

PERTH MARKET (DISPOSAL) BILL 2015

Committee

The Chair of Committees (Hon Adele Farina) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 1: Short title —

The CHAIR: The question is that clause 1 stand as printed.

Hon Simon O'Brien: Aye!

Hon KATE DOUST: That was a very enthusiastic aye from Hon Simon O'Brien. I hope he is feeling that way a little bit later in the proceedings.

Hon Simon O'Brien: It's probably the best speech you'll hear on clause 1.

Hon KATE DOUST: Hon Simon O'Brien always gives good speeches. Here we are at around two minutes to one on the last sitting day—a long last sitting day—and we have finally got to the Committee of the Whole on the Perth Market (Disposal) Bill 2015. Because we have been denied the opportunity to refer this bill to a parliamentary committee, which could have utilised the period of our break to go through this legislation with a fine toothcomb and perhaps examine some of those extra matters that we have now become aware of in the last 24 hours, and because we have been denied the opportunity to have that committee report to this chamber with improvements or corrections to the bill, I am going to take the advice of the Leader of the House who said that in the Committee of the Whole of this place we will have ample opportunity to forensically analyse this bill. I say to the Leader of the House—I am sure he will not be disappointed—that it is our intention to forensically analyse the bill in this place and to do whatever we can to make sure it is an appropriate piece of legislation and is in the best interests of the Western Australian public, which we doubt very much.

I am sure my colleagues will want to raise a number of matters as we go through the next many hours—however long it ends up being. I say to members opposite who are not happy with the sitting arrangements that we are in here doing our job: we are holding this government to account. Government members chose to bring legislation into this place last week and if they expect it to be rushed through without appropriate scrutiny, I do not know what they are doing in here.

Hon Simon O'Brien: We aren't accusing you of rushing it through.

Hon KATE DOUST: My friend, we will not be rushing it through. The commentary of other people has been highly critical of the fact that we are sitting today to spend time to go through this bill. I remind people that the opposition did not move the motion to sit beyond 5.20 tonight if we needed to. In fact, the leader of the government did that, so if members of the back row of the government benches have a complaint because they are sitting here late tonight as we apply the blowtorch of scrutiny to clause 1 —

Several members interjected.

Hon KATE DOUST: It starts beautifully.

Several members interjected.

Hon KATE DOUST: I am scrutinising clause 1, my friend.

Hon Simon O'Brien: I am not complaining about sitting. My only complaint is that you're not sitting.

Hon KATE DOUST: I will sit from time to time.

The CHAIR: Order, members!

Sitting suspended from 1.00 to 2.00 pm

Hon KATE DOUST: Before lunch I was pointing out the lay of the land and that we would apply an appropriate level of scrutiny to this bill. If anyone has any complaints about how long we sit here, I suggest they take it up with the Leader of the House, not with us; it was his call, not ours.

There is a series of questions about clause 1, and I will not rattle them all out in one go. I am sure my colleagues also have questions about clause 1. I cannot recall whether in the minister's reply to the second reading debate she talked about the timing of this bill. I wonder whether she could provide an explanation about why the government commenced the sale process before the bill was brought into the chamber.

Hon HELEN MORTON: I start by introducing my advisers here. There is Alan Ramage, who is the Senior Assistant State Solicitor, and Jane Wedgwood, who is the project director for the Perth Market Authority

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asset sale from the Department of Treasury. I introduced them to give a level of understanding about the level of advice I am getting on these matters. In my reply to the second reading debate I indicated the time frames for the sale, and I will take a few minutes to find the documents in which the information was covered. This process has not just started; this process has been ongoing now for at least —

Hon Sue Ellery: Over a year.

Hon HELEN MORTON: Over a year—that is right. I also indicated that the bidders were fully informed that the contract of sale would be undertaken on the basis that this legislation would be passed. The inference of the member's question is why we are debating this bill while this other process is already in tow, but nothing we are doing means that we are in any way unable to continue that process. We can do two things at once. As long as the information to the proponents is that the contract is dependent and conditional on the outcome of this legislation, there is no reason that things should not happen concurrently.

Hon KATE DOUST: I suppose it is an unusual situation to put an asset out to tender quite a while before a bill is brought into the house. There was no guarantee, really, that the government would get the bill through, so it might have proceeded down the path of the sale unnecessarily. The fact that the minister's colleagues in the National Party have raised questions and are to move amendments in this house means that the government was not to know that there could have been some leakage from the National Party, which may not have supported the bill and may have opposed it. I think that would have set up a very difficult position for the government—that is, to move to sell the property and the bill then not being passed. As it is, I think this legislation has some significant flaws. I hope that as we work our way through the bill, the minister might be open to address a couple of those flaws. Aside from the amendments flagged on the supplementary notice paper, a few other matters need to be tidied up, if you like, as we work through the bill. At least two clauses in the bill are probably a bit superfluous to the government's needs and requirements—and to the purposes of this bill.

The other thing I wanted to find out about relates to the following words in the short title —

An Act to provide for the disposal of the whole or part of any business carried on ...

Given that the government has put the whole property out for tender, for sale, why are the words “or part of any business” included in the short title?

Hon HELEN MORTON: There is a potential that a buyer might not want the entire site, so a small portion of it could be retained by the state for whatever reason; that option was included in the tender.

Hon KATE DOUST: The difficulty for us in dealing with this bill is that we do not know what is in the big documents that indicate what the various buyers are interested in. I suppose we can assume they just want the whole site as it stands, but what if they took only part of it? If they took only the main selling floor and some of the warehousing and left the rest of it, surely that would defeat the purpose of the government wanting to offload this asset.

Hon HELEN MORTON: It is obvious that if the government sold only a part of this site to one of the proponents, the remainder could equally be sold separately.

Hon KEN TRAVERS: Regarding the issue that has been raised by Hon Kate Doust, it is my understanding, if I am not mistaken, that the process to sell has already commenced, tenders have been requested, and tender documents and information have been provided to prospective buyers. So that there is complete transparency in the sale process, can the minister ensure that the tender documents and any other industry briefing documents and the like that have been provided are tabled in the house—preferably before we complete debate on this bill? I would think that the minister's advisers should be able to organise for the information to be sent to Parliament, and I am sure that people back in the advisers' offices would be in a position to provide the tender documents and any associated briefings to industry for tabling.

Hon HELEN MORTON: I have here the “Request for Detailed Proposal: Perth Market Authority Asset Sale—Market City” and I seek leave to table it.

Leave granted. [See paper 3726.]

Hon SALLY TALBOT: On that same point raised by Hon Kate Doust, this is the first we have heard about the lots being divvied up. Presumably, if one tenderer does not want to buy the whole thing, but another tenderer does, that will automatically give the tenderer with the greater area to purchase a privilege over the tenderer with the lesser area.

Hon HELEN MORTON: It is incredibly hypothetical. The current tender is for the Perth Market Authority business and the site associated with that, so there is no tender for the other part of the land at this stage, and I do not know if there ever will be. As the proposals come in, the government will look at them. If, at the end of the

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day, the proposals demonstrate that only a small proportion of the existing site is warranted for the ongoing business of the Perth Market Authority, the government would have to look at that.

Hon SALLY TALBOT: I am finding this a little confusing. I can follow the minister as far as her saying that this bill is about the sale of the PMA and the land that is currently controlled by it, but does that not include, for instance, the petrol station and the tavern?

Hon Helen Morton: Yes.

Hon SALLY TALBOT: If a tender came in that said that the tenderer wanted to buy everything except the tavern, would that be acceptable to the government under the terms of this bill?

Hon HELEN MORTON: As I have said, when the proposals come in, they will be considered. There is not anything that is not going to be considered by the government. As a consequence, we will get the best outcome for the government through that process.

Hon SALLY TALBOT: I am pursuing what admittedly is a hypothetical situation. In a situation in which we do not have any certainty of outcome, all situations are hypothetical, including some of the ones that the government would like to think have gone beyond the stage of being hypothetical. The reality is that everything we are dealing with is hypothetical. If we were in a situation in which somebody had bid for just the tavern, would that be an acceptable tender?

Hon HELEN MORTON: Obviously that would not meet the conditions for market continuity.

Hon SALLY TALBOT: That tender would automatically be excluded, but if the successful tenderer tenders for everything except the tavern—I am using the tavern or the petrol station as an example; it could apply to any part of the footprint—I understood the minister to be saying that the tavern lot would then be sold separately by the government. Is that correct?

Hon Helen Morton: Sorry, I just missed the last little part of what you were saying.

Hon SALLY TALBOT: If the successful tenderer is awarded everything except the tavern, will the government then proceed to sell the tavern?

Hon HELEN MORTON: Once again, it depends on what the proponent comes in with. The member is making an assumption that somehow or other the government does not want to sell the tavern or something.

Hon Sally Talbot: No.

