some time has passed since then.

To reinforce a point a made earlier and which might not have come across, the land was not resumed by Main Roads. Main Roads used resumption as a lever and a mechanism to negotiate the sale of the property to Main Roads. That is the same as is happening with town planning scheme 13. The resumption sits at the back and then people try to negotiate with a big hammer hanging over their head. It does not work.

**The CHAIRMAN:** Thank you very much. You have put the situation very clearly to us. I am sure that we appreciate the difficulties to which you have been subjected.