

**METROPOLITAN REGION SCHEME AMENDMENT NO 1028/33, SOUTH EAST DISTRICTS  
OMNIBUS (NO. 5), DISALLOWANCE**

*Motion*

Pursuant to Standing Order No 152(b), the following motion by Hon Jim Scott was moved pro forma on 14 November -

That the Metropolitan Region Scheme Amendment No 1028/33 - South East Districts Omnibus (No. 5) published in the *Gazette* on 20 September 2002 and tabled in the Legislative Council on 24 September 2002, under the Metropolitan Regional Scheme Town Planning Scheme 1959, be and is hereby disallowed.

**HON JIM SCOTT** (South Metropolitan) [7.31 pm]: This is an omnibus amendment dealing with a great many proposals. However, I will refer to proposal No 1. I am concerned also about proposal No 4, but given the time constraints the House faces, I will concentrate on proposal No 1. The situation is somewhat vexed because the omnibus contains non-controversial amendments but among them are at least two controversial amendments. It is a shame that in such cases we cannot move to delete certain proposals from the omnibus amendment so that the good proposals are not put at risk.

Proposal No 1 deals with the area known as Ascot Waters, the subject of an improvement plan in, I think 1984, which designated a certain area alongside the Swan River in Belmont. This proposal was implemented some six years ago and we are being asked to retrospectively allow an amendment that is a fait accompli. This is very worrying given that MRS 1062 is in the pipeline, which will enable the Western Australian Planning Commission to retrospectively approve all manner of amendments. Figure 1 in the South East Districts Omnibus No 5 report illustrates a proposal that includes a waterways reservation that cuts through the land area on the eastern bank of the Swan River and rejoins the Swan River further upstream, thereby creating an island. To my knowledge, in the light of some research by people assisting me on this issue, this occurred without proper process. In fact, it was contrary to the previous metropolitan region scheme. The first MRS amendment No 945, gazetted on 5 August 1994, was to rezone the development land from industrial in parts to urban. MRS No 945 shows the Swan River intact. I will describe the map for the *Hansard*. It shows the river flowing past the development area, but no island is shown on the map. The development area shown at the back of a large area of recreational land is quite small. I should mention that, following some investigation, to the best of my knowledge this improvement plan was never gazetted. Judging by the original drawing of that plan, the boundary has changed on occasions without, it seems, any proper process. The area that it covered has reduced.

Members should understand that Ascot Waters was developed in partnership with the developer, the Belmont City Council and the Western Australian Planning Commission. Both planning bodies were involved in the development. It is not a normal development. One hopes that in such cases, all the proper procedures are followed and the proper approvals are in place. Yet from that first MRS amendment, it has been beyond our ability to find approvals for the type of island and waterway that has been created. There seems to have been no proper approvals process. I hope the parliamentary secretary will be able to table at some stage documentation showing this change from the original proposal as drawn on this map, which was later amended by another MRS amendment - omnibus amendment 993, which was gazetted on 8 September 1998 - which rezoned more parks and recreation land to urban. According to the plans, the river remains intact. Neither the water body nor marina constructed in 1995, nor the re-routing of the river via the construction of a waterway and island in 1996, is shown. Therefore, in this next MRS amendment, again no island has been created. I hold up, for the benefit of members, a photograph of the development concept plan, which shows a number of discrete lakes with little islands in them. At the top of this lake we can see the beginnings of the development of the most easterly lake.

The DEPUTY PRESIDENT (Hon George Cash): Is there a description, such as a file number or whatever, on that map that may assist members?

Hon JIM SCOTT: It is the Ascot Fields development concept plan, diagram 1.

The DEPUTY PRESIDENT: That will be helpful for someone in the future.

Hon JIM SCOTT: That is right; thank you for reminding me to provide that description, Mr Deputy President.

In this diagram there is a complete linkage of the recreational areas with the Parry Field area. There will be complete and open access, and there will supposedly be demonstration gardens, lookout towers, an environment centre and an environment centre annexe etc. This area has been set up for public recreation. That is interesting, because one of the other problems with this proposal is that part of the land that has been caught up in this Ascot Waters development came from an area called Grove Farm, which was a land grant to the community via a trust. The trustee of that trust is the Belmont City Council - again, the people who are involved in Ascot Waters. The terms of the trust are clear and simple. The charitable trust is for the purposes of public recreation and

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enjoyment, and for those purposes only, yet over a period, parts of that land have been subsumed into this development. It is probably important to note that the council has made an attempt in the past to sell off this trust land for purposes other than public recreation and enjoyment. Documents of the City of Belmont reveal that it sold part of the trust land into the Ascot Waters development in 1995. It fenced off the land and commenced Supreme Court action to excise the majority of the land from the scheme that same year. The Belmont City Council is holding this land in trust for the purpose of public recreation and enjoyment, and for those purposes only, yet it is trying to subsume it into the Ascot Waters development. This is all taking place in partnership with the Western Australian Planning Commission. This is a big concern. The city was unsuccessful in the court action. The sale stalled, and plans for the 400-plus units of hotel and short-stay accommodation development were shelved. I do not know how we can have public recreation and enjoyment in that sort of scenario. That sounds to me more like private purposes. The trust land is being swept up into the Ascot Waters development and is being used for private purposes and abused as a place for public recreation and enjoyment.

The first proposal in this amendment that is before us is an attempt to legitimise retrospectively some of the land deals, or whatever we want to call them, that have already occurred. Members may be aware that some time ago I moved a disallowance motion for another proposal in that area, which was the swapping of Hardey Park for another area further upstream. It is interesting to note that according to the original proposals and maps for that area, that area was also supposed to have been for parks and recreation under this proposal. It is difficult to understand how on earth that land was ever able to be sold to a person who wanted to put a development on it and was then able to swap what was supposed to be a parks and recreation area for another parks and recreation area that was also, I believe, the result of a land grant from a member of the community. We have this shuffling of land for purposes other than those for which it was granted and other than those for which the trust was set up.

