

MR GARY TREMAINE, COMPENSATION FOR SALE OF LOT 1, MILITARY ROAD, GINGIN

Grievance

MRS C.L. EDWARDES (Kingsley) [9.41 am]: My grievance is to the Minister for the Environment on a matter with which she is familiar and that I have raised in this place before. It is in respect of a Mr Gary Tremaine, who owns a property at Lot 1, Military Road, Gingin and mines a limestone resource on that property. Unfortunately, the property in Gingin is outside the metropolitan region. This is an issue that is very difficult for a Government to deal with; it is about a person's rights affected by the general public good. In this instance, Mr Tremaine's property has been zoned P1. It was not zoned P1 when he bought the property but now that it is he can now no longer dispose of it. His rights have been affected by a government decision. If it is important to protect water on P1-zoned land, then the taxpayers of this State should pay landowners for that injurious affection. As Mr Tremaine's property is outside the metropolitan region, the Government's offer of compensation unfairly discriminates against him. Various state Acts deal in an iniquitous way with the rights of landowners. Mr Tremaine, who has been fighting for compensation for some years now, is one of those landowners. This is not the first time that he has had to fight the bureaucracy. He has been unfairly treated in the past and is being unfairly treated now. The Water and Rivers Commission has agreed to purchase Mr Tremaine's property and has put that agreement in writing. It said -

Your client's land is considered to be one of the priority properties for purchase this financial year.

The Water and Rivers Commission wants to purchase the property, but only for the amount in its valuation. The property is identified in the Gngangara land use and water management strategy for future parks and recreation land; however, the council will not rezone the land. If the council were able to rezone the land, it would again attract compensation. If that were to happen, Mr Tremaine would receive more money than the Water and Rivers Commission is offering. His rights are being affected by the Western Australian Planning Commission and the Shire of Gingin. Mr Tremaine believes that the matter should go to arbitration. Egan National Valuers (WA) has valued his property at \$1.14 million; Alan Morcombe and Associates valued it at \$1.030 million; and Ferguson Fforde valued it at \$1.050 million. Mr Tremaine has a right to mine on the property. That activity will not affect the priority 1 rating. Yet, the Water and Rivers Commission board wants to play by only its rules. This man is not being offered fair compensation. It seems that a very firm bloc is against offering this man fair and reasonable compensation. The Water and Rivers Commission will not offer him fair and reasonable compensation. Why is it not prepared to have this dispute determined by an independent arbitrator? Does it not want the matter to go to an independent arbitrator because it would be forced to pay more than what it is currently offering? If that is the case, it is even more unfair that the matter does not go to arbitration. Arbitration involves an independent person and requires everybody to abide by what is fair and reasonable. Section 14 of the Water and Rivers Commission Act states -

- (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions, either generally or in relation to a particular matter, and the Commission is to give effect to any such direction.

The section further states that the text of that direction must be reported in the annual report. No-one would criticise the minister for directing the board to take the matter to arbitration because that is fair. She would not be telling it to pay Mr Tremaine \$1 million. Nor would she be telling the board to pay him the \$680 000 plus 10 per cent as well as the costs he has incurred in trying to negotiate fair and reasonable compensation and allow him to have a lease on the property. This man is being unfairly discriminated against. The public service has previously unfairly discriminated against him, and it is happening again on this occasion. It is not that the public service wishes to discriminate against him as an individual. I do not suggest that. However, a mindset is involved that can be broken only by an independent valuer. The way in which this landowner's property is being treated is unfair. He would have sold this property by now if it were not for the P1 rating. He would have received fair compensation from the Western Australian Planning Commission if the P1-rated property was in the metropolitan area. He would have received fair compensation if the Shire of Gingin wanted to rezone the land to parks and recreation. At every step of the way, this man has not received fair treatment. Let it go to arbitration.

DR J.M. EDWARDS (Maylands - Minister for the Environment) [9.48 am]: I thank the member for her grievance. I intend to give a bit of history about the issue and then make some more positive comments. This grievance concerns Gary Tremaine and the proposed purchase of his property at lot 1 Military Road, Gingin. As the member has pointed out, the Water and Rivers Commission is interested in this land. It is committed to purchasing private property in priority 1 source protection areas, as this property is.