Hon HELEN MORTON: If the proponent comes in and wants everything except the tavern, that would be considered against any other proposals that come in. As long as the tender met the four objectives that I outlined in the second reading speech, that certainly would be considered.

Hon SALLY TALBOT: I go back to the response to Hon Kate Doust's original question, which was that we are not necessarily looking at one sale here—we could be looking at two or more sales if the successful tenderer does not want the whole of the site. What I am asking the minister is this: in the event that the whole 51 hectares is not sold, will the government have to come back into this place with another bill to dispose of that part of the property?

Hon HELEN MORTON: Obviously what Hon Sally Talbot is asking about is very hypothetical. It is unlikely. The government has made its position absolutely clear on this—that is, to sell the site and to privatise the Perth Market Authority. We will be looking for the best possible proposal that comes in seeking to achieve that and that meets the objectives we have identified.

Hon SUE ELLERY: Listening to the view expressed by the minister, it seems to me that the way in which this bill is structured to give effect to the central policy—that is, to sell the asset and privatise the market —

Hon Helen Morton: And maintain the market.

Hon SUE ELLERY: And maintain the market. The essential element of the policy of the bill that has already been set by the house is to dispose of the market. That is the essential policy. The government then has a choice about how loosely or otherwise it does that. The interesting observation that can be made from that little exchange is that the minister said, "Well, Hon Sally Talbot is asking a hypothetical question." It seems to me that because the government has structured the sale arrangements in this bill so loosely and has taken a light hand to the regulatory framework that it is putting around the sale, it is open for us to assume all sorts of things and for all sorts of hypothetical propositions to be put to the minister to test the boundaries of the hand of regulation that the government is applying to the sale. While I am not going to go back to canvass the second reading debate, I did make the point during that debate that the report of the Economics and Industry Standing Committee, which Hon Martin Aldridge referred to in his contribution, made the point that when the

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government is privatising what is a public asset, it needs to make a very conscious decision about whether it will do that with a light hand of regulation or a firmer hand of regulation, because what it is selling, in this case, is not just the piece of land, but also the public's interest in the function thereof. It seems to me that the government has made a conscious decision in this case to err on the side of a very light hand of regulation.

I think what the minister is saying to the chamber is that the government has decided, in the interests of what she described as wanting to get the best offer, to be as loose and open as possible so that it can get many different variations and, therefore, the best deal. But in doing that—in keeping it so loose—the government leaves itself, and, unfortunately, the public of Western Australia, open to the public interest being lost or diminished as a consequence. The examples of that that struck me in the bill were in some of the definitions. The sale is able to be exercised in whole or in part, so there are no parameters to the practical implications of selling part of the business. There are no constraints on that. The disposal of the market is being implemented in very general terms. The order to sell in clause 9 of the bill is in very general terms. It need not include any details about anything. It need not include anything in particular in that order to sell. Under clause 10, there are literally no limitations—that is the wording of the clause; that is the phraseology. Subclause (1) states —

... there are no limitations on the nature of any transaction or arrangement that can be entered into ...

That is the wording of that clause—there are literally no limitations. The Economics and Industry Standing Committee said that we should make a judgement when we sell public assets about whether a light hand or a firmer hand is to be applied to the regulatory framework being put around the sale. Clearly, this government is erring on the side of a light hand. I think that is a policy failure, and I would welcome the minister's comments on that.

Hon HELEN MORTON: Obviously I do not agree with the honourable member. For example, clause 47 of the bill refers to the way in which the disposal can be in part or in whole, so that part has already been covered in the legislation. The objectives are set out very clearly. There are site rules that are included in the contract for sale. I do not think the government has had too light a hand, as the member might refer to this. I think the government has had a very even-handed approach to the way it has balanced the requirements for flexibility and the requirements to meet our objectives of ensuring that the Perth Market Authority is sustainable and that the operation is able to grow and is not constrained by certain matters. That will facilitate the private sector investment into the future and maximise the transaction proceeds and the financial return for the state while minimising residual financial risk and liabilities for the state. All those things have been handled very appropriately in this bill.

Hon KATE DOUST: I am just curious: if the government wants to offload a public asset in this manner, why has it left it so broad? If it were serious about wanting to recoup money, why would it not just insist in its tender documents that the whole site had to be sold, and not leave it open so that there might be options to carve off chunks of the area for a later sale to another purchaser? If the government is going to do it, would it not have been a lot cleaner to have just said it would sell the whole site, the 50-plus hectares, in one job lot? Would that not have been a tidier way of managing this sale?

Hon HELEN MORTON: If the member gets to look at the tender document, she will note that the government makes its intention absolutely clear that it will be selling the whole lot. Although that is the government's intention and that is the requirement, one hopes that the proponents would take that into account. However, if that is not the case, there will still be room for flexibility.

Hon KEN TRAVERS: The minister made the point then about if we get to see the tender documents. One of the tender documents is, I would have thought, the key one we are referring to; that is, the sales contract.

Hon Helen Morton: You won't be seeing that—not yet; not until it is signed. Who do you think you are?

Hon KEN TRAVERS: To assist the chamber in its deliberations this afternoon on all these clauses and how they relate to each other, I would have thought it would significantly assist the committee if a copy of the sales contract was made available. I have not heard the minister give an explanation for why that sales contract cannot be provided to the chamber today. Can the minister please explain why we cannot get a copy of the draft sales contract to look at as part of the deliberations of the committee today?

Hon HELEN MORTON: I am amazed that Hon Ken Travers thinks that somehow or other the government would release a sales contract to him, or to anybody else, before it had been negotiated with the proponent. It is unbelievable that he would even imagine that could occur.

Hon KEN TRAVERS: I do not think it is unbelievable that a government that is asking Parliament to sell this asset—members made that decision in the second reading debate and we are now trying to work out the terms and conditions and how that sale is done—would be expected to table a copy of the draft. The minister must understand that the draft contract, as I understand it, has been provided to all the bidders. The only people who

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have a key interest in this sale at the moment and to whom the government is denying a copy of the contract are members of Parliament, who are trying to write the bill to allow that sale to go ahead. I find it absolutely amazing that the executive is so arrogant that it believes it can deny such a crucial piece of information to members of Parliament to allow their deliberations on how to construct the sale. The minister admitted in her response to the second reading debate that it is the intention of the government to make a copy of that final sales document available to Parliament without redaction. What is the commercial reason, apart from arrogance, that it cannot be provided to Parliament?

Hon HELEN MORTON: Yes, it is going to be provided once it is negotiated with the proponent, once it has been agreed to and once it is signed off.

Hon Ken Travers: But why can't the draft be provided?

Hon HELEN MORTON: It is going to be provided as a final document. I am sure Hon Ken Travers has been involved in sales contracts for the sale of various items before and in the negotiations that take place that change elements of a sales contract. As a result, what we get is the final negotiated position between the successful proponent and the state government. I can assure Hon Ken Travers that nothing in this bill refers to the sales contract. He is asking for something that is separate from the bill that is before us at the moment.

Hon KEN TRAVERS: The minister has not answered the question: is there anything that prevents her from providing a copy of the draft contract to Parliament? What absolute nonsense her last comment was! This bill allows the government to actually go ahead with the sale. Everything the government is doing at the moment has no legislative power. It will be able to be brought to conclusion only once this bill has been read for a third time. Of course, when we get to the third reading stage, we will need to know whether or not the detail in the bill is sufficient to meet the policy objectives we agreed to in the second reading stage. Clearly, part of the end result of this process is that there will be a sale. A draft copy has been provided to all the potential tenderers, as I understand it. Five groups out there have put in bids and, I assume, have been given a copy of it. They will all know what changes have been made between the draft and the final version. The only people who will not know what changes have been made are the owners of the asset—the people of Western Australia who are represented by members of this place and the other place. The minister has still not provided a single commercial reason for why the provision of that contract is not able to be provided to Parliament. The minister says that I might have been involved in other contract negotiations. Yes, I have been involved in contract negotiations for my own home, but that was me selling my home. What the government is doing here is getting Parliament to give it permission to sell an asset on behalf of the people of Western Australia. The position the minister is putting to us is that it would be like my partner and I owning our house together and me saying to my partner, "Sorry, darling, you can't see the draft contract. You can only see the final contract when it is released", even though she is one of the owners of that building. If we owned it as tenants in common, so I had 51 per cent and she had 49 per cent, it would be like me saying, "You're not going to get to see the contract I'm negotiating with the purchaser until the very end of the process, and then I'll show you the copy because I don't want you to see the draft." That is the analogy to what we are seeing today; that the owners of that property, the people of Western Australia, represented by this Parliament, are the only people who are not allowed to see the draft. The potential purchasers and the negotiators through the government are allowed to see it, but the people who actually own the asset are not. I find that extraordinary. I again ask the minister: is there a single commercial reason why that document could not be provided to Parliament today?

Hon HELEN MORTON: I will comment on this one more time. It has been indicated that once the contract of sale has been completed and signed, it will be tabled. Until that point, there is no contract.