It is interesting that the waterway in figure 1 cuts straight across this trust land to create - this is the crux of the matter - the entrance to a marina for the Ascot Waters development. I do not think the entrance to a marina for the Ascot Waters development is there for the purpose of public recreation and enjoyment and for that purpose only. It is there clearly to help the development. It is completely at odds with the Ascot Fields development concept plan that I mentioned before. Furthermore, it creates an island that includes part of the trust land, but that land will now be cut off from that walk from Parry Field that the community could have enjoyed. We now have an island that people can get to; however, the access is extremely limited. In addition, the land that is now subsumed by the water body will become part of the river. There is another little trick to this. In order to be able to carry out this development, or whatever one wants to call it, the designation of the land has been changed to urban. However, it is now being changed back to waterways. In changing it back to waterways, it is liable to come under the Swan River Trust Act. It will become part of the river, so the trust will lose the land. What is going on here? This local government and the Western Australian Planning Commission is taking no notice of the designation of this trust land - what it is all about - and is creating a waterway for which no formal approval process seems to have been conducted. No document can be found. Community members who have looked into this issue, such as members of "The Springs" group, have pointed out to me that the department has made it extremely difficult for them to get hold of information pertaining to this development. The department has told them that if they want to get hold of the public approval documents, they must apply for them under the freedom of information legislation. The residents had to pay \$100 to get hold of the Environmental Protection Authority's files - 10 files on informal approvals that the EPA has given - from a consultant. This process has involved a great deal of secrecy. It is my strong contention that despite the claims of the WAPC and in the note I have been given from the minister, the necessary approvals were never given for this water body to be created. In fact, the last approval given was for the Ascot Fields development concept plan.

Another interesting point about this development change is that the top lake has been filled in. The people who used to live on the front row alongside the water of the lakes have suddenly had a new lot of buildings built in front of them. One group of lots was sold as waterfront lots, that water body was then filled in, and some more houses were put in front of the original lots. It is interesting to note that the ex-front row is called Waterway Crescent. Now it is "Backstreet Crescent". That seems rather poor practice for the WAPC and local government to become involved in.

The other aspect that is worth mentioning is that the various plans show how the improvement plan boundary has changed as time has gone on. How can an improvement plan be set aside and its boundaries changed without going through any process? I do not think that is a legal process. I would be obliged if someone could tell me whether that is a legal process, because it seems highly suspect to me. As I said at the beginning of my speech, it appears that the original approval plan was never gazetted.

It has been pointed out to me that although the Ascot Waters waterway has existed now for some six years, the official Department of Land Administration maps do not show this six-year-old waterway. It does not exist; it is

not there. People who drive past and see this waterway must be imagining it, because according to the official documentation, it is not there. We are supposedly going to retrospectively approve a proposal.

I have another, newer Ascot Fields development plan that shows the marina and the linkages through to the Swan River. There has been an in-between stage in that the ends were not previously opened up. When the top lake was filled in, it was turned into one lake in the middle. The next step was the linkages. One linkage goes straight through the trust land. To my mind, that is outrageous. It is outrageous that a local government and a Western Australian government authority - the Western Australian Planning Commission - has allowed a development such as this to occur without the necessary approvals and without any care for who owns the land. The trustee of that land is not just whacking it into the Ascot Waters development but into another development further around. I will try to find the number of the block. In this map it is No 247. That was another block that had been owned by the council. I understand that it was not in the trust, but was where the local council was set up in this area. Playing fields of various types were across from it, and headed down towards the river. I do not know whether members can see the map I am holding - the proposed metropolitan region scheme Ascot Fields amendment map No 945/33A. The map has very straight lines on the edge of the pink urban area. Underneath, a pink line shows that the improvement plan 20 line actually cuts through and across to what is the main drain in this area.

Hon Derrick Tomlinson: The Mathieson Road drain?

Hon JIM SCOTT: I think that is what it is called. This was not where improvement plan 14 finished before; it used to take in all this area. A very large building was recently built on block No 247. As part of the Hardey Park arrangement, I was concerned that rather than stopping on the edge of this block, the buildings had taken some more of the trust land and the development had been allowed to go right down to the river. I have a sketch of the development that is occurring on that block, which shows that the developer wanted to build a swimming pool within six metres of the river's edge. The pool would certainly not have been used for public purposes. I managed to get the developer to increase that distance to 11 metres. At that time I did not know that the developer was actually misusing or stealing trust land on which to do that. If I had known that, I would have been even stronger in my demands, because clearly that was never meant to have been land that the council could flog off in this way for a development. It is bad enough that they are trying to get 30-metre setbacks up and down the river in that area, but here the council's own development was going to go within six metres of the river.

Hon Derrick Tomlinson: Is it your contention that block No 247 is part of the trust land?

Hon JIM SCOTT: I believe that block No 247 is now called No 600. The number has been changed. Part of it was trust land. It is no longer trust land; it has been shifted, and is the property of the developer. A letter from the council spoke about the pressure I applied to have a decent setback from the river, so that people could walk up and down without putting their feet in the water and there could perhaps be a cycleway or path along the edge of the river. The letter from the City of Belmont reads -

On Friday, 25 August 2000, I met with Mr Kim Burke and Mr Greg Dodd from the Ascot Waters Consortium and explained the rationale for seeking a wider foreshore reservation between the westerly extremity of their Lot 600 and the waterway leading to the Marina and Swan River. That organisation has entered into a contract to sell this land to the City and Suburban Group Pty Ltd, provided the development proposed for Lot 600 can receive the final conditional approval from the Western Australian Planning Commission (WAPC).

I am sure that would happen because the WAPC is a partner in all this and has no problem in approving these sorts of deals and flogging off land that does not belong to it. It continues -

Present at the meeting was a representative from the City and Suburban Group Pty Ltd who after much persuasion agreed to the excision of the land as shown on Sketch 'A', conditional on the WAPC issuing a development approval. They are, of course, also seeking compensation for this land which is an issue to be addressed between the City of Belmont and the WAPC.

