

**PRIVATE JETTIES, NORTH FREMANTLE**

*Urgency Motion*

**THE PRESIDENT** (Hon J.A. Cowdell): Members, I have received the following letter -

Dear Mr President,

At todays sitting it is my intention to move under SO.72 - That the Council consider as a matter of Urgency, the role of the Swan River Trust & the DEP in the approval of private developments on & over the Swan River and more particularly the imminent approval of private jetties in North Fremantle.

Verdantly Yours

Jim Scott

At least four members will need to rise in their places in order for this motion to be considered.

[At least four members rose in their places.]

**HON J.A. SCOTT** (South Metropolitan) [3.36 pm]: I move the motion.

This is an extremely important issue for the future amenity and enjoyment of the Swan River in Western Australia. A buyback, over time, of the riverfront area by the Swan River Trust and various State Governments has been subverted in recent years by some appalling planning decisions and also by the failure of the Swan River Trust and the Department of Environmental Protection to take a firm stance on this issue.

The issues that I will raise go back to the days of WA Inc. However, I will not deal with all of that, except to say that some leases granted over marine use jetties were dealt with rather badly. In more recent times, a body of precedent has been built up by both the DEP and the Swan River Trust. That has resulted in policies that discourage the private ownership of the foreshore and of large buildings or structures of any type over the river, particularly those which may require dredging, which pollute visually, and which may obstruct the river flow and boating and other movements on the river. A number of documents were compiled by those bodies. Suffice it to say that the thrust of those documents was that public ownership of the riverfront was the key objective, which is why a large percentage of the waterfront in the North Fremantle area was bought back from industry. Some of the areas about which I am talking were owned by marine operators who were carrying on boating industries in that area. Much of the waterfront area was bought and then leased back to the previous owners until such time as those industries moved on. The purpose of this was that the land would become a public foreshore area for parks and recreation in particular. It now seems to be falling apart. It started to fall apart under the previous Government.

I will hark back to the odd things that went on with superannuation moneys in the days of WA Inc and the purchase of the area known as Pier 21 and later as The Moorings. That property was originally owned by Clough Ltd and was sold to a company of which Peter Laurance was a major beneficiary. I believe that Ian Laurance was also linked to that company. That company sought a change to make that area 100 per cent residential. In doing so, it sought approval to include a private jetty as part of the proposal. The council did not originally give approval for the private jetty, but the then planning minister overrode its decision. Another subdivision in a similar situation was located right next to Pier 21, or The Moorings as it is now known. One of the owners of that development was previous planning minister Richard Lewis. He was part of what was called the Portside development, which also contained a jetty. An appalling planning decision was made at that time, which again was opposed by the local council but approved because the planning minister of the day overrode the council's objections and allowed it to go ahead. An unusual planning precedent was set whereby the marina that was to be constructed as part of this urban development, using the existing jetty leases, did not require parking facilities. In fact, it was said that the parking facilities of the development would double-up as parking for the marina. This particularly bad piece of planning has allowed a number of other developers to push for a similar deal. It was, of course, a lucrative deal for the people involved. The deal handed over land that was purchased with taxpayers' money to private owners, who could then make a fortune out of the boat moorings that were added to the development. It was an appalling misuse of public funds to benefit people who, I might say, were rather close to the Government or were in government. It is equal in stature to some of the deals that occurred under WA Inc.

The difference between those two jetties and the current issue, which is of even greater concern, is that jetties were already in place and there was a transfer of existing jetty licences. Another development took place between the bridges in Fremantle called the Northbank development. The developer was Bruce Monteath. That development was the beneficiary of some rather unusual decisions. The public recreational foreshore area was ceded to the developer to be used as his component of public open space. He received a good favour, much to the chagrin of the people living in that area. The difference between the Northbank development and these other

scandalous decisions was that the council did not give approval for any private jetties, although the developer kept putting in his plans a picture of a private jetty. There has been a strange process by which that jetty has finally ended up getting approval.