Hon Ken Travers: Arrogance is the only excuse.

Hon HELEN MORTON: Let me finish. Until that time, there is no contract of sale; nothing has been negotiated; nothing has been completed. The member is asking me to somehow provide something that will probably change in untold manner through negotiations and whatever process is undertaken to determine who the successful bidder is and the final outcome. He is asking me to table something that I imagine is more like a commercial structure that will be used to try to make this disposal come to fruition, which can be significantly varied. As a result, and as I have said before, the contract of sale is not part of this current legislation.

Hon Ken Travers: It can't happen without this legislation, though.

Hon HELEN MORTON: The contract of sale has nothing to do with the legislation before us. This legislation will enable the Perth Market Authority to be disposed of. The contract of sale is a separate matter.

Hon KEN TRAVERS: It is extraordinary; we cannot have a contract of sale without the passage of this Perth Market (Disposal) Bill 2015, so to say they are completely separate matters is nonsense. I have heard the

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minister say lots of things in this house but that is complete nonsense. The problem the minister is making for herself is that we need to set the terms of sale of this asset. One way of doing that would be for a draft copy —

Hon Helen Morton: No, you don't.

Hon KEN TRAVERS: We have every right to; that is what this bill is about.

Hon Helen Morton: This is about the disposal, not the contract of sale.

Hon KEN TRAVERS: Yes; this bill is about setting the parameters for the sales contract.

Hon Sue Ellery interjected.

The CHAIR: Order, members! Hon Ken Travers has the call.

Hon KEN TRAVERS: Is the minister having difficulty on this really fundamental point? This bill and its provisions set the terms for the sale of this asset. The contract will then need to comply with all the clauses in this legislation. Having decided to agree to the sale of the asset, it is up to this house to work out the terms we want attached to it. That is why making the sales contract available to this house would be much more efficient. Members on the other side who want to complain about the amount of time we will sit here should understand that we would be able to get through this bill a lot quicker if that draft sales contract was available. We could even create an addendum to add it as a schedule and clarify which provisions of the sales contract could be varied and which ones could not according to Parliament.

Hon Helen Morton: I am very keen. I want to really agree with something you said.

Hon KEN TRAVERS: Let me finish one last point.

Hon Helen Morton: I'm very enthusiastic.

Hon KEN TRAVERS: It is funny, because a minute ago the minister said that would be the last time she would stand, but I am glad she is engaging now.

Hon Helen Morton: That was a different issue.

Hon KEN TRAVERS: I have not moved from this issue.

Hon Helen Morton: You've really supported me and you know you've supported me and I want to reiterate it to you, so I'm very grateful for you doing that.

Hon Sue Ellery interjected.

The CHAIR: Order, members!

Hon KEN TRAVERS: I will ask this question: does the draft sales contract mention caveats on the lots?

Hon HELEN MORTON: I wanted to say that Hon Ken Travers made the comment, with which I totally agree, that it is the legislation—he should be focused on it now—that will determine the components in the sales contract, not the sales contract determining what is in the legislation. Hon Ken Travers is dealing with the legislation. It is the job of this house to deal with the legislation to enable the disposal of the Perth market. Then the government will take hold of that legislation, and the component parts of it that need to be in the sales contract will be in it. Hon Ken Travers needs to focus on the legislation. Let us deal with the legislation.

Hon KEN TRAVERS: As I say, as a result of the minister's decision, it will be a slow and painful process as we work through —

Hon Helen Morton: I have got many, many days.

Hon KEN TRAVERS: Good. I hope the Leader of the House takes his backbenchers' advice and lets us sit until a normal hour tonight and come back for future sitting days to work through this bill. It is the minister's backbench who are complaining.

Hon Peter Collier: Who's complaining?

Hon KEN TRAVERS: Wow! The Leader of the House is deaf.

Several members interjected.

The CHAIR: Order, members! Can we focus on the bill?

Hon KEN TRAVERS: Clearly, we will have to play this game of pulling teeth out of the government and trying to work out what the government thinks the parameters of the sales contract will be. We will have our views about them and we will have to work out what should or should not go in the bill.

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I start with a point because we need to do that in this clause—we have to work out what additional clauses we might want to add as we go through this process. I ask the question again in light of all the earlier conversations about splitting up lots and potentially selling some and not others: is it the government's intention that all the blocks that are sold will have a caveat over them?

Hon HELEN MORTON: The answer to that is yes.

Hon KEN TRAVERS: Is there any reason we could not include in the bill that it be a requirement that every lot has a caveat placed across it?

Hon HELEN MORTON: That is a standard contractual aspect of many sales, as the member knows and, as a result, it will be in the contract of sale.

Hon KEN TRAVERS: It can go in the bill then?

Hon Helen Morton: It's not necessary; it's irrelevant.

Hon SUE ELLERY: I want to settle some facts about how many organisations are in receipt of a version of the draft contract of sale.

Hon HELEN MORTON: As I mentioned before, the contract of sale is not mentioned in the bill and the number of proponents is not something I have talked about but I know that all the proponents will have got whatever is in the tender documents to enable them to put in a tender. I will not start talking about the contract of sale. It is not part of the bill and it is not part of our discussion today.

Hon SUE ELLERY: Thanks very much for that bit of information, but it bore no relationship to my question. I want to establish how many organisations received copies of the draft contract of sale. That is the question I am asking.

Hon HELEN MORTON: I cannot indicate specifically how many government agencies have a copy of the beginning drafts of this thing and the various iterations that have taken place. As I have said before, I will not spend time focusing on a draft contract of sale when legislation is in front of us that we need to be focused on.

Hon SUE ELLERY: Thanks very much for that information. Again, it bore no relationship to the information I am seeking. The bill before us seeks to create a head of power to dispose of the Perth Market Authority. In this section of the debate it is Parliament's job to test how that will be implemented. That is the point of and the scope in particular of the clause 1 debate. It is to deal with how that will be implemented. To assist Parliament to determine how it will be implemented, it is indeed on point for the house to be provided with draft copies of the contracts of sale that have been provided to others. I go back to my original question: how many organisations received copies of the draft contract for sale? I am not interested in government agencies. I am interested in people who might have expressed an interest in the expression-of-interest process and organisations that may have put in a proposal.

Hon HELEN MORTON: I thank the member for attempting once again to divert our attention away from the legislation. I will not go down that track, as I have indicated. If the member looks at the legislation, she will find that part 2 enables the disposal to take place, which is what I think the member is referring to. The member could pick up some of the information that she is looking for in and amongst that part of the bill, but if she is asking me to start talking about the draft contract for sale, I will not get into it because it is not part of the legislation.

Hon SUE ELLERY: I make the point again that the purpose of this part of the debate is to go to how the legislation will be implemented.

Hon Helen Morton: Part 2 is the enabling section.

Hon SUE ELLERY: Thanks very much. When we look at how the legislation is to be implemented, it is our responsibility to test the way the government intends to apply the provisions of the legislation. One of the ways in which the government intends to apply the legislation is to have certain things in a contract for sale and, for example, to give bidders information about the kind of things that could be in the contract for sale. I am not asking the minister to talk about the final contract because she does not know what it is—no-one here knows what it is because it has not been signed yet—but the draft itself. I do not see what would be offensive to the process at all, unless the minister disagrees with Hon Ken Travers and she is able to tell the house that no-one was provided with a draft of the contract for sale, which I do not think she can. If drafts were available on equal terms to everybody who has expressed an interest in this process, I fail to see how Parliament can be denied that information. How can we test that the government will implement the legislation in the way that is set out in this bill? That is the purpose of the bill going through the committee stage.

Hon HELEN MORTON: I am quite enjoying this because one of the things that the member has said is, "You must give us the draft contract for sale because we have to look at that to see that the legislation is okay" or

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whatever—I cannot quite follow the reasoning. But what if the legislation had been passed six months ago, as the member said it should have been, and we were not dealing with it concurrently? The thing is that the member would then be able to focus on only the legislation. I am telling the member not to confuse the two processes. She should focus on the legislation in front of her right now because that is what I am doing.

Hon SUE ELLERY: What an extraordinary argument: if we, being the government, had put this before the house six months ago, the opposition would not be able to argue about this. She is absolutely right; we would not have been able to because —

Hon Helen Morton: Which means that they are two separate processes, so do not confuse them.

Hon SUE ELLERY: But the minister is missing the essential element: she did not bring it to us six months ago. She started the process and now she is asking us to legislate to give her the head of power to do what she has already started. Of course we have to test the legislation. We can test it and the minister can provide the information because she has already put out the draft contract to potential buyers of the market. If the minister is feeling frustrated and saying that we would not have been able to ask this question six months ago —

Hon Helen Morton: The frustration is over there.