Has the trust been given any compensation for the land that has been stolen from it; if not, will the trust get any compensation for the land that has been stolen from it to provide an entrance to the marina on this private development? This question should be asked, not whether the developer has had a windfall gift of being given trust land close to the water's edge on which to build a swimming pool to enhance the development. The people who should really be compensated are those who have had trust land taken away from them and used for a purpose that the trustees knew full well did not fit within the terms of the trust. It is an absolute disgrace. If the Government thinks that this amendment is reasonable, the Government needs to think again. There are huge problems with what is happening here.

Further issues are involved in this debate, one of which is the island. I understand that the island will have an area set aside for a black swan breeding or nesting site. Much of the island was originally the site of a dump.

Eight metres of toxic fill was poured onto the land that was set aside for recreation and enjoyment by the public. A bund was put around it to keep the leachate in. The development was the beneficiary of Building Better Cities program funding, which provided \$1 million for the cleaning up of the site. A good question to put to the parliamentary secretary would be: how much of that money has been spent on the remediation of toxic waste from that site or has the site merely had a bund put around it and some trees planted on it which have died? The drawings of the concept plan to which I referred earlier show that in the middle of all this, there is a leachate drain. The point chosen for the nice environmental touch of the black swan breeding area is at the end of the leachate drain.

I have been provided with some information from a report by Bowman Bishaw Gorham of May 2002. An appendix of the landscape consultants' geotechnical consultants' report sets out the results of water analysis from the proposed black swan breeding site. The analysis shows that zinc is at around five to 50 times the maximum recommended aquatic ecosystem level. It shows two times the maximum recommended level of dieldrin and 50 times the maximum recommended level of phenyl. From memory, phenyl causes reproductive problems. Carbon 10 to carbon 14 have no recommended maximum levels but their presence is 420 micrograms per litre. Polychlorinated biphenyls were not tested. The presence of chromium was about 10 times the maximum recommended level and the presence of copper was one to five times the maximum recommended level. It is therefore not the greatest site on which to locate a breeding colony of swans.

I have said that I would be as brief as I could on this debate, but before I wind up, I want to ask the minister how this Government will prevent further shifting of trust land away from the trust and into the developments of the City of Belmont and the Western Australian Planning Commission. Will the waterway that has been created on the trust land remain the property of the trust or will it be subsumed into the Swan River; and, if it is subsumed into the Swan River, how will the trust be compensated?

I have received a message from the minister stating that all the proper approvals are in place, yet nobody seems to be able to find them. I admit that they are very hard to get hold of, because the Western Australian Planning Commission and the Environmental Protection Authority do not seem to want to hand them over without receiving lots of money. Will the parliamentary secretary or the minister ensure that they will table in this Parliament all the documentation relating to the approvals and the changes to the boundaries of the improvement plan and all the information on the amendments and approvals relating to the progressive changes to what started out as discrete lakes in the centre of this project, became a single body of water and eventually a waterway that created an island? I would also like some evidence of the public process that was gone through before those changes happened without having further metropolitan region scheme amendments. I would also like to know whether the \$1 million provided for the remediation of contaminated soils was used for that purpose and whether the \$1 million from the Building Better Cities funding was set aside for affordable housing for which it was designated.

I am loath to knock out some changes that are required in other areas, but because of these omnibus amendments, because we cannot just knock out one section by means of a disallowance, and because I think this is such a serious issue, I will continue to seek the disallowance of this proposal. I hope other members will support me. I remind members that another amendment is coming up - No 1062 - which, if passed, will allow retrospective approvals for this sort of amendment as a regular process. That would be all very well if the Western Australian Planning Commission and local governments were not involved in developments, but this is exactly what is happening. The WAPC is up to its neck in all of this, together with local government, and I do not believe that is proper.

I now indicate a number of aerial photographs of this area taken over time between the periods when the different metropolitan region scheme amendments went through, showing that in the early stages virtually no development was occurring; then the proposed connecting channel was put in place. Before that there is virtually nothing; the waterway was finally put through, the development proceeded and the marina was built. It is pretty clear that the process of gradual change from lakes, to a single water body in the middle and then finally this waterway all occurred without proper process. It was a deliberate process that has alienated the trust of this land, which was supposed to have been fairly administered by the Belmont City Council, and it is now being legitimised by this motion we are debating.

It is inappropriate and utterly disgraceful for this House to support this sort of process. I hope other members will support the disallowance of this MRS amendment.

**HON GRAHAM GIFFARD** (North Metropolitan - Parliamentary Secretary) [8.13 pm]: I rise to speak against this motion. The report on amendment No 1028/33 states -

At its June 2000 meeting, the Perth Region Planning Committee (PRPC) acting under delegated authority from the Western Australian Planning Commission (WAPC), resolved to proceed with Amendment No. 1028/33 -

Which is this amendment -

in accordance with the provisions of Section 33 of the *Metropolitan Region Town Planning Scheme Act*.

The proposal before us that seems to be attracting allegations of controversy is proposal 1. In summary, proposal 1 states -

To transfer a waterway adjoining the Ascot Waters subdivision and the Ascot Waters marina, both of which are connected to the Swan River, from the Parks and Recreation reservation to the Waterways reservation so that the MRS more accurately reflects the on-site situation.

That is the purpose of this amendment. It is about amending the reservation from parks and recreation to waterways to more accurately reflect the on-site situation. Incidentally, there are also changes - relating to the marina area rather than the general waterway area - from urban to waterways. In essence, that is what this amendment seeks.