People involved in this issue got in touch with the Department of Transport, which approved this private jetty despite its not being approved as part of the overall development. They were told that the Department of Transport approved the private jetty after it was approved by the Swan River Trust. The trust said that it had approved it because it was part of the overall planning approval for the development, which had been approved. The Department of Transport denied this and said that the lease was specific to the jetty and had nothing to do with the approval for the whole development. We are now in a situation in which a whole lot of people do not want to make a final decision on this jetty. It is the same with the Portside development. The DEP has said that it is leaving the decision to the Swan River Trust and the trust has said that it will take its lead from the council. The council has been rather misled by the statements of some officers on this development. It had been told that the council foreshore plan for the area was no longer relevant and had no standing, when in fact it does, because the foreshore plan was part of the approval process. That foreshore plan still exists today.

Hon Peter Foss: Is this reserve land?

Hon J.A. SCOTT: It is in the Northbank area.

Hon Peter Foss: Is it reserve land?

Hon J.A. SCOTT: It has a funny status, because although it is foreshore reserve, it is also part of the open space requirement of the developer.

Hon Peter Foss: It is reserve land. The council cannot plan for it.

Hon J.A. SCOTT: But it is also part of the 10 per cent requirement of the developer, so it said that it would double that up. An article in *The Fremantle Herald* of 29 April 2002 states -

THE Gallop government has conditionally approved the extension of a private lease for the Harvest Road jetty in North Fremantle.

...

The article continues -

Dr Edwards says she took local concerns into consideration by accepting a compromise deal proposed by Fremantle council which will see the removal of gates and fences. "My decision is that public access to the jetty must be allowed." Dr Edwards told the *Herald*.

The article in *The Fremantle Herald* went on to say that WA infrastructure minister Hon Alannah MacTiernan would give final approval.

I call on Minister Alannah MacTiernan to have a bit more guts than Dr Judy Edwards does. The Labor Government must step in and do something if it wants to uphold the principle of public ownership of the foreshore. In the limited time I have had, I have found out only part of the funny dealings that have been going on in this matter. The Government must step in and tell people what it is planning to do with the foreshore area before it disappears. It is no good putting in place plans later. We need comprehensive planning proposals for public access to foreshore areas and a clear statement from this Government about what it will do about this issue. The current buck-passing is achieving nothing except ultimately the ownership of foreshore areas in private hands. The planning of the area is a total mess. People are not unhappy; they are extremely angry that access to the foreshore is ending up in that way. It is far too precious a resource to hand over like this and I urge the Government to take a strong stand.

**HON GRAHAM GIFFARD** (North Metropolitan - Parliamentary Secretary) [3.51 pm]: I will refer briefly to the role of the Swan River Trust in the approval of private developments on and over the Swan River, which is the wording contained in the urgency motion today. The Swan River Trust is primarily the authority that approves such development proposals. The Swan River Trust Act established the Swan River Trust's role and responsibility as planning and management control of the management area of the Swan River. The Act established a board to consider planning assessments and make recommendations to the Minister for the Environment and Heritage for decision by the minister. The Environmental Protection Authority is involved in those decisions to an extent when a development application has the potential to significantly impact on the environment. However, the agency with carriage of the proposal is primarily the Swan River Trust.

The trust refers a development application to other public authorities that have functions relevant to the application. It also refers development applications to local governments for their information, with a request that they make a submission to the trust. When the trust receives submissions and all the information it requires to make a decision, it prepares a report for the board of the trust, which then makes a recommendation to the

minister. The minister then makes a decision, having regard to the merits and issues associated with the proposal, any submissions received, and the Swan River Trust policies and planning pertinent to the location.

Hon J.A. Scott: That's all very well but the local government is saying that it does not want private jetties on this foreshore and it is locked in by decisions of the Swan River Trust, the EPA and the Government.

Hon GRAHAM GIFFARD: I understand the point made by the member. I will refer to the jetty redevelopment adjacent to Harvest Road in North Fremantle, which is the most recent decision of the Minister for the Environment and Heritage for a jetty development in North Fremantle. The decision before the minister was whether an alteration to the jetty would proceed. The minister received recommendations from the Swan River Trust and then consulted with representatives of the local community, the City of Fremantle and the proponents of the development. The advice I received from the minister is that ultimately she accepted a compromise plan that was initiated by the City of Fremantle to enable both public and private access to the jetty. Under the development conditions now indicated by the minister, the jetty will be available at all times to the public with the existing gates and fencing on the jetty removed. In addition, two boat pens will have to be removed and public access restored to the jetty and the river area north of the jetty.