Hon SUE ELLERY: I will stop whenever the minister interjects. If the minister is feeling frustrated that we are talking about something that we could not have talked about six months ago, she should reflect on why she did not bring in the legislation six months ago because if she had, I can guarantee that we would not be sitting late tonight. Nevertheless, I go back to the original proposition: what is the impediment to providing Parliament with copies of the draft contract for sale given that it has been provided to people who have expressed an interest in purchasing the site?

Hon Helen Morton: I have answered the question.

Hon KEN TRAVERS: I thank the minister for her advice that part 2 enables the disposal. I would like to know whether the minister can see anything that would prevent the house from including a new clause in part 2 to ensure that the proposed contract for sale and associated documents provided to the tenderers become the final and only sale of contract agreed to by the government. Is there anything to stop us putting that into part 2 of the bill as a new clause?

Hon HELEN MORTON: That is probably the most ridiculous thing I have heard the member say the whole time that I have been in Parliament. He wants to put a contract of sale into the bill with no room for negotiation or flexibility. Apart from everything else, the contract of sale does not need to be in, as Hon Sue Ellery commented, the head of power that enables the disposal to take place. The contract for sale is a different matter.

Hon SALLY TALBOT: I can only think that the minister has a script somewhere or a cheat sheet with some lines on it so that she can come up with this stock standard stuff. It seems to me that she is wilfully misunderstanding the point that Hon Sue Ellery has made, and then tries to dismiss the perfectly valid question asked by Hon Ken Travers about whether we could include certain measures in part 2 of the bill by calling it ridiculous. That is not an answer as to why it cannot be done. With this going on, it will take us days and days —

Hon Helen Morton: That is all right. I have all the time in the world.

Hon SALLY TALBOT: I am not interested in the minister's time; I am profoundly disinterested in the minister's availability. What I am intensely interested in is the passage of the bill through Parliament and whether we as the opposition are able to apply proper scrutiny to the bill. I ask that the minister moderate her language when labelling questions by the opposition ridiculous and silly et cetera—I know she has a vast repertoire! It will take us longer to do this if she keeps doing that. I want to go back if honourable members can —

Several members interjected.

Hon SALLY TALBOT: Members opposite need to pace themselves a bit. This is going to take a very long time and, undoubtedly, they will be called upon to do something constructive at some point. They just need to conserve their energy.

Several members interjected.

The CHAIR: Order, members! Can I remind members that we are dealing with the Perth Market (Disposal) Bill 2015.

Hon SALLY TALBOT: Thank you, Madam Chair. I will just rewind to the question last asked by Hon Kate Doust. If the government's preferred tenderer is the tenderer that bids for the entire site, why was that not put into the bill? This is committee stage by interjection on the part of the minister. The minister is sitting there saying, "I did not say that."

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Hon Helen Morton: I did not say that to the member; I was speaking to my advisers.

Hon SALLY TALBOT: I can hear everything the minister says. She should move down and sit in the chair that ministers normally sit in if she does not want me to hear her speak. Hon Kate Doust asked if the government wants the whole 151 hectares sold because that is the best outcome for the government, then why was that not put in the bill? Do we agree that that was the question asked by Hon Kate Doust?

Hon HELEN MORTON: I have no idea whether they are the precise words used by Hon Kate Doust, but I certainly did not say that the preferred proponent of the government would be the one that tenders for the entire site.

I made the point that the government has a set of objectives that it wants to meet and that the preferred proponent would be the proponent that best meets those objectives. In that process there is the potential for a proponent to not want the entire site. That is as far as I went. The rest of it is words that the member has added, made up or constructed to somehow or other fit an argument that she wants to make. That is fine; I do not mind the member doing that—I just want to be very clear about what I said.

Hon SALLY TALBOT: I would just like to be very clear about my intentions in standing here. I am not trying to make an argument; I am trying to clarify the provisions of the bill because that is what oppositions do when we get to the committee stage of a bill. I was going to ask the question that is on the other side of the coin to the question asked by Hon Kate Doust, but let me just delve a little further into that one. Was any modelling done on the benefits of keeping the whole footprint together in one job lot?

Hon HELEN MORTON: Yes, modelling was done on various options. I have just had brought to my attention what I think is really instructive in letting people understand the reasons this whole or part can be part of the proponents' outcome. I am happy to table this, but the document I refer to is titled "For Sale Market City Canning Vale Perth, WA: For Sale by Expressions of Interest". I do not know whether members have had access to that, but it was certainly made available to members when we were having our briefings on it. Members would note that right up at the very top is this tiny, weeny, little triangle of land that is quite separate from the rest of the Perth markets. If, for example, somebody wanted to buy the rest of the land and the market site et cetera but not that tiny weeny little triangle —

Hon Kate Doust: It is not actually that tiny.

Hon HELEN MORTON: — that would be an option. Members need to understand that the flexibility is there to enable those kinds of outcomes.

Hon MARTIN ALDRIDGE: I would like to thank the minister for her response during her second reading reply to many of the matters that I raised during my contribution to the second reading debate. I want to take this opportunity during Committee of the Whole to flesh out a few of those issues. I have some questions initially around the process of the sale itself. I understand that 15 bidders initially responded to the expression of interest through the tender process. I understand that was short-listed to five, announced by a media statement somewhere around 23 September, from memory. As reported in *The West Australian* on 27 November, the short list is now two, which includes the Kerry Stokes bid and the bid from the industry consortium. Can the minister confirm whether the government is now negotiating with two bidders and whether they are the two that were identified by *The West Australian*?

Hon HELEN MORTON: I thank the member for his ongoing interest in the matter, but I would just say that, once again, I will not get into aspects of the discussion that relate to the bidders, the number of bidders, who the bidders are or what they may be considering as part and parcel of their bid. I am not even following that line of information. Hon Martin Aldridge is the first person who has mentioned to me that there were 15 original bids. I would not know that and it is not part of my requirement to know that to ensure that this legislation is passed. This bill will enable the disposal of the Perth market, so the number of proponents et cetera is not covered in any way, shape or form in the bill.

Hon MARTIN ALDRIDGE: I go to the time frame for sale. This is absolutely relevant because we are told that there is urgency for this bill to be through the house otherwise, in the Treasurer's words, it would complicate the sale of the Perth market if it was not. I want to talk about the time frame. The time frame that was identified early, when the EOI was released in June, was that the government's intention was to work towards a contract close date at the end of the year. During the minister's second reading reply, she indicated a revised time line. She talked about contract negotiations taking place in January, with signing expected at the end of January and completion expected by the end of February. I just want some clarification around that time frame because the government is working to announce the preferred bidder and continue negotiations with them through January, with a contract close at the end of January. I assume that relevant contracts will be executed and transfers and

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things like that will take place by the end of February. Can the minister confirm or elaborate more on those time frames, because that is relevant to the advice we received about the expediency of the passage of this bill?

Hon HELEN MORTON: I can only reiterate what I said in my second reading reply. The member is clear about those time frames and that is the only information that I have around the January–February time frames.

Hon MARTIN ALDRIDGE: It seems a bit odd to me that the government would be announcing the preferred bidder for the Perth market by Christmas and contract negotiations would take place over January, with the signing at the end of January. That seems a little odd, as I would have thought the government would have its contract negotiations done, particularly if it has short-listed its bidders. It should have negotiated those contractual arrangements before it announced the preferred bid and that it was prepared to execute the contract that has been negotiated. If my assumption is wrong, I guess once the government announces its preferred bidder, after this extensive process that has gone on for more than six months, what types of contract negotiations are likely to occur?

Hon HELEN MORTON: Again, the member is seeking information that is not necessarily relevant to the legislation. I do not have that information at my fingertips. The member is asking for information that is part and parcel of the ongoing negotiation between the proponents and the minister responsible, who is the Treasurer, and that will all occur after the legislation has passed. Can we just focus on the legislation that is required to enable the disposal to take place? The member can have the discussions that he is seeking on the process of those negotiations directly with the Treasurer.

Hon MARTIN ALDRIDGE: I thought that was why we have such high-calibre advisers at the table to advise the minister on these matters. As the Committee of the Whole continues through the clauses of the bill, I have concerns around matters that have been left to the government to execute in the sale contract, as opposed to matters that I think should be contained within the bill. To that extent, I think this issue is relevant. The response that I have received about the likelihood of the amendments to this bill succeeding was that it will complicate the sale of the Perth market. I seek to understand the extent to which that sale will be complicated. There has been talk about finance not being extended to the parties or to the preferred bidders, which might put at risk the execution of the sale. Hypothetically and generally speaking, I would assume that every day that a contract drags on, the risks mount. Are any risks known to the minister or her advisers at the table that would jeopardise the sale of the Perth market if this bill was delayed beyond Christmas?

Hon HELEN MORTON: Again, we have said from the start that the issues to do with the contract for sale and the proponents, including how many there are and what negotiations are taking place, and whether that is happening now or will happen in late December, January or February, are outside the purview of this legislation. This legislation will inform what is in the contract of sale and what is required to be negotiated. If for some reason the legislation is held up—I hope it does not happen—obviously, the contract for sale would be held up as well. That is not what we intend to happen, and it is not what I understand is required to happen, but if it were to happen, that is the logical order in which it would occur, not the other way around.