I will outline the history of this matter. In 1994 the Western Australian Planning Commission and the City of Belmont sought expressions of interest for the acquisition, development and sale of the land in question, Ascot Waters. At that time I am advised 30 expressions of interest were received and, after extensive evaluation, short listing and final tender, the Ascot Waters project as we now know it was accepted. The Western Australian Planning Commission, the City of Belmont and the Ascot Waters joint venture, the successful tenderer, negotiated a heads of agreement in March 1995, and that heads of agreement was to deliver the project. It indicated that the heads of agreement required the joint venture to obtain all necessary approvals from the Swan River Trust, the Western Australian Planning Commission, the EPA - where it needed to get all its environmental approvals and requirements satisfied - the City of Belmont and the Water Authority. That joint venture was able to convert its heads of agreement into a formal deed of implementation to undertake the project. The project involved the marina and housing components, the creation of a waterway, the rehabilitation of the former Belmont tip, extensive - we have seen the maps that Hon Jim Scott has held up tonight - open space development and the creation of a dual carriageway on either Grandstand Road or Resolution Drive. The waterway, which seems to be the aspect of the development that members say has some controversy about it, was formerly assessed by the EPA via a public environmental review which concluded that the project was considered by the EPA and the Swan River Trust to be of net benefit to the Swan River. That was outlined in the EPA bulletin No 797 published in December 1995. I will not refer extensively to that document, which contains the EPA report and recommendations for Ascot Waters, but the map contained therein dated December 1995 shows the waterway coming through the lake area.

The DEPUTY PRESIDENT (Hon George Cash): Does that map contain a file number or description?

Hon GRAHAM GIFFARD: I am referring to figure 5 of bulletin No 797 of the EPA document. In summary, at page 22 the document states -

The merits of the Ascot Waters dredging proposal are considered to be consistent with the policies and recommendation expressed in Bulletin 775 (EPA, 1995). The Ascot Waters proposal involves the upgrading of a public reserve for continued public use whereas the Bulletin 775 dealt with the use of a public reserve for private purposes. The Ascot Waters proposal is considered to be substantially different from the specific dredging proposal assessed by the Environmental Protection Authority in 1995 and reported to government in Bulletin 775.

The Ascot Waters proposal is considered to be a net benefit to the river environment as it provides replacement wetlands well in excess of the area disturbed by dredging, relocates the Central Belmont Main Drain and adds retention basins to the drain to improve the quality of water entering the Swan River.

Extensive references have been made to various aspects of that summary. I can provide copies to members who do not have a copy.

Hon Jim Scott interjected.

Hon GRAHAM GIFFARD: No, I do not have the metropolitan region scheme - it is a proposal by the Western Australian Environmental Protection Authority to dredge two channels to connect an artificial wetland with the Swan River. I do not think that the MRS issue is any different now. Proposal No 1 will transfer the zoning of land from parks and recreation to waterways and, in a smaller way, where the marina is, the zoning will change from urban land to waterways. It will amend that in the MRS. That will acknowledge - it will not give approval to, retrospective or otherwise - that a waterway has been constructed over the parks and recreation reservation that now separates the Ascot Waters residential subdivision and the island directly south of that subdivision. A marina has been constructed as part of the Ascot Waters subdivision and it is connected to the waterway on a mixture of both parks and recreation and urban land.

I refer to the issues in contention, as outlined by Hon Jim Scott. I am advised that the Ascot Waters subdivision was developed by State Development Pty Ltd in an agreement with the Western Australian Planning Commission. As part of those overall arrangements, I am advised that it cost \$5 million, not \$1 million.

Hon Jim Scott interjected.

Hon GRAHAM GIFFARD: That money came from the federal Government's Building Better Cities program, and it was passed to the company for the purpose of landscaping and developing the parks and recreation area adjoining the Ascot Waters urban zone for the use and benefit of the public. Part of the project included management of pollution from the former tip site on that land. The development of the parks and recreation area included the construction of the waterway for access by watercraft to the Ascot Waters subdivision marina. These are important issues to consider when we later address the matter of the trust land and the waterway that has been put in place of an old drain or flood area in the trust land that links the inland lake. The area was developed to provide watercraft with access to the Ascot Waters subdivision marina; access to recreational canoeing on some portions; several small island bird sanctuaries; black swan breeding areas for conservation purposes; and generally for its contribution to the landscape and passive recreation value of the subject land. It is important to bear in mind the purposes for which the waterway was built in the first place when we consider the way in which the trust deals with the land that the waterway now goes through with regard to public access and public recreation.

Hon Jim Scott: It links it to the marina.

Hon GRAHAM GIFFARD: It does link it to the marina. I am advised that the public will be able to access the marina and they will be able to dock their boats there. I am not sure whether they are able to do that currently. The public will not be able to use the private pens that have been constructed with private money. However, the public will have access to the area for recreation and will be able to access the marina by boat.

Hon Jim Scott interjected.

Hon GRAHAM GIFFARD: I do not know the price of houses near the marina.

Part of the waterway and associated waterways reservation proposed in this amendment are located within the area to which Hon Jim Scott has referred. That area is covered by the deed trust. The primary requirement of that trust is that trust land be used for the purposes of public recreation and enjoyment. I remind members of the aspects I referred to on the purpose of the development of that parks and recreation area when the waterway was first constructed. It would be a misunderstanding to suggest that the waterway will simply create boat access to a private marina. The public can access the waterway and the marina area and they will be able to moor their boats there.

Hon Jim Scott interjected.

Hon GRAHAM GIFFARD: The island? The trust land that is on the island or -

The DEPUTY PRESIDENT (Hon George Cash): Order members! I am not trying to stop members from interjecting, but I ask them to speak up for the purposes of Hansard.

Hon Jim Scott: I can hear you quite audibly.

Hon GRAHAM GIFFARD: The public can access the island from the mainland.

Hon Derrick Tomlinson: There is in fact a traffic bridge. A road goes right around the island. People can drive on that.

Hon GRAHAM GIFFARD: That would seem to me to provide fairly easy access.

Hon Jim Scott: My understanding is that a large area is fenced off.

Hon GRAHAM GIFFARD: I am not aware whether it is currently fenced off.

The point of the amendment is that the current waterway is already constructed and functional. It is part of the recreation and conservation use of the Ascot Waters development. I say again that the change in the MRS simply acknowledges that fact. It is not seeking approval. It is not a development application. The minister's office and the department advised me that when the necessary approvals were required, they were sought and obtained. The other legal approvals that may have been required were, as I said, obtained appropriately from the WAPC and from the Minister for the Environment and Heritage.