Hon Jim Scott referred to comments made in *The Fremantle Herald*. I too have an excerpt from *The Fremantle Herald*. I do not have the exact date of the excerpt but it is around the same time. It is a letter to the editor from Dr Judy Edwards, the Minister for the Environment and Heritage, responding to a short article that appeared in *The Fremantle Herald* on 4 May. It is instructive to note the minister's words on the process she followed so that members understand what was involved in her decision. As I said, the minister received advice from the Swan River Trust and she consulted widely. The letter states -

... my office consulted widely - including meeting with the North Fremantle Community Association, the City of Fremantle and the jetty owners' representatives.

As a result of this process, the decision I took gave strong consideration to the very real concerns of the community - that public access to the jetty and nearby foreshore would continue to be denied.

Those were the concerns of the community. In setting out that information, the minister has ensured that public access to the jetty will not be denied. The minister said at the end of her letter -

The decision I have taken makes a very clear signal from this government - that public access is an important value, and one which must be safeguarded.

Hon J.A. Scott: Why doesn't she?

Hon GRAHAM GIFFARD: She has.

Hon J.A. Scott: She hasn't. It is still a private jetty.

Hon GRAHAM GIFFARD: It is a private jetty and she will not resume it from the developers. The point I make is that the minister has ensured that the public will at all times gain access to the private jetty in its redevelopment. I point out to members another aspect of the process. Putting aside the Marine and Harbours Act and the Jetties Act, the process followed is carried out by the Swan River Trust, which will make a recommendation to the minister.

Hon J.A. Scott: But it is not following its own policies.

Hon GRAHAM GIFFARD: Those Acts state that when a process has been followed under the Swan River Trust Act, the Minister for Planning and Infrastructure is then obliged to accept the decision of the Minister for the Environment and Heritage. It is not a matter of then going off to the Minister for Planning and Infrastructure and asking what is her decision. The statutes place an obligation on the Minister for Planning and Infrastructure to accept the decision of the Minister for the Environment and Heritage.

Hon Barbara Scott interjected.

Hon GRAHAM GIFFARD: It is private.

Hon Barbara Scott: But the minister has approved public access.

Hon GRAHAM GIFFARD: It is still a private facility; so it would be private, and they would have insurance to cover that.

On 6 May, Hon Alannah MacTiernan and Hon Judy Edwards issued a joint press statement that is relevant to this issue. That statement announces the establishment of a precinct planning project for the Swan and Canning Rivers that will guide future development on Perth's major rivers and that attempts to bring together the key stakeholders to coordinate a common approach that does not detract from the natural beauty of the Swan and

Canning Rivers. It states also that a draft handbook has been prepared to assist in this process. The precinct planning project is designed to facilitate input from local governments and local residents about developments on the Swan and Canning Rivers and to enable people to contribute their local knowledge and interest to developments on those rivers in their areas. Therefore, local governments and communities will play an increasingly crucial role in the consideration of development proposals for the Swan and Canning Rivers. Local areas will have the ability to ensure that the character of these rivers is retained and their management is improved.

**HON DERRICK TOMLINSON** (East Metropolitan) [4.01 pm]: I am not sure whether we should characterise what we have just heard as buck-passing or duckshoving. It is certainly one or the other of those.

Hon Graham Giffard: It is neither. The Minister for the Environment and Heritage has made the decision.

Hon DERRICK TOMLINSON: Of course.

Hon Graham Giffard: That is proper.

Hon DERRICK TOMLINSON: Of course. In other words, it is duckshoving.

Hon Graham Giffard: No. The minister has made the decision.

Hon DERRICK TOMLINSON: Oh - it is buck-passing.

Hon Graham Giffard: No. She has made the decision..

Hon DERRICK TOMLINSON: This motion is to discuss the role of the Swan River Trust and the Department of Environmental Protection in the approval of private developments on or over the Swan River and more particularly the imminent approval of private jetties in North Fremantle. The parliamentary secretary said that the Swan River Trust may make recommendations, but the Minister for the Environment and Heritage will make the decision; and whatever decision the Minister for the Environment and Heritage makes will be binding upon the Minister for Planning and Infrastructure. I have heard that sort of duckshoving before. It was to do not with a jetty but with a proposal for a structure on the river foreshore in Cannington that was regarded by the local community as visually offensive. The local government authority objected to and rejected that proposal. The matter went to appeal, and the then Minister for Planning, Hon Graham Kierath, approved the appeal. When the local government authority asked the minister on what grounds he had upheld the appeal, when the proposal contradicted all the town planning principles, he said his hands were tied; he could not make a decision that was contrary to the decision of the then Minister for the Environment, Hon Cheryl Edwardes. Part of the objection to the proposed development was that it would impinge on the floodplain of the Canning River. However, the then Minister for the Environment used her discretionary authority to approve that development, and the then Minister for Planning avoided his responsibility to uphold the planning principles by saying he was bound by her decision. It was nothing more than duckshoving.