Hon SUE ELLERY: I want to go back to an issue I talked about before. I draw the minister's attention to clause 39(2) and the words —

... an agreement entered into for the purposes of a section 9 disposal;

What does the minister understand that to mean? What is an agreement?

Hon HELEN MORTON: I am a bit concerned that members are flicking forward to ask specific questions about individual clauses. When we get to clause 39, obviously, this will be seen in the context of that clause. The clause outlines that however the state decides to enter into a contract for sale, it does not give rise for a third party to claim compensation from the state. It is about compensation from the state and a third party.

Hon SUE ELLERY: Do we now agree that the contract for sale is in the legislation?

Hon Helen Morton: No.

Hon SUE ELLERY: That is what the minister just said. Can the minister give me a definition of an agreement entered into for the purposes of a section 9 disposal?

Hon HELEN MORTON: The member is obviously a little confused. The clause refers to any form of transaction; it is not a specific transaction. Any form of transaction does not give rise for a third party to claim any compensation from the state.

Hon SUE ELLERY: I thank the minister very much for that answer. Indeed, any transaction could include a contract for sale. Those were the words the minister referred to in her first answer to my question just a few minutes ago. I put before the house that the notion that the minister told us about 45 minutes ago that the contract

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for sale was not within the purview of the legislation is patently not the case. I go back to the issue I raised: given that the contract for sale is within the purview of the legislation, what is the obstacle to the minister providing the house with copies of the draft contract for sale provided to proponents?

Hon HELEN MORTON: If the member looks at clause 10, she will see that it very clearly states —

... any transaction or arrangement that can be entered into ...

It is a very broad statement about any transaction that might occur. It does not specifically stipulate or refer to the contract for sale; it is about any transaction. It is about ensuring that any third party cannot claim compensation from the state. Once again, I will not get drawn into a conversation around the draft contract for sale.

Hon SUE ELLERY: Clause 9 is the power in the legislation to dispose of all or specified market assets. Clause 39 refers to —

... an agreement entered into for the purposes of a section 9 disposal;

That clearly includes a contract for sale. About 45 minutes ago the reason the minister gave us for being unable to provide us with the information I sought was that the contract for sale is not a part of the legislation. I think it is now clear to all members that that is patently not the case. My question a few minutes ago was: what is the obstacle to providing that information to the house? I ask again: what is the obstacle to providing that information to the house?

The CHAIR: The minister has indicated that she has answered that question. The question has been put a number of times and, as the President reminds us on a frequent basis, we may not like the answer that we get, but an answer has been provided. We may need to move on from that point or look at some other way to access that information, but that question has been put and an answer has been provided.

Hon SUE ELLERY: I will take the Chair's advice and I will not ask the question again, but I will make the point that I think the record needs to show quite clearly that the minister was not able to provide us with a reason that information could not be provided to the house. As long as everyone is clear that that is the case and that the one reason the minister gave us, that it is not referred to in the legislation, is clearly not the case. The minister is now saying that she will not provide that information, not that she is unable to give that information. As long as members understand that, I am happy to move on from my point.

Hon HELEN MORTON: Once again, the Leader of the Opposition tries to put words to me that I have not spoken. The issue is that, as I have said many times over —

Hon Peter Collier: Again and again.

Hon HELEN MORTON: I have said again and again that the reference that the Leader of the Opposition is talking about is "any transaction". It is a very broad part of the legislation that refers to any transaction around any aspect of the negotiations that might take place. As a result, I do not want to be drawn into focusing on the contract of sale, which is irrelevant and not a part of this legislation.

Hon SALLY TALBOT: I have a number of questions on clause 1, but I want to make just one point about Hon Sue Ellery's defence of this point that I think has been far more than adequate. I want to ask the minister just one more question in an attempt to break this impasse. The minister has referred us to clause 10—I recognise that we can talk about clause 10 when we get there—and the phrase "any transaction or arrangement". I ask the minister: does the phrase "any transaction or arrangement" include a contract?

Hon HELEN MORTON: It is possible.

Hon SALLY TALBOT: I then further ask the minister: could the disposal be effected without a contract?

Hon HELEN MORTON: The answer is yes.

Hon SALLY TALBOT: Can the minister now provide details of how the property could be disposed of without a contract?

Hon HELEN MORTON: Once again, we are looking at a range of new information but I am advised that it could be through an allotment of shares or through a direct transfer to a new buyer. Of course, there are other options as well—but that is an example of just a few.

Hon SALLY TALBOT: In those two examples that the minister has given us of how the property could be disposed of without a contract, how would something such as a transaction involving issue of shares be done without a contract?

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Hon HELEN MORTON: We are getting into lots of areas of work that are, again, not necessarily related to this clause, but the example that I am given is that it could be through a lease without a contract for sale. The issue is about a contract for sale; it could be done without a contract for sale.

Hon SALLY TALBOT: Could we be talking about the issuing of a lease rather than the sale, and that could be effected under the provisions as outlined in this bill?

Hon HELEN MORTON: What was your question?

The CHAIR: Hon Sally Talbot, the minister sought clarification about your question. Would you mind putting it again.

Hon SALLY TALBOT: Is the minister indicating that, as the bill is currently drafted, we are not necessarily looking at a sale—we could be looking at a lease?

Hon HELEN MORTON: I will just go back to saying that this is a disposal bill. It is members opposite who have focused only on the possibility of a sale. It is a disposal bill so one of the options, under disposal bills, is the ability to lease it or lease part of it. As I said, there is a flexible arrangement and it is all set out in part 2, which enables the disposal.

Hon KATE DOUST: I am intrigued that the minister has thrown it back onto Hon Sally Talbot as though she has only just started talking about options. Although there is that option in the definition of “dispose of” for sell and lease, in all the minister’s documents and in the document that she has provided to us today, the “Request for Detailed Proposals”, the language is all about the sale of; there is no reference to lease in the state objectives. It is all about the sale. I think Hon Sally Talbot raised a very interesting idea. Although the government has talked only about the sale of its assets since last year, why was there not a discussion about a long-term lease? I think that that would have been a very interesting proposal and it would have meant that the property stayed in the hands of the public but the government would still recoup some funds or could look at other options. Why was a permanent or long-term lease not looked at as a viable option, rather than just the sale? I thank Hon Sally Talbot. In fact, the document that the minister has given us is the “Perth Market Authority Asset Sale—Market City”; it is not titled “Perth Market Authority Asset Lease”. It is all about the sale. That is the only thing that the minister is interested in doing. Why was the other option not canvassed?

Hon HELEN MORTON: The government has made no apologies for stating that its preferred outcome is for the sale. However, as I said, the potential reference in the legislation is to dispose of the market asset, including —

- (a) to sell or lease the market asset; and
- (b) to create and assign an interest in the market asset;

In the proponents’ negotiations or when they indicate their preferred position with the state government, all those options need to be outlined in the legislation to enable the disposal to take place should any of those options come forward in the proponents’ work.

Hon KATE DOUST: I think that the minister has been in the business of confusing the proponents, because, very clearly, in the second reading speech, the minister talked only about how the government has decided to sell. The document that the minister put in front of us is only about the sale; there is no reference at all to lease. The minister has then slipped the word “lease” in the definitions. If the minister intended only to sell it, why did she not clarify that in the definition of “dispose of” by just having “to sell” the market asset?

Hon HELEN MORTON: I will go one more time on this. As I have indicated, the government has made it absolutely clear that its preferred position is to sell, and, consequently, that is what the tenderers and everything have been hearing. If the proponents come back to the state government and indicate that they want a 99-year lease on it, for example, and we achieve the outcomes that we seek or that they want to purchase the majority of it and lease a little bit of it, or whatever, that is the flexibility. It is whatever the proponents come back with. We are focused on the legislation today. The legislation needs to be able to accommodate the disposal across all those different options.

Hon SALLY TALBOT: I am not sure whether the minister can have it both ways. I refer the minister back to clause 10 and my original question. Let us now work in terms of just what the minister has said is the government’s preferred option, which is the sale. “Sale” informs all the official documentation that has been issued, from the second reading speech and the explanatory memorandum to the minister’s response and the “Request for Detailed Proposals” document that she has tabled this afternoon. They all use “sale”, so let us focus on “sale”. I ask the minister again: does the term “the nature of any transaction or arrangement” include a contract?

Hon HELEN MORTON: Does the member mean contract for sale or a contract?

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Hon Sally Talbot: I mean a contract for sale.

Hon HELEN MORTON: The legislation needs to be the mechanism by which future negotiations will occur for a contract for sale, a contract for lease, a variety of them all, or whatever the contract might be. Clause 10(1) refers to transactions; it does not refer to a contract of sale, but it can include all the things I have mentioned previously.