I understand that some criticism has been raised with regard to landowners not agreeing with the council's plans for the deed of trust area. The City of Belmont owns in trust the area covered by the waterway trust deed. However, the city is also the landowner. It must consult with itself about the fulfilment of its obligations under that trust. To the best of my knowledge, there is no obligation for it to then seek approval of any other group

when making decisions about the fulfilment of its responsibilities under the trust. The use of the site is consistent with the requirements of the trust. It is for the purposes of public recreation and enjoyment.

Hon Jim Scott: For those purposes only?

Hon GRAHAM GIFFARD: For those purposes only. The public has access through this waterway, even though the marina is not on trust land. I take the point Hon Jim Scott is making that, in fact, the public has access for public recreation and enjoyment in that marina anyway, notwithstanding the fact that it is beyond the trust land. It cannot be argued that the terms and obligations under the trust are not being met. I referred previously to the number of activities and aspects of the construction of the waterway. That range of activities is entirely consistent with what the trust requires. I know Hon Jim Scott does not agree with me, but that is what it does.

I will try to put this as clearly as I can. The purpose of this amendment is to recognise what is going on there now, quite properly and legally; that it is a functioning waterway and a functioning marina. The Government is changing the metropolitan region scheme zoning from parks and recreation and, where it applies, urban, to waterway. As is stated at the very beginning of the report on the submission, this is done to more accurately reflect the on-site situation. If this amendment is rejected, the area will remain as parks and recreation and urban-zoned land. I am advised that that will not have any direct consequences for the Ascot Waters development, because it has already obtained all the necessary legal and environmental clearances.

Rejecting this omnibus amendment will negatively affect proposal No 40, which is to rezone land from rural to urban in Armadale to allow for growth in the education, research, development and employment village. This village will provide economic, social and employment benefits to the south east districts of the metropolitan region and provide a base for research and study by the University of Western Australia. I have letters from Hon Alannah MacTiernan in 1999, when she wrote to the university strongly supporting the ERADE village, and from Senator Alan Eggleston, dated March 2001, thanking Professor Dawkins for his visit, and supporting the concept. I also have a media release dated October 2001 from Senator Ian Campbell, announcing that the Immunogenetics Research Foundation is to receive \$550 000 for the establishment of the C.Y. O'Connor high-tech incubator, which forms part of a broader complex that is to be known as the ERADE village. I am advised that disallowance of this amendment would delay that proposal, or have even more serious consequences. For that reason alone I would be loath to see this motion supported.

The proposed MRS amendment acknowledges the existence of the waterway and the marina. It changes the reservations from parks and recreation to waterways. I am advised that Hon Jim Scott may be aware of other matters of inquiry. Hon Jim Scott may well want to raise issues about what has gone on at Ascot Waters. If he is of that view, I simply say to him that other forums or processes are available to him to raise those issues. However, this MRS amendment simply recognises what is happening on site. Even if I were to believe some of the allegations that Hon Jim Scott made, it would serve no purpose for this place to disallow the MRS amendment because that simply would not achieve the outcomes he seeks. Importantly, if this motion is supported, it will have a very profound effect on the ERADE village in Armadale, which on the face of it appears to be a very innovative and exciting program that will create employment. The Government wants that project to come on stream sooner rather than later. I urge members to reject this disallowance motion because it is simply not an appropriate way of dealing with the issues Hon Jim Scott has identified.

**HON DERRICK TOMLINSON** (East Metropolitan) [8.36 pm]: This metropolitan region scheme omnibus contains 40 amendments to the metropolitan region scheme. Hon Jim Scott has pointed out that the consequence of voting against the Ascot Waters proposal, which motivates his motion for disallowance, would be to disallow the other 39 amendments. Of the 40 amendments, 35 relate to either the rationalisation of road reserves or the extension or contraction of parks and recreation reserves. Although they might be inconvenient, they will not have any profound consequences for land use within the metropolitan region.

Other matters that are of more profound significance include proposal No 4, which relates to the Kewdale Senior High School site. The amendment will change the zoning of that land from public purposes - education to urban. That is being done simply because the land has moved from the status of a government school site - the Kewdale Senior High School site - to that of a Muslim school site. The zoning is now inappropriate. The amendment will bring it under the metropolitan region scheme as urban, and impose a requirement upon the City of Belmont to bring its town planning scheme in line. That will cause some considerable challenge to the City of Belmont, but the amendment itself is a procedural matter.

The other very important amendment is the one that Hon Graham Giffard referred to: proposal No 40, which will change the reservation of locations 114 and 149 to urban for the so-called education, research and development and employment village. I would be very disappointed if development of the ERADE village were in any way inhibited as it is a very exciting proposal for biotechnology research in Western Australia. It has the full backing of the University of Western Australia and the potential to become an internationally significant centre for

biotechnology research. However, as much as I might be disappointed to see that in some way inhibited, the question that we must ask is whether the matters raised by Hon Jim Scott justify the decision of this House to disallow all 40 amendments. Therefore, let us look at the matters raised by Hon Jim Scott about proposal No 1 for the proposed omnibus amendment No 5; that is, the so-called Ascot Waters development. Let us be quite clear; all this does is change the zoning of the waterway from parks and recreation to waterways. The waterway bisects the land that is most commonly referred to as the Ascot Waters development. The north-eastern portion of that land is the urban land, which is the urban Ascot Waters development that I think is now an almost completely saturated development. The south-western portion of the land is the land previously owned by the Western Australian Planning Commission, which was previously used as the Belmont refuse disposal tip and now forms an island that is commonly referred to as Black Swan Island. I think the Nyoongah name is Kulak Island or something of that nature.

Hon Graham Giffard: I'll get it for you.

Hon DERRICK TOMLINSON: It is something of that nature. However, let us stick with the anglicised name, Black Swan Island, because I am familiar and comfortable with that, although I do respect the Aboriginal name for it.

Hon Graham Giffard: It is Kuljak.

Hon DERRICK TOMLINSON: Kuljak Island; I thank the parliamentary secretary.