Let us consider the role of the Swan River Trust in this exercise. The Swan River Trust recommended against this development on four grounds. The parliamentary secretary has already referred to the first; namely, that it conflicted with the intent of the City of Fremantle's North Fremantle foreshore plan. That plan, as both the parliamentary secretary and Hon Jim Scott have explained, is directed towards maximising public access to the river foreshore. The proposed development will not maximise but will minimise public access to the river foreshore. If we accept that a private jetty is a private jetty, then that minimisation is maximum minimisation. It is an absolute denial of access to the river foreshore, because the river foreshore is privatised by virtue of its being a private jetty. Another ground was that the Swan River Trust did not want to encourage an existing inappropriate use of the foreshore in a residential area by promoting an isolated commercial marine operation within close proximity to sites designated for public recreation. In other words, some planning principles should apply. We should not have a commercial marine operation and a designated public recreation area side by side. Another ground was that the marina would not have the necessary infrastructure to support such an operation and there would be insufficient space to accommodate the necessary facilities without affecting the integrity of the regional open space. The final ground was that the proposal would create an undesirable precedent for other owners of private jetties to establish commercial marinas without the necessary facilities. Those four clear grounds are based upon four clear planning principles.

I waited with some interest for the parliamentary secretary to say why the recommendation from the Swan River Trust was overruled. The answer was that the minister had spoken to other people, and after the minister had spoken to those other people, she had made her decision. Who did the minister speak to?

Hon Graham Giffard: I have told you.

Hon DERRICK TOMLINSON: Why then do we have a Swan River Trust?

Hon Graham Giffard: Why does the minister have the ability to make the decision?

Hon DERRICK TOMLINSON: That is also a very good question. I am sure the Lord Mayor, Mr Nattrass, would also ask that question, because he has been trying for some years to get authority or approval to redevelop his private jetty in Crawley.

Hon Graham Giffard: But you are not advocating that.

Hon DERRICK TOMLINSON: What I might advocate is not of great relevance. The Government has deliberately introduced legislation in this House to take away the minister's discretion. The member should cast his mind back to the planning appeals Bill. What was that planning appeals Bill about? It was about taking the discretionary authority away from the minister and giving statutory responsibility to a de facto court. Let there be a little bit of consistency. It does not matter what I think; I am a mere backbencher. What does the Government think? The Government thinks two things: it wants to introduce a statute to deny the minister's discretionary authority on the grounds that discretionary authority is a bad thing, but it wants to argue that the discretionary authority of the minister is essential. Why? Because the discretionary authority is contrary to the recommendation of the Swan River Trust, which has argued on very sound planning grounds against it. If we are to have open and transparent government, it behoves the minister to provide reasons for the decision, rather than saying that he has spoken to other people and they have a different opinion.

The PRESIDENT: Order! Before I give Hon Barbara Scott the call, I acknowledge in the President's Gallery representatives of the Zhejiang Provincial People's Congress, our sister state in the People's Republic of China. I welcome them to the Legislative Council this afternoon.

[Applause.]