Hon MARTIN PRITCHARD: I do not want to take the minister back to a previous question, so I will ask something slightly different. Is it correct that if a purchaser purchases the whole lot, they can then sell parts of that?

Hon HELEN MORTON: As I indicated in an earlier response, there is a caveat over that land, so if it were sold, that caveat would limit the use of the facility to make sure that the continuing purposes for the government's objectives are maintained in that process, and, of course, there are the market restrictions.

Hon MARTIN PRITCHARD: The small piece of land that the minister indicated could be sold separately or sold off —

Hon Helen Morton: The little triangle?

Hon MARTIN PRITCHARD: Yes, I am referring to the little triangle. If that was purchased and then onsold, what is the caveat on that piece of land?

Hon HELEN MORTON: The caveat is on only the market site.

Hon MARTIN PRITCHARD: If the market site is sold, the caveat would follow on, but a person could sell every other part, other than the market; for instance, they could sell the disposal facility. Could they sell every other part other than the market without a caveat?

Hon HELEN MORTON: Does the member have a copy of the "For Sale Market City Canning Vale Perth, WA: For Sale by Expressions of Interest" document?

Hon Martin Pritchard: No.

Hon HELEN MORTON: That section there is the market site; that is the 51 hectares. That triangle up there, which is off the market site and which the Perth Market Authority owns, is the section that does not have a caveat on it. The rest of it has a caveat; it is the whole site.

Hon KATE DOUST: The triangle of land is separate from the land that is being dealt with under this proposal. If the proponent were to sell that, could the proponent do that for any other purpose?

Hon Helen Morton: Sorry, I was asking someone a question.

Hon KATE DOUST: I will let the minister ask her question.

Hon Helen Morton: I have done that; you ask yours now.

Hon KATE DOUST: I refer to the triangle of land that Hon Martin Pritchard has been asking questions about. If the proponent bought the entire site and elected to sell it, would they have to discuss selling off that part of the land with the government because it will not be covered by a caveat and they could sell it to anyone who wanted to buy it for any other purpose?

Hon HELEN MORTON: That is correct. It is 916 square metres.

Hon KEN TRAVERS: I want to clarify this matter. The minister keeps saying that the land has a caveat on it. Does it currently have a caveat? Who is the holder of the caveat, or is it proposed that it will have a caveat?

Hon HELEN MORTON: The land is owned by the government.

Hon Ken Travers: That's right; so it doesn't have a caveat at the moment?

Hon HELEN MORTON: No; but by the time it gets sold, it will have one.

The CHAIR: I interrupt proceedings to make this point: the definition of the Perth market site according to the bill includes two parcels of land that are clearly stated at page 9, together with the certificate of title, volume and folio. Referring to the "triangle" piece of land makes it very difficult for Hansard and will make it very difficult for anybody reading *Hansard* at some future time to know which parcel of land we are referring to. It might be helpful for the purposes of debate that we identify the lot parcel that is being referred to in the discussion.

Hon KEN TRAVERS: I want it to be clear: is it the government's intention that the bill will put a caveat on the full 51 hectares, or is that still something that is subject to negotiation as part of the sale contract?

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Hon HELEN MORTON: Lot 1002, which is 50.8441 hectares, will have the caveat. Lot 1004, which is 916 square metres, will not have the caveat.

The CHAIR: By way of clarification, lot 1004 is the triangle lot that has been referred to today?

Hon Helen Morton: That is correct.

The CHAIR: I wanted to put that clearly on the record.

Hon KEN TRAVERS: Now anyone reading *Hansard* in 20 or 50 years, or even earlier, will understand. Will there still be an issue about the caveat? I understand that part of the 51 hectares is vacant land. Is it not possible that as part of the negotiations for the sale contract, a part of the land may be subdivided and sold without a caveat on it?

Hon HELEN MORTON: The member will be aware that the entirety of lot 1002 will have a caveat on it.

Hon Ken Travers: No—we have established that. It will have. You’ve got to be correct, minister; you pointed that out to me.

Hon HELEN MORTON: The member is quite right. It will have the caveat on it, which will mean that the government will play a role in determining its use. It will be subject to all the requirements around subdivision et cetera, and of course that process once again will require the government to support or agree with whatever it wants that land to be used for. Clause 16 of the bill is the development conditions relating to warehousing. Subclause (4) states —

- (4) Despite the *Planning and Development Act 2005*, any planning scheme as defined in section 236(1) of that Act or any other written law, the imposition of a condition under subsection (2) is not reviewable by the State Administrative Tribunal.

Hon KEN TRAVERS: I asked a simple question that still has not been answered. Is the area over which a caveat will be placed able to be changed as part of the negotiations of the sale contract or is it absolutely guaranteed that the full 51 hectares of lot 1002 will have a caveat over it?

Hon HELEN MORTON: If clause 16 is passed, which is what the member is referring to, that will require the entire lot to have a caveat over it.

Hon KEN TRAVERS: What will be the terms of the caveat?

Hon HELEN MORTON: If the member looks at the legislation, he will see that it stipulates that the site cannot be used for anything in a way that does not comply with the requirements and the objectives of the legislation—that is, in terms of the way the government wants it to be used. The planning scheme cannot override the legislation.

Hon MARTIN PRITCHARD: Just so I understand, it is possible to onsell parts of that land, but both parts of the land would carry a caveat. Is that what the minister is saying?

Hon HELEN MORTON: I think the member is asking whether the caveat would continue to the next owner, and the answer to that is yes.

Hon MARTIN PRITCHARD: If I bought the two lots involved and onsold, would there be a caveat on that and would the owner be responsible for conducting a market?

Hon HELEN MORTON: I draw members’ attention to the map on page 35 of the legislation. It indicates that the tavern sits in the commercial centre, which is the section designated by crosshatching. As members would see from the legend at the top of the map, that area is unrestricted.

Hon Sally Talbot interjected.

Hon HELEN MORTON: It is schedule 1.

The CHAIR: Page 35 is “Defined Terms”, minister.

Hon Martin Pritchard: I think you mean page 33.

Hon HELEN MORTON: If members have a look at page 33, they will see that the crosshatched area is the commercial centre and that is unrestricted. If the new owner wanted to build anything in that crosshatched area, it would be okay; that is their business.

Hon Sally Talbot: So are there no caveats on that?

Hon HELEN MORTON: There is no caveat on what is to be built in that area.

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Hon MARTIN PRITCHARD: I am not certain where the waste disposal facility is on that map. If that were to be sold off, and I presume it is in the restricted area, would the owner of that facility have a caveat that they would be required to run a market for the next 20 years?

Hon HELEN MORTON: That is correct; it would have to be for market-related purposes.

Hon SALLY TALBOT: I seek some further clarification, because I must have misheard the minister's earlier advice that caveats would be put on all the land comprising lot 1002. I think the minister has just informed Hon Martin Pritchard that caveats will not be placed on all the land covered by lot 1002.

Hon HELEN MORTON: Depending on how questions have come to me, they have received different responses, but I will make it absolutely clear —

Hon Sally Talbot: Were they all right or were some of them wrong?

Hon HELEN MORTON: Just a minute. They are all right to the best of my knowledge, but I will have to look at *Hansard* to make sure that they are all right. The caveat will be across the entire site—the whole 50 or whatever —

Hon Ken Travers: Just under 51 hectares.

Hon HELEN MORTON: Yes—just about that. We would lift the caveat on the commercial area because it is currently not used for market purposes and it could therefore be developed into other commercial purposes. For example, if members look at the picture on the brochure of that commercial site, they will see that a lot of land there could have bigger and more expanded commercial premises.

Hon SALLY TALBOT: Yes, but that land is clearly taken care of—I think, without references—in clause 16, which outlines the number of warehouse sites available. That is clearly over and above what we are talking about now in terms of the caveats. I will try to put this another way, because I am utterly unclear, having a relatively limited experience of buying and selling property, about the status of something that is called a caveat, but one that may be lifted. What happens when someone looks at a title document for a piece of land? Does it say that there is a caveat unless they are a certain type of person or they are proposing a certain type of activity? Can the minister give us a clue about what it might look like?

Hon HELEN MORTON: There is actually nothing confusing about it. It is an absolute embargo for the owner to deal, sell or use differently the land unless the state agrees to it—so the caveat is owned by the state. It is an absolute caveat.

Hon SALLY TALBOT: So it is a caveat. A caveat does not have to be put on the caveat; it is covered by a caveat.

Hon Helen Morton: What is it that you are asking?

Hon SALLY TALBOT: The minister just told Hon Martin Pritchard that the land the tavern was on would not be covered by a caveat.

Hon Helen Morton: No; you have not listened properly.

Hon SALLY TALBOT: Try me—try to explain it again.

Hon HELEN MORTON: I made it really clear, but I will do it again for the member. The whole 50-something hectares, which is the whole market site, is covered by a caveat, and that caveat is an absolute caveat—an absolute embargo over dealing, selling or making use of that land in a way other than what the state intends. That caveat is held by the state and the state has indicated that for the commercial site, which is the crosshatched area on the map, it would consider lifting the caveat to enhance the commercial aspects of that part of the site, and that part only.