Kuljak Island is a parks and recreation reserve. On the other side of the waterway is urban zone, and at present the waterway itself is parks and recreation reservation. All that the Western Australian Planning Commission is requiring is for that waterway to be given the same designation as other waterways; that is, a waterways reservation as distinct from the parks and recreation reservation, which is the Kuljak Island reservation. It is as simple as that.

Now let us deal with the very important questions that Hon Jim Scott has raised. The first is the question of whether at any time all the necessary approvals for the creation of that waterway were given. It has been there for six years. As I said, if the Ascot Waters development is not a completely saturated development now, it is very close to being so. The waterway has been there for six years. The question asked by Hon Jim Scott, which is a very important question, was: were all necessary approvals given before the waterway was dredged? I cannot answer that. The proposal for the Ascot Waters development was a joint proposal of the two landowners: the Western Australian Planning Commission, which previously owned what is now Kuljak Island and which is parks and recreation, and the City of Belmont, which previously owned what is now the Ascot Waters urban development. Those two proponents received \$5 million under the Building Better Cities program for the rehabilitation of the previous refuse disposal site and the continued monitoring of the leachates and environmental health of that island. I use the word "health" to mean "unhealth" as well.

The development was carried out by Estates Development Company. I am advised that Estates Development acquired all the necessary approvals. I do not have any documentary proof of that, other than the document to which Hon Graham Giffard referred; that is, EPA bulletin 797 of December 1995, headed "Ascot Waters - Proposal to dredge two channels to connect an artificial wetland with the Swan River: Western Australian Planning Commission and the City of Belmont". Without repeating what Hon Graham Giffard said, the Environmental Protection Authority not only gave approval to the proposal but also said -

- it provides replacement wetlands well in excess of the area disturbed by dredging;
- it provides replacement river environment (benthic fauna habitat) well in excess of the river environment disturbed by dredging;
- it will improve the quality of water entering the Swan River from the Central Belmont Main Drain; and

That is the Matheson Road drain -

- it will upgrade an area of degraded regional open space for public use.

The merits of the Ascot Waters dredging proposal are consistent with the previous Environmental Protection Authority statement . . .

That environmental approval was a public environmental review assessment, which is the highest level of assessment -

Hon Jim Scott interjected.

Hon DERRICK TOMLINSON: I suggest that the best way to answer that question is to read the bulletin because those sorts of questions are addressed in the bulletin.

As far as the environmental assessment is concerned, the bulletin is available as a public document. I do not know whether other Planning Commission approvals were granted but, because it was a Western Australian Planning Commission proposal, I am hesitant to suggest that there were no approvals. The question, however, remains.

Hon Jim Scott: Normally you have to go through some sort of process.

Hon DERRICK TOMLINSON: Yes. Hon Jim Scott has raised an important question. However, the question remains. I hope that in future the truth of this will be tested in a civil jurisdiction - and I suspect it will in the light of things that were said on the radio this morning. That question remains, but part of it has been answered in the documentary evidence of the EPA assessment that has been produced.

The second question of the trust land is vexing. I want to challenge a point made by Hon Jim Scott; that is, the extent of the trust land. I have a copy of the trust document headed "1954: Belmont Park Road Board: Declaration of Trust". As Hon Jim Scott said, the document states -

The Board -

That is the Belmont Park Road Board -

desires to provide a place for the purposes of public recreation and enjoyment

That phrase "public recreation and enjoyment" is very important. The declaration of trust continues -

NOW THESE PRESENTS WITNESSETH that The Board doth hereby declare that it stands seized of the said land in trust for the purposes of public recreation and enjoyment and for those purposes only

I read that part to reiterate the words used by Hon Jim Scott. There is therefore no challenge to the purpose of the trust. The question I raised was the extent of the trust land. The schedule in the trust document describes the trust land in these terms -

ALL THESE pieces of land being:-

1. Portion of Swan Location 33 and being part of Lot 223 on plan 2365 and being the whole of the land comprised in Certificate of Title Volume 611 Folio 45
2. Portion of Swan Location 33 and being part of Lot 223 on plan 2635 and being the whole of the land comprised in Certificate of Title Volume 611 Folio 46.
3. Portions of Swan Location 33 and being (firstly) Lot 10 the subject of diagram 1005 and (secondly) Lot 49 the subject of diagram 1349 and being the whole of the land comprised in Certificate of Title volume 1095 Folio 940

The Common Seal of the Belmont Park Road Board )  
was hereunto affixed pursuant to a resolution of the )  
Board and in the presence of : )

The schedule then has the signatures of the chairman and the secretary which, unfortunately, I cannot read. Attached to that is the declaration of the trust, which was lodged at 12.30 pm on 6 August 1954 with the then Registrar of Titles. It contains a diagram of the trust land. Lot 247 on the trust document is quite clearly not part of the trust land.

Hon Jim Scott interjected.

Hon DERRICK TOMLINSON: I want to make that quite clear. If the House requests it, I am happy to table the trust document.

However, I now turn to the really contentious issue, because lot 247 is irrelevant to the central argument. The central argument is whether the waterway dredged through lot 223 - that is part of the trust land - is a legitimate or legal use of the trust land. I am not a lawyer. This matter is being investigated by at least two bodies that I know of. First, a private citizen has lodged a request with the current Attorney General, Hon Jim McGinty, to clarify whether that use of the land - that is, the waterway dredging on lot 223 - is legal. The Solicitor General's Office quite properly is dealing with this confidentially. It has made no finding and the private citizen who has lodged the request will be advised of the outcome in the future.

The second inquiry relates to that about which I have consistently asked questions of the Minister for Local Government; that is, the inquiry into the City of Belmont, which was commenced in January this year. The minister indicated to me that the report would be handed down next month. My understanding is that the draft of the report will be ready about the end of February or the beginning of March because the inquiry was still receiving submissions on 10 December. Therefore, given the time that Crown Law will require to review it and

so on, we will see that report in perhaps June next year, not next month as the Minister for Local Government indicated. However, I am confident that one of the matters that that inquiry will address is this very issue.

