STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

TRANSCRIPT OF EVIDENCE TAKEN
AT MARGARET RIVER, WEDNESDAY, 16 FEBRUARY 2000

SESSION 5 OF 5

Hon M.D. Nixon (Chairman)
Hon Ray Halligan
Hon Ken Travers

WREN, MR PETER,
Member, Executive Committee, South West Private Property Action Group,
PO Box 5,
Karridale, examined:

CHAIR—Would you please state the capacity in which you appear before the committee?

Mr Wren—I am here as a landowner, farmer and a member of the South West Private Property Action Group.

CHAIR—You have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Wren—Yes, I have.

CHAIR—Would you like to make an opening statement?

Mr Wren—I will be fairly brief because I had short notice of this meeting. However, I would like to congratulate the committee and whatever has been behind it because I believe it is the beginning of people being able to bring forward these problems and to look for solutions. I did not hear mention of the statement of planning policy on the Leeuwin-Naturaliste ridge when the chairman read out the background of the petitions. I will illustrate the fact that that statement needs to be mentioned. I believe the statement is gazetted as SPP8 and it needs to be taken on board and concern shown. This document in place as a policy now is the same as that mooted through the planning process. In meetings I have had through the South West Private Property Action Group and the Pastoralists and Graziers Association with the Minister for Planning, Mr Kierath, we were fairly quickly told that under the Town Planning and Development Act 1928 farmers and landholders had virtually no rights per se. We would have taken advantage of what would be qualified as de facto rights. As we understand it, that is the position on property rights. However, the policy, as it is, is the forerunner for the state planning strategy, the overall strategy, and a region scheme. What we see today is policy to become implemented in a scheme at the shire level with the force of the law behind it. It has not happened yet but that is the picture from the State Planning Commission. What is worrying to us is this policy document has arbitrarily changed the land use from rural. It has categorised seven generic categories of land use, two of which are directly of concern to us; nature conservation and landscape. That change was arbitrary and there has been no recognition of the impact of the change on landowners. In our position that affects probably at least 85 per cent of our land holdings. We have been in this area since 1972. Two of the other categories are principal ridge protection and ridge landscape amenity and they are very restrictive policies. As of now, there are policies about the land use change from rural to nature conservation and landscape and we envision that in the future they will become documented in law through a scheme. Fifty-four per cent of our farming land is still bush.

CHAIR—Is that the shire?

Mr Wren—No, of our personal property. I started out market gardening and I was probably ahead of Peter Iley because we came earlier. However, while Peter can still pitch to clear land,

the opportunity for us to so pitch has disappeared. The restrictions and government policy mean we would be wasting our time in trying to put our potential land into agricultural production. It is not only the memorandum of understanding from Agriculture Western Australia but also the planning policies. We have to start to try to look at other ways to work around it. Ironically, the majority of our land is under the old title. Mr Chairman remarked earlier on the rights inherent in those old titles and the use of that land. We hope the committee will recognise that the statement of planning policy is not first off the rank because there is a Peel and there is a Bunbury region scheme. Leeuwin Naturaliste and Albany are mooted to be the next policies to become "law". Some of us have been left behind the eight ball because of an arbitrary land use change without any compensation or recognition of the impost upon us and our future.

At this point in time we have to be realistic and are trying to take advantage of the incentives given through subdivision and covenanting. However, it is not our first choice by any means; it is something we are being forced to look at.

CHAIR—Would you like to clear and develop your property further?

Mr Wren—Yes, that was our primary aim in purchasing the property. We always tried to go there until the writing was on the wall - you can only throw so much good money after bad then we have to try other ways to walk away with a future. The committee is probably aware that in this state, 92 or 93 per cent of land is crown land. It is ludicrous that if we have increasing demand for resources for population increases, development and growing awareness of environmental concerns and needs, that that pool of land could not be seen as something of an answer to these problems of urbanisation. When I first came here Augusta had quite a bit of property which was given away, the industrial area was established and there was encouragement and incentives for people. People did not need a lot of money to buy that land and they had time to pay for it. Instead of gobbling everything up into restrictions and regulations because the source is finite, there could be a relaxation of that 92 or 93 per cent of land and the water that comes with it. Many of these things would fall away for a long time if that was done. That is just a general comment and the committee would see that much of it is the attitude to what we can and cannot do.

Michael Wright talked about the developer being responsible for subsidising the cost of the restrictions; that concept is not foreign, it is called betterment. The Shire of Busselton considered it in its district planning scheme. There was quite of bit of debate about it. Betterment is when it is proved that one sector benefits and there is a pass on. It is already available and possible in our system and the committee could explore it more.