Hon SALLY TALBOT: So, there is a caveat over the whole of lot 1002—the areas shaded by a single line.

Hon Helen Morton: And the crosshatched areas.

Hon SALLY TALBOT: That is the area indicated on page 33 of the bill that is filled with a single line—and exactly the same caveat applies to the areas filled with the crosshatching. However, there is an additional clause in the caveat over the crosshatched areas that indicates that in this case the caveat may be waived with the government's permission.

Hon HELEN MORTON: Now I know where the member is getting a bit confused. There is no difference in the caveat at all, but the member is now asking to talk about the contract of sale.

Hon Sally Talbot: That is the part of the bill we are not allowed to see.

Hon Kate Doust; Hon Helen Morton; Hon Ken Travers; Hon Dr Sally Talbot; Hon Sue Ellery; Hon Martin Aldridge; Hon Martin Pritchard

Hon HELEN MORTON: Yes, but the contract of sale refers to the ability for that commercial area to be expanded.

Hon Kate Doust: But how do we know? We can't see the contract.

Hon Helen Morton: I just told you; it's in *Hansard*.

The CHAIR: Order, members! It would be helpful to *Hansard* and to me if members would wait until they get the call before they start making comments, and also if they do not make comments across the chamber to each other.

Hon SALLY TALBOT: I made the observation towards the end of lunchtime that we were unable to make calls in or out of this building on mobile phones. It seems to me that that might be because the bandwidth has been blocked by the people who are putting in expressions of interest and who are now desperately trying to ring in to find out what the hell is going on with these caveats, which are sort of caveats, and then there are riders on the caveats, and then there are caveats on the riders for the caveats. I just hope everybody is following this very closely; I know that they are. I will try this in a different way. I know the minister will not be very happy with me for doing this, but it is the only way I can see to try to provide some clarity here. I want to go back to the Perth Market Act 1926 as it stands today. I ask the minister to pay attention or to give her consideration to section 3 —

Hon Alyssa Hayden: How rude.

Hon SALLY TALBOT: I am requesting her politely to pay attention.

Hon Alyssa Hayden: She is paying attention; she listens to every word.

Hon SALLY TALBOT: I am only worried about —

Hon Ken Travers: Why are you two delaying the passage of this bill?

The CHAIR: Order, members! Hon Sally Talbot has the call.

Hon SALLY TALBOT: Thank you, Madam Chair. Section 3 of the Perth Market Act 1926, "Perth Market Authority", states —

- (1) On and after the date of commencement of the *Acts Amendment (Perth Market Authority) Act 1990*, the body corporate previously constituted under this Act by the name of the "Metropolitan Market Trust" is preserved and continues in existence as a body corporate under and subject to the provisions of this Act by the name of the "Perth Market Authority", ...

That is important, because we now know that the Perth Market Authority is the old Metropolitan Market Trust and it serves as a body corporate. Subsection (1aa) states —

The Authority as a body corporate has —

...

- (b) power to hold land.

In relation to the two separate areas that comprise lot 1002, who has the power to hold that land? Who holds the land?

Hon HELEN MORTON: It is the Perth Market Authority as an agent of the state.

Hon SALLY TALBOT: Is the Perth Market Authority, acting as a body corporate, the sole member of that strata? Is it just a one-person strata?

Hon HELEN MORTON: It is not a strata title. It is a single certificate of title; it is freehold land. As I said before, it is owned by the Perth Market Authority as an agent of the state.

Hon SALLY TALBOT: It is referred to somewhere in the bill. I will ask the question another way, because the minister can refer me to it if she knows where it is. Is the minister saying that all the land in lots 1002 and 1004 is freehold land?

Hon HELEN MORTON: Yes.

Hon SALLY TALBOT: Coming back to the service station and the tavern, are they lease arrangements; and, if so, what are the details of how those leases are constituted?

Hon HELEN MORTON: They are long-term leases.

Hon Kate Doust; Hon Helen Morton; Hon Ken Travers; Hon Dr Sally Talbot; Hon Sue Ellery; Hon Martin Aldridge; Hon Martin Pritchard

Hon SALLY TALBOT: Are there arrangements somewhere in this bill for the continuation of those leases or do they all expire with the expiration of the PMA?

Hon HELEN MORTON: They transfer with the disposal of the land.

Hon SALLY TALBOT: So will caveats be placed over those leases?

Hon HELEN MORTON: About 50 per cent of the individual tenants have lodged their own caveats over the operational services that they are currently involved with.

Hon SALLY TALBOT: Fifty per cent of the tenants have lodged their own caveats; is that what the minister said?

Hon Helen Morton: That is correct.

Hon SALLY TALBOT: What about the other 50 per cent?

Hon HELEN MORTON: For whatever reason, they have not. They have not indicated an interest in doing that.

Hon MARTIN PRITCHARD: Just with regard to that unrestricted part and the indicated willingness of the government to lift a caveat, how would the removal of section 136 of the Planning and Development Act 2005 allow for regulation of improvements on that land?

Hon HELEN MORTON: That clause merely overrides the use of the site, so the requirements to comply with standards et cetera would still apply.

Hon MARTIN PRITCHARD: I will just move on to something slightly different. With regard to the requirement to run a market, is that open to any other use? Can products be sold at the market other than what is currently defined?

Hon HELEN MORTON: The central trading area can be used only for wholesale market purposes, and “central trading area” is defined in the bill. The rest still has to be used for market-related purposes, and, again, the market-related purposes are outlined.

Hon MARTIN PRITCHARD: It can sell produce only as defined?

Hon HELEN MORTON: The central trading area is covered under clause 15 of the bill. That outlines what can happen in that clause. The rest of it is covered under clause 16, and that outlines what can occur in that clause.

The CHAIR: Order! The private conversations being conducted by members are audible. If members could take those outside the chamber, that would be helpful.

Hon MARTIN PRITCHARD: Does that mean one can sell the produce only as defined? I did not understand the answer.

Hon HELEN MORTON: That is correct in terms of what can be sold in the central trading area.

Hon KATE DOUST: The definition of “produce” in the bill refers to fruit and vegetables, cut flowers and fish, crustaceans and marine animals, including those frozen. There is no reference to meat. I mention that because just off from the central trading floor, a number of sites along the Ranford Road side of the property sell meat, both frozen and fresh, and I understand there is quite an enthusiasm among those outlets to expand their business opportunities. Where do they stand under this proposal? There is no reference in this bill to the sale of meat; it refers to vegies, fruit, fish et cetera. What happens to them? Are they excluded?

Hon HELEN MORTON: As I have indicated, the definition of “produce”, as outlined in the bill, refers to what occurs inside the central trading area. The meat products and boning room are outside of that and it is able to continue to operate like that, or expand in fact, which is what I expect it would do also.

Hon KATE DOUST: The minister might say that the definition applies to the central trading area, but the set of definitions does not provide that degree of clarity; the bill contains just a general definition of “produce”. When we read it—I am sure we will find this as we go through other parts of the bill—it could mean anywhere on that Perth Market Authority site. That is why there is concern that that type of product is excluded.

Hon HELEN MORTON: Clause 15 on page 10 refers to the central trading area, so the definition of “produce” in the bill relates to the central trading area under that clause; and outside of the central trading area, other forms of produce can be incorporated.

Hon KATE DOUST: The minister is saying “produce” outside of the central trading area, but could any other type of product be sold outside the central trading area? Could it be dried goods or a range of other options?

Hon Kate Doust; Hon Helen Morton; Hon Ken Travers; Hon Dr Sally Talbot; Hon Sue Ellery; Hon Martin Aldridge; Hon Martin Pritchard

Hon HELEN MORTON: As has already been indicated, that crosshatched area, which is unrestricted, is already a commercial centre with a tavern and it has other things happening there. That could expand and continue to grow in some way within that crosshatched area.

Hon KATE DOUST: I appreciate what the minister has said, but that is more of a retail outlet than a wholesale outlet. The meat warehousing environment is more of a wholesaler. My question is really more about those warehousing or outlet structures along that Ranford Road area, not in the area that the minister is talking about. That is what I want to find out: what else can be sold in that area?

Hon HELEN MORTON: The member is quite right that the sections where the meat warehousing takes place is not open to the public other than for weekends, obviously. She gave me an example of something other than meat.

Hon Kate Doust: Dried goods.

Hon HELEN MORTON: Could the member give an example?

Hon Kate Doust: Flour, rice, cereal.

Hon HELEN MORTON: Flour—absolutely; those sorts of things. I thought the member might have been talking about whitegoods, and of course that is not possible, but dry goods et cetera are possible.

Hon MARTIN PRITCHARD: One of the tenderers has investments in cattle and meat. Is the minister saying that he would not be able to sell meat in the central trading area?