A third inquiry was undertaken into the legality of the use of the land, at the request of the City of Belmont to the previous Attorney General, who is present in this House. He knows more about that issue than I do. He is better versed in the law than I; therefore, I will leave that to him to discuss.

There is an unanswered question about whether the planning approvals were granted. I presume they were, only because it was a Western Australian Planning Commission initiative. However, that does not prove anything. It leaves the question unanswered. The Environmental Protection Authority assessment is available and that question has been answered. The member may not be happy with the answers it has provided, but the answers are available and have been made public. I will leave the question of the trust land to my much-loved colleague - No 1 in the East Metropolitan Region.

The question then is: do those questions justify disallowing this proposal and thereby disallowing the other 39 amendments? Let us return to the first proposition. All the amendment does is change the designation in the metropolitan region scheme. It does not retrospectively validate anything. It does not affect any legal question. It does not in any way resolve the question of the trust land. It simply changes the designation of the waterway. Given that Hon Jim Scott has raised some serious questions that need to be answered, those questions will be answered outside this place and will not be affected by the decision if the House does not agree with the disallowance. The Opposition does not support the disallowance and is of the opinion that the amendment should proceed.

**HON PETER FOSS** (East Metropolitan) [8.55 pm]: Hon Derrick Tomlinson has clearly stated the question that the House must answer in order to decide whether to support this motion. Many questions arise about the process we should follow concerning section 33 amendments. I do not know how many times I have suggested that, if not a select committee, one of the standing committees should examine the role this House should play in this issue. Whatever we think about the process of planning, the idea of planning occurring in this House is not very good. I hope that one of these days this House will examine the whole issue of planning. It would be a good idea to examine section 33A at the same time.

Hon Robin Chapple: And the whole issue of omnibus legislation.

Hon PETER FOSS: Yes; a number of issues should be examined, but we cannot do that now. We are dealing with a substantial omnibus amendment. When the coalition Government was in power, it tried to ensure that omnibus regulation amendments, in line with omnibus legislation amendments, were not contentious. That was ideal and allowed many matters to be addressed without difficulty. That applies to most amendments.

I have had some concerns about this land and the trust attached to it. The land is vested in fee simple in the City of Belmont, but it is subject to a rigorous express trust. It came to my notice because the City of Belmont tried to have that land vested in itself free of the trust. It sought my assistance as the then Attorney General in that process because the Attorney General is the supervisor of charities. The trust is a charitable trust and the City of Belmont wanted a scheme to get rid of the trust attached to that land. If a scheme is devised to get rid of a trust attached to land, the intent of the trust must be preserved in some other way. The City of Belmont presented me with a number of propositions that gave me considerable alarm, such as selling the land and using the purchase price for purchasing other land to be subject to the same trust. That is one way of varying a trust. Another was to obtain a swap of land. As the City of Belmont continued with its proposition, I became increasingly concerned because it appeared to me that there was a conflict of interest between the City of Belmont as a local authority and the City of Belmont, which happened to be the trustee of this land. It was clear that the city's desire to have the land free of the trust dealings was driving its dealings with the trust. Anyone who understands the duties of a trustee will know that a trustee cannot have a personal interest in the land for his own purposes. I said that I did not trust the City of Belmont - not in any unpleasant terms - but because I did not believe it had the capacity to mentally separate the propositions it was putting to me as trustee and as the City of Belmont. It was quite embarrassing because the City of Belmont happens to be in my electorate. I said that, at that stage, the propositions were unacceptable. They were plainly driven by the City of Belmont as the local council, not as the trustee. The City of Belmont was coming to me not as a trustee with a problem but as a local authority with a problem.

There is a simple solution. Under the Trustees Act, the City of Belmont can pass to someone else its job as trustee and appoint that person to be the trustee. It can vest the land in someone else in fee simple, and that person can hold it under the purposes of the trust. If ever there was an indication of how correct I was about the conflict between its position as the City of Belmont and its position as the trustee, that was it, because it was very loath to do that. It did not want anyone else to have control over that land. As soon as that conclusion could be reached, it should have got out. As far as I was concerned, it was not just a matter of whether the propositions it was putting were right. The propositions were totally wrongly motivated. The City of Belmont had come to me

with a plain conflict of interest. The fact that it was so reluctant to take the simple solution of letting someone else control the purpose was almost proof in itself of the conflict of interest that it had. I must confess that remained the state of affairs at the time that I ceased to be Attorney General.

I still hold the view that the City of Belmont is not the appropriate trustee of this land while it has two quite different purposes in mind. Had this amendment been promoted by the City of Belmont it probably would have constituted a breach of trust, because to have land that it holds for one purpose rezoned for another purpose is a breach of trust. However, I understand this amendment has been promoted not by the City of Belmont but by the Western Australian Planning Commission, because it is the one that needs the waterway. There is probably a bit of a conflict of interest there as well. Had it had the legal effect of getting rid of the trust, again I would have had serious concerns. However, the fact that it has been so zoned does not prevent that.

The one serious concern is that if the land is zoned as a waterway it may have a significant effect on the value of the land. It may increase the value, because there may be better recreational value alongside a waterway. I do not know. However, it does not change the fact that not only is the land still subject to the trust but so, too, is the waterway. It is interesting that if it ever wanted to try to stop people from using the waterway it might find it very difficult to do so, because people could say that the land belongs to a charitable trust and is for public recreation, and they are entitled to go along the waterway and no-one can stop them. That may create some problems for someone, but nonetheless that is the effect of the law. The law remains the same. The land remains subject to the trust, regardless of what we do so far as the reservation of the land is concerned.

On that basis, I do not think there will be an impact on the trust. However, that remains to be settled, and I remain concerned about that. I hope the Attorney General will understand the concern that I have. I have never claimed to be a constitutional law guru. I have never claimed to be a criminal lawyer. However, I do claim to be a charitable trust lawyer.

Hon Derrick Tomlinson: Are you charitable or a trust lawyer, or both?

Hon Graham Giffard: The words have to be read together.