**HON BARBARA SCOTT** (South Metropolitan) [4.12 pm]: This issue has come to my attention as a member of Parliament based in Fremantle, although it is not in my electorate. This matter has a broader perspective. It raises some alarming issues for the Government, such as those I raised by interjection with Hon Graham Giffard, including liability for the owners of these leased jetties. Two ministers proposed this decision. We are here talking about a jetty that was built some 23 years ago that was sold by Clough to a developer. The jetty needs repair and the lease has five years to run, as Hon Jim Scott has indicated to the House. The owners seek clarification of whether, if they were to repair the jetty to a standard where it could be used for private and public purposes, they would have to pick up the cost. More importantly, as I asked by way of interjection, what does the Government plan to do about public use of a private facility when the private owner provides cover for repairs, insurance and public liability? As I asked the member earlier, if an adverse event happened on the jetty and a claim was made against the owner, what would the Government do about it? This critical change in policy will affect many Western Australians who have private jetties. Will the people on the Mandurah canals be caught up in this policy change by the Government? If the Government permits people to build private jetties and then requires that they be made available for public use, will the Government require those private owners to take responsibility for whatever happens on those jetties and will it apply to all jetties? Will the Government ensure that this case in North Fremantle will not open up issues in relation to other jetties? Hon Ken Travers is looking rather perplexed.

Hon Ken Travers: I am trying to work out what your position is. Do you think the jetty in North Fremantle should have public access or not?

Hon BARBARA SCOTT: I am not commenting on that. I am commenting on whether the Government has considered the can of worms it has opened for many Western Australians. Is the Government expecting owners to cover all the maintenance and the public liability insurance costs when private jetties are made available for public use? This will have an impact right across the State. Will the Government explain its position to the House? What will this do to all developments not only in the North Fremantle area but -

Hon Ken Travers interjected.

Hon BARBARA SCOTT: Has the member finished?

The PRESIDENT: Order! The interjector has finished.

Hon BARBARA SCOTT: My question is a very simple one. The history of this jetty has been explained to the House. Fourteen shareholders, who are owners of the property, bought the company which had the lease from Clough. It has five years to run, and two ministers in the Government are declaring that it should now become a public facility with public access! What is the Government's answer to the many Western Australians who have and who are contemplating building private jetties on their properties? Who will pick up that cost and the cost of the public liability insurance in the future? This will open up a whole range of policy issues and may involve the Swan River Trust in some cost implications. Is this a broad-brush change and what are its implications?

**HON J.A. SCOTT** (South Metropolitan) [4.17 pm]: I thank members for participating in the debate on this issue. Like Hon Derrick Tomlinson, I was a bit disappointed in the response by the parliamentary secretary. As

pointed out by Hon Derrick Tomlinson, the parliamentary secretary was like Mr Quiverful in *Barchester Towers* or one of those novels; he was unable to decide what “private” actually means. Private means private, and private ownership of the foreshore covers private jetties on the foreshore. That includes recreational reserves across which these jetties go, and rivers are supposedly public and not private property. This Government is saying it upholds the principle of private property ownership on the foreshore, but it is not doing anything about it when it gets the opportunity. In reality, these jetties were intended to go when the Government first paid for that land and leased it back to the industrial users of that land. The land was to become public recreational land that people could use to access the river. We are talking about a 20-year extension of approval of one jetty, and another jetty has been approved. This is a new jetty that is attached to the Monteath properties, and which had no legal standing for a long period. It was the developer’s dream; he put it in, but it was not approved. Suddenly, through a strange process that no-one admits to being responsible for, the lease is now being given to some landowners who are currently on those ex-Monteath properties. I want to know how that happened. The minister should be asking how the Swan River Trust approved a jetty that was not approved by council as part of the original plan. No answer has been given -

Hon Derrick Tomlinson: Swan River Trust officers recommended against the approval.

Hon J.A. SCOTT: The member is thinking of the Portside development. I am talking about one of the Northbank jetties that was proposed by the Monteath group. Monteath proposed three jetties - two public and one private - but the private jetty was never agreed to. Yet, now that Mr Monteath has disappeared from the scene, a mythical third jetty has suddenly gained approval. According to the Department of Transport, the Swan River Trust approved that jetty. I am at a loss to understand how this happened and this matter must be investigated. I point this out so that the parliamentary secretary can take the matter on board.

The Swan River Trust needs to be revamped if it agrees to this proposal, because the area will require dredging, which is against its policy, and a large structure will need to be built. A number of misleading statements have been made to get this proposal approved, including aspects of the public process that the proposal is supposed to have been through. The jetty drawings underestimate its size. They do not show a jetty that is 63 metres long and that will take 24 boats, but one that will take 12 to 15 boats. It is not clear who will pay for works associated with the jetty; for example, foreshore work. I want some answers to the questions I have raised as to the policy of the Swan River Trust and what happened with that proposal.

Motion lapsed, pursuant to standing orders.