Hon HELEN MORTON: I do not know anything about the tenderers. If Hon Martin Pritchard is suggesting that a tenderer wants to sell meat in the central trading area, that is not allowed. That central trading area is for the produce identified in the bill.

Hon KEN TRAVERS: Does that mean that no-one can sell mushrooms in the central trading area? That is a serious question; the minister should not look at me like that. If she asks her advisers, she will understand the point of the question. Members opposite do not understand; it is not covered in this bill. It is a major error of the bill. It is fungi and it is not covered by those definitions.

Hon HELEN MORTON: I do not know about the member, but I buy my mushrooms from the fruit and vegie shop.

Hon Ken Travers: It is not a fruit or a vegie.

Hon HELEN MORTON: It does not matter to me that it is not a fruit. There is a real debate about whether tomatoes are a fruit or a vegie too. We could get into all sorts of debates here about what is a fruit and what is a vegie. In the Perth Market By-laws, the current list underneath the vegetables includes mushrooms.

Hon KEN TRAVERS: The question still comes down to not what is in the by-laws, because they will disappear under this legislation—they will go; they will no longer be around—but to what is defined in the legislation. Does the definition of “produce” under this legislation include fungi?

Hon HELEN MORTON: Allow me to record in *Hansard* once and for all, for perpetuity, that mushrooms are included for the purposes of this act as a vegetable.

Hon KEN TRAVERS: Can the minister confirm whether she has had legal advice on that?

Hon Alyssa Hayden interjected.

Hon KEN TRAVERS: I have seen bills go through this house when the explanatory memorandum has said something and the State Solicitor’s Office has said that it was not the case. I do not want it to be just the minister’s view in redefining the classifications of different fruits, vegetables and fungi. I want to know that she has legal advice that the definition of “produce” —

Hon Helen Morton: I said for the purposes of this act.

Hon KEN TRAVERS: Yes. Does she have legal advice that absolutely, rock solid, without question, fungi is included in the definition of “produce”?

Hon HELEN MORTON: The answer is, absolutely, 100 per cent, yes. I have legal advice that for the purposes of this bill, mushrooms are included as vegetables. If Hon Ken Travers wants to exclude them, he will have to move an amendment to do so.

Hon Ken Travers: I want them; I like my mushrooms.

Hon Helen Morton: Then we are all in agreement.

Hon Kate Doust; Hon Helen Morton; Hon Ken Travers; Hon Dr Sally Talbot; Hon Sue Ellery; Hon Martin Aldridge; Hon Martin Pritchard

Hon MARTIN PRITCHARD: Sorry to move on from that, but if people have questions on that, I am more than happy for them to go back to them. If the lot is sold—I cannot find any provision in the bill—and the person who buys the lot goes bust, what will happen to the caveat?

Hon HELEN MORTON: The caveat will stand.

Hon MARTIN PRITCHARD: The liquidator would have to try to sell the whole lot because he would not be able to do it piecemeal. If he did it piecemeal, it would break up the responsibility for running the market.

Hon HELEN MORTON: The caveat would stand. If such an occasion arose, whatever the liquidator sought to do would have to be done within the constraints of the caveat.

Hon KEN TRAVERS: I want to make sure I completely understand how all the clauses and schedules operate together. As I understand it, the area shown in division 2 of schedule 1 is the central trading area, which is the only area in which produce can be sold, as defined under the legislation.

Hon Helen Morton: That is correct.

Hon KEN TRAVERS: The central trading lot is shown in division 1 of schedule 1 on page 33 of the bill. Anything in that area must be market related, except for the area shown as a crosshatched area?

Hon Helen Morton: That's correct. Hang on; I'm saying that's correct, but I'll get legal advice on that.

Hon KEN TRAVERS: Yes. We have agreed that the area in division 2, the central trading area, must be used as a market and only produce as defined in the bill and interpreted by the minister today can be sold there. The central trading lot is the area that will have the caveat placed over it and it must be used purely for market-related purposes, other than the area that is crosshatched, which is the commercial area.

Hon HELEN MORTON: That is not quite correct.

Hon Ken Travers: That's what I wanted to clarify.

Hon HELEN MORTON: We are clear about the central trading area. I do not think anyone is not clear about that.

Hon Ken Travers: Yes; that's easily done.

Hon HELEN MORTON: Written in the bill is that apart from the existing warehousing area, the proponents must ensure that an additional 24 000 square metres of the central trading lot remain available for warehousing-market-related purposes. The remainder of the lot outside of that can be developed or made use of for other purposes that are not constrained in that way.

Hon KEN TRAVERS: Does the minister know how many square metres the current warehousing-market-related purposes cover?

Hon HELEN MORTON: It is 46 000 square metres.

Hon KEN TRAVERS: On top of that, 24 000 square metres must be made available, so it will be 60 000 square metres, which is six hectares.

Hon Helen Morton: It's 70 500 square metres.

Hon KEN TRAVERS: My apologies—70 500 square metres. What is that in hectares? I am trying to work out the numbers. The whole site is 51 hectares. How much will be available for open development that does not have to be warehouse-market related?

Hon Helen Morton: I haven't added it.

Hon KEN TRAVERS: We are about to go to question time, so maybe we can work it out during question time.

Hon Helen Morton: Who can? You can. You can sit down and do the sums; you love figures, so do the sums.

Hon KEN TRAVERS: The minister said that everything would have a caveat on it, but we are finding out that a lot will not.

Hon Helen Morton: It is all under caveat—don't dispute that.

Hon KEN TRAVERS: It is the term of the caveat that is important.

Hon Helen Morton: Don't say that it's not under a caveat then.

Hon KEN TRAVERS: It may not all be under the same caveat.

Hon Helen Morton: It is one caveat.

Hon Kate Doust; Hon Helen Morton; Hon Ken Travers; Hon Dr Sally Talbot; Hon Sue Ellery; Hon Martin Aldridge; Hon Martin Pritchard

Hon KEN TRAVERS: Right, but that caveat can be varied by the government to remove areas from it.

Hon HELEN MORTON: There is one caveat but the variations the member is referring to are variations so long as they satisfy clauses 15 and 16.

Hon KEN TRAVERS: I do not think it is unreasonable for us to want to know the bare minimum that will ultimately be required to be maintained for the central trading lot and market-related purposes. I make that point and I am happy for the minister to work that out and come back to us after question time. The part I cannot work out—I think I know the answer—is where market-related purposes is defined. Is it in the bill or will it be part of the caveat and/or sales contract?

Hon HELEN MORTON: Clause 16 refers to the requirements to support the public market, which is covered under the definitions of the bill. Its use cannot move outside of those requirements.

Hon KEN TRAVERS: But that is for only the 46 500 square metres, is it not?

Hon Helen Morton: No, for the 70 —

Hon KEN TRAVERS: Sorry; for the 70 500 square metres when the two are put together, which is seven hectares; I think that is right, 70 000 square metres is seven hectares and there are 10 000 square metres to a hectare. That is still only a small area, but even then —

Hon Helen Morton: Don't forget the central trading area.

Hon KEN TRAVERS: Yes, that is on top of that figure; I understand that and we will get there eventually. Then we also have to take the commercial area off the total of just under 51 hectares. Would a transport industry or a trucking depot meet that definition?

Hon HELEN MORTON: Yes. If it could fit within the leftover land and the business was conducive to what we would allow within that caveat, yes, it would.

Hon KEN TRAVERS: Have we got a list of those developments that are considered as warehousing that would support the public market?

Hon HELEN MORTON: No, we do not have a list. It is a bit like putting down a list and then leaving out mushrooms, which then becomes a problem. The list is not there.

Hon Stephen Dawson: That is a problem. The minister has left out mushrooms so that is a problem.

Hon KEN TRAVERS: We have just redefined fungi to be a fruit and vegetable today. Botanists across the land will be confused by members of the Legislative Council, but obviously our job is to confuse them.

Several members interjected.

The CHAIR: Order, members! Hon Ken Travers has the call.

Hon KEN TRAVERS: It is a good thing that Hon Ed Dermer has retired from Parliament because if he were here, I suspect that we would be bogged down at this point. I think that the minister would understand why we are trying to get all the clauses of this bill right. Does the minister have the airport in her electorate?

Hon Helen Morton: Certainly.

Hon KEN TRAVERS: Then the minister would be well aware of the issues that have arisen over the years and the confusion about what is considered an airport-related purpose. I think we have seen things to the extent of brickworks going under the definition of an airport-related purpose, which is why it is quite important to understand whether we need to amend the bill to help define a market-related purpose to a greater degree. I am sure that the members for East Metropolitan Region understand better than anybody the absolute problems that have arisen. Even under the act, the only items allowed on the airport must be airport related, which has been so broadly interpreted that I am yet to find something that does not fit the definition.

Debate interrupted, pursuant to standing orders.

[Continued on page 9442.]

Sitting suspended from 4.15 to 4.30 pm