CHAIR—How long have you been here?

Mr Wren—Since 1971.

CHAIR—What property rights do you believe you have lost in that period?

Mr Wren—I do not want to be facetious but I have come to realise that we do not have any property rights. I cannot say that I have lost any rights because constitutionally there is no recognition of property rights in Western Australia.

CHAIR—I do not know that that is right. Our advisory-research officer is a lawyer and I do not like to give legal advice and I am not doing that. However, when the Western Australian government was set up, there was an unwritten constitution in Britain and it was carried across the sea.

Mr Wren—I understand common law.

CHAIR—That unwritten constitution and common law arrived in Western Australia and since then it has been added to by statute law in certain areas.

Mr Wren—If you describe it that way and in terms of the entitlement, I would say that in those portions of our land that are pre-1903, pre-federation, there is a good chance we could argue that we have not lost any of those rights. We own the bush, the vegetation and the use of that vegetation just as we do the minerals and even the water.

CHAIR—Do you have some of the old crown land titles?

Mr Wren—Yes, approximately 80 per cent of our land is still under the old titles. If I had the resources to go to the courts and take it to the nth degree, I would say I had not lost any rights. I could win the use and the value of that land, even the remnant vegetation. Under that title it does not belongs to the crown or the community as the Environmental Defenders Office would say. I would have less of a chance of securing and developing the entitlements of the portions of land which were given off under federation and have subsequently come under the Town Planning and Development Act. The right is based on the entitlement.

Hon RAY HALLIGAN—Would it be correct to say that you can have the ownership of the land but you cannot control the use of it? That is in the hands of the bureaucrats except for the old title.

Mr Wren—Except for the old title. Mr Wright is no longer here but if I was a man of his stature and backing, I would see many more opportunities available through the old title.

CHAIR—You have to be able to afford to defend them in court.

Mr Wren—Exactly.

Hon RAY HALLIGAN—That is your belief but it has yet to be tested.

Mr Wren—It is my belief and it is the only answer I can give. I cannot give anything more than that. I am also a member of the water users coalition and Graeme Waugh from Albany is the chairman. I called him last night and he was not aware of this hearing but would very much have liked to have been involved.

CHAIR—We were in Albany on Monday night.

Mr Wren—He did not know that. I tried to encourage him by saying at least we have the right to speak out and to say that there is injustice in the lack of compensation. That is probably the

only difference to other systems of government in the world. At least we can still speak out. We can lobby and we can come before committees like this one. I hear where the chairman is coming from in terms of regulation, restriction and locking in and trying to protect things — we need to be realistic and to have flexibility in our system. I am not one to say that it would be good for everything about property rights to be black and white because life is not that way. Things change and we need that flexibility. However, we need that consultative process as early as possible and until things become regulatory those who will be potentially affected should have the ability to appeal and bring their case forward. That access should not be in a muddied position. In our democracy we need to have that available to the common man as much as possible.

CHAIR—You need affordable justice. One of the systems in our law is trial by jury. How do you resolve matters of dispute like this? Michael Wright suggested we have sworn valuers and keep the government out of it; that was a pretty good start.

Mr Wren—If you look at the way the Valuation of Land Act is written, basically the onus and burden is upon whatever agency or force is coming down on the landowner. The onus is for it to find a property and a similar value. That is hard to do in some circumstances. How does one arbitrarily set down a formula? Certain properties have unique features. We could have that valuation process and a tribunal but inevitably you have access to the higher court system if you are not satisfied that all your case was heard at the level of valuation. You have more than one shot at it and that is necessary. The chairman mentioned the jury and the judicial system: we know that that is why we have a legislature and hopefully there is a fair balance in it. The judicial system may give short-term answers but we need the back up of the legislative process which can come to us in this form. The jurists and the legal system do not do this; it is not their mission or role to do what the committee is doing.

CHAIR—In the judicial system one is judged by a superior judge and one is getting an expert legal opinion whereas in a jury system one is judged by one's peers and the jury tends to view the matter in a similar manner to the person on trial. Should community people or experts be involved in dispute resolution? We have the problems of every property being unique and the human factor; it is a very complex area. What property rights have been eroded, if any?

Mr Wren—It should not have to get that way — that is where I am coming from. If there will be changes to the future of our land and its use, we should have a say in that right from the beginning.

CHAIR—That is a fair comment. Thank you for participating.

[The witness retired]

THE COMMITTEE ADJOURNED