It is important to point out that a select committee of Parliament considered this issue and also the Gngangara underground water pollution control area, which overlays the area and determines the priority 1 status of it. In

August 2001, the board endorsed a submission for negotiations to commence with Mr Tremaine for the purchase of the property. I will not go through the full history of what has happened since then because it is well known to the member for Kingsley. Essentially, there have been valuations, offers to purchase, discussions, negotiations and further attempts to resolve this issue. I met with Mr Tremaine in December 2001. We went over the history of it again and I put a fresh proposal to him, which was that the land be purchased for \$350 000 and that he would be able to extract the limestone on that property over the next five years, subject to normal management operations. Subsequent negotiations have taken place since then, which I will refer to in a minute.

Limestone extraction is a compatible land use within the P1 area. There are several extractable limestone quarries in the Gngara region. This can continue to occur provided that the base of the operations is three metres above the water table and appropriate precautions are taken. To that extent, Mr Tremaine is not constrained should he wish to operate the property for the purpose of extracting the limestone. It is also clear, as the member points out, that there is no obligation on either the Water and Rivers Commission or the Western Australian Planning Commission to purchase P1 land in any circumstances, nor is there any facility for either to resume the land. The commission has been working with Mr Tremaine to resolve this matter.

The member for Kingsley grieved about this issue in April 2003. Following that grievance I had further discussions with the Chief Executive Officer of the Water and Rivers Commission. As a result of those discussions, in July this year a meeting was held with Mr Tremaine and his representatives, the acting CEO of the Department of Environmental Protection, a valuer from the Valuer General's Office and a representative from my office. They again went over the issue. The outcome of the meeting was that the acting CEO again put the issue to the board of the Water and Rivers Commission for its consideration and recommendation. On 11 July 2003 Mr Fforde, acting on Mr Tremaine's behalf, wrote to the commission setting out procedures for arbitration and providing a list of valuers who were suitable to them to act as arbitrators.

In view of the time since the last valuation in 2001, the Valuer General was requested to provide a current market valuation for lot 1 Military Road, taking into account the value of the limestone resource, the sealing of Military Road and any recent sales evidence. This valuation placed the value of lot 1 at between \$600 000 and \$700 000. At its meeting on 25 July 2003, the board of the Water and Rivers Commission considered three options with regard to Mr Tremaine's property. The first option was that the commission would withdraw from any further negotiations. The second option was to make a cash offer to Mr Tremaine as a full settlement of the matter. The level of this offer would be based on the valuation obtained from the Valuer General. The third option was that the board would agree to go to arbitration. After consideration, the board has endorsed the second option - to make a cash offer to Mr Tremaine. A formal offer was subsequently made to Mr Tremaine on 6 August 2003 for \$680 000 walk-in, walk-out.

The member for Kingsley and I are aware that this issue has caused considerable distress to Mr Tremaine over the years. We are both aware that in the past he has had similar difficulties with bureaucrats - as the member put it. I have had discussions with the Water and Rivers Commission. It is reluctant to go to arbitration. In fairness to it, it has presented me with valid arguments for not going to arbitration. Equally though, the member has raised a situation whereby private property owners in a P1 area and who are outside a metropolitan region scheme are suffering potential disadvantage.

For those reasons I have asked Mr Brian Martin, the coordinator of water services in the Office of Water Regulation, to quickly review this issue for me. He is doing a review for the minister. He will review the case of Mr Tremaine, taking into account the history of what has happened and his circumstances, including being a private owner of land in a priority one area that is outside the metropolitan region scheme. In addition, I will ask him to give me further advice on the policy issues that arise from this.

I urge the member to ask Mr Tremaine to consider putting in a counteroffer in the meantime, because I think both of us want to see an end to this as quickly as possible. I will get Mr Martin onto this as quickly as he can pull himself from other duties. I anticipate having a report from him in the near future, but I urge Mr Tremaine to make a counteroffer as well and I will then take advice from Mr Martin.

It occurred to me prior to the member raising this issue that an option open to me is to direct the board. It is the board that makes this decision. However, to direct the board I believe I need further advice. For that reason I have asked Mr Martin, who resolves many water disputes in his role in the Office of Water Regulation, to provide me with some quick, immediate advice on the best way forward for Mr Tremaine, the broader community and people who may be in his situation in the future.