Hon PETER FOSS: That is one area in which I have practised a lot, probably more than most practitioners. I think I know a fair bit about charitable trusts. This concerned me immediately. I have acted for many trustees, and never have I struck a situation in which they have applied for a scheme to further their own ends as opposed to furthering the ends of the trust. It is not good enough for a trustee to say, "I think our ends meet. What I want and what the trust requires me to want are the same." The problem all along is that people cannot indulge in a schizophrenic exercise to make these decisions. I sincerely hope the Attorney General will tell the City of Belmont to give the land to someone else, impose the same trust on it, and see whether that person thinks the same way as the City of Belmont. If that person does, the city council is right; if that person does not, it is wrong. I think the council will be found to be wrong. I do not support a disallowance. I still have the concerns that I have had for 13 years in this place about section 33 and 33A amendments. We must look at that issue one of these days. This may be a reason to discuss setting up a committee for such a purpose. If the Greens would support that, I would be keen to get one going, but not now. Clearly, because of the minimal or almost negligible impact on the trust itself, it would be quite improper for us to disallow all these other perfectly valid, worthwhile and necessary amendments because of that one concern. Yes; that concern remains. It should be on the record that this is a matter about which the public should be very concerned. However, this is not the venue nor is this the mechanism for enforcing that. I oppose the motion.

**HON JIM SCOTT** (South Metropolitan) [9.05 pm]: I thank members for their contributions to this debate. I will address a couple of matters that have been raised. Hon Derrick Tomlinson raised the issue of my being incorrect about a block, which is now block No 600 but was then No 247. I think what I said was that a portion was added to it from the trust land, rather than -

Hon Derrick Tomlinson: Along what was the Mathieson Road drain.

Hon JIM SCOTT: Yes, rather than that it was trust land.

Hon Derrick Tomlinson: I think you managed to have it extended to 11 metres from the so-called high watermark.

Hon JIM SCOTT: That is right. The issue that I do not think has been addressed by anybody so far is that of the moving of the boundaries of the improvement plan. I would have thought that some process would be required to approve the moving of the boundaries of an improvement plan area. I hope that the parliamentary secretary has noted that issue.

Hon Graham Giffard interjected.

Hon JIM SCOTT: One expects the Environmental Protection Authority to be able to examine the environmental credentials of something, but we still need a planning process, which is normally, to my understanding, a public

**Extract from Hansard**

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process. Boundaries of planning areas are not changed without some sort of process through which the public is informed about a proposal and submissions invited on it. The other issue, of course, was that although an EPA document okayed the building of these channels and the creation of the waterway, I have not seen the metropolitan region scheme document that allowed that to happen.

Hon Graham Giffard interjected.

Hon JIM SCOTT: Does Hon Graham Giffard mean that without any public process at all, it could be subsumed -

Hon Graham Giffard interjected.

The DEPUTY PRESIDENT (Hon George Cash): Order! Hansard cannot hear what is being said.

Hon JIM SCOTT: Thank you, Mr President. I do not consider that to be a minor change. It involves the creation of a new channel of the river. That is a reasonably important planning change. The cutting off of an area and the creation of an island is a reasonably important piece of planning; it is not some minor change, particularly when an area has the history of this particular area. I would like to see the planning approvals and the process that enabled this to happen, and not the EPA approvals. Hon Graham Giffard said that he was not aware that any area was fenced off. I went back to my notes. They indicate that the northern two-thirds of lot 5, which is part of the trust land, remain fenced off from the public. The land contains monolithic structures announcing Ascot Waters and a warning "keep out, construction site" and is used as a private construction access road. The rubbish dump there is in the form of a baseball diamond. There is also an unapproved sales office building for the adjacent Ascot Quays development.

Hon Derrick Tomlinson: That has a temporary permit from the Western Australian Planning Commission for the purposes of construction.

Hon JIM SCOTT: Okay, but it is clearly not an area that can be used for the purpose for which the trust prescribed it.

Hon Derrick Tomlinson: No, but it has a temporary other use.

Hon JIM SCOTT: The parliamentary secretary also said that the public could use the area that is at present subsumed by water and is trust land, but the words of the trust agreement do not state that it is for the purposes of public recreation and enjoyment and leave it at that; the words state in addition that it is for those purposes only. They do not state that it is for the linking up of a private marina to the river. That does not satisfy my understanding of the meaning of those words of the trust agreement.

The history of the trust land and the attempts by the City of Belmont in the past to alienate the trust from the land still concern me very much. For those reasons, despite the fact that valuable changes may have been made to other parts of this omnibus amendment, until I see appropriate planning approvals for this waterway, I will not agree to the amendment going through without challenge. Even though Hon Graham Giffard read out the first proposal, saying that it more accurately reflected the on-site situation, it could also be read to say that if approvals are already in place, why do we need the metropolitan region scheme amendment? It seems to me nonsensical. I believe that the metropolitan region scheme amendment is put forward because no approvals are in place and it will give the situation some legitimacy. Therefore, I commend my motion to the House.

Question put and a division taken with the following result -

Ayes (4)

Hon Dee Margetts

Hon Jim Scott

Hon Giz Watson

Hon Robin Chapple (*Teller*)

Noes (26)

Hon Alan Cadby

Hon Adele Farina

Hon Frank Hough

Hon Tom Stephens

Hon George Cash

Hon John Fischer

Hon Barry House

Hon Bill Stretch

Hon Kim Chance

Hon Jon Ford

Hon Robyn McSweeney

Hon Derrick Tomlinson

Hon Murray Criddle

Hon Peter Foss

Hon Norman Moore

Hon Ken Travers

Hon Bruce Donaldson

Hon Graham Giffard

Hon Louise Pratt

Hon Ed Dermer (*Teller*)

Hon Kate Doust

Hon Nick Griffiths

Hon Ljiljana Ravlich

Hon Sue Ellery

Hon Ray Halligan

Hon Barbara Scott

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Pair

Hon Christine Sharp

Hon Paddy Embry

Question thus negatived.

**Extract from *Hansard***

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