

KENNEL ESTATE — NAMBEELUP PARK

Statement

HON SALLY TALBOT (South West) [10.07 pm]: I want to draw to the attention of the house a problem being experienced by a couple of my constituents. It goes right back to the end of the 1980s. It is a very long and sorry saga. I have very limited time to talk about it tonight so I am going to cut to the chase and do a quick summary and then rely on some of the documentation that these people have given me.

As I say, the story starts at the end of the 1980s when a group of people bought property in the Nambeelup Park Kennel Estate. Part of the agreement to which they signed up involved the creation of public open space in that area, which is now called lot 500, but in those days was called either lot 81 or lot 31, depending on what documentation one refers to. I found in the myriad emails and documents that I have been provided with over the last couple of years that the most succinct statement of the problem is found in the Ombudsman's summary in a letter dated 31 January 2000. I mention these dates to give honourable members a sense of how long this has been going on for. As I said, the original properties were purchased at the end of the 1980s and these people have found themselves with a very serious problem in that the original scheme to which they signed up was never implemented properly. They have been through a whole series of appeals and court processes and they have, to this date, found no satisfactory outcome to their problem. I think it is just not good enough in 2012 for us to have consigned these people to the very difficult situation they have found themselves in for the last couple of decades.

I will briefly quote from the Ombudsman's letter dated 31 January 2000. It states, in part —

I refer to your complaint about the transfer of Lot 81 Gull Road to the Shire of Murray as a condition of subdivision.

As I understand the situation, on 30 April 1987 the then State Planning Commission gave approval to the subdivision. Condition 7 of that approval stated:

“7. *The proposed Lot 31 —*

I have explained about the difference in lot numbers; this was the public open space —

(sic) shown on the plan of subdivision as open space and which may include a communal training area, being the subject of a separate Diagram of Survey to be transferred free of cost to the Local Authority”.

The approval also contained the following footnote:

“The Commission imposed Condition No 7 on the basis that the subject land is to be leased back to the subdivider for the use and management of the land by the lot owners as a Communal Training Obedience area.”

I am advised that the condition itself is most unusual and is not one that would be accepted by the Western Australian Planning Commission today. However, it appears that at the time the application for the subdivision was made it was not uncommon practice for separate titles to be created for proposed public open space and the title transferred to the local government concerned. Where land is to be used for public open space today, the WAPC generally requires that the land be declared a reserve and vested in a local government rather than owned in fee simple. It also appears from the footnote that the then SPC considered that the land would be subject to a lease back to the subdivider. Both the condition and the footnote are silent in relation to the terms of any lease. However, given that it was intended to be a commercial arrangement it appears unlikely that the land would have been made available to be used free of charge by adjacent landowners. I also note that the land was not zoned as public open space but rather as “*Special Use — Kennels*”, similar to the surrounding blocks.

By endorsement dated 24 April 1989 on the draft Diagram of Survey the then Shire Clerk certified that the conditions, including Condition 7, “*had been fulfilled to the satisfaction of my Council*”. It appears that the SPC relied on the certification of the Shire Clerk that the condition had been fulfilled in clearing the Diagram of Survey.

Lot 81 subsequently became the subject of a Certificate of Title registered in the name of Lakes Road Pastoral Company Pty Ltd. Some time after that it appears that the company was deregistered. In 1995 the Shire requested the Australian Securities Commission to execute the transfer of the land to the Shire on the basis that the ASC was the vestee of property owned by deregistered companies, pursuant to the Corporations Law. However, the ASC declined to do so.

The deregistration of the Lakes Road Pastoral Company Pty Ltd was lifted by the Supreme Court on 21 January 1998 and a former director of the company obtained judgment and pursuant to a Writ of Fi Fa the land was set down for auction on 3 August 1999. The Shire was successful in lodging caveats for easements for fire fighting and drainage purposes. However, the Judgment Creditor would not permit the Shire to lodge a caveat claiming any form of beneficial ownership.

As you are no doubt aware, the Shire decided not to make a bid for the property at the auction and although I appreciate that you consider that there should have been a greater effort made to obtain the land, I accept that such a decision was open to the Council to make. I understand that the reserve price was not achieved at the auction. The land remains in private ownership and there appears to be no further avenue available to the Shire to obtain title to the land.

I appreciate that you may well be disappointed with this outcome but given the circumstances I do not believe that there is any further action I can take to achieve the result you desire.

The Ombudsman wrote to the Shire of Murray in similar terms. The critical reference in that letter is to drainage. The shire was successful in obtaining caveats for easements for firefighting and drainage purposes. The upshot of the loss of that public open space was that the drainage provided to the lots now occupied by my constituents was effectively filled in. There is no drainage in that area now. The result right now in 2012 is that the property on which at least one of those property owners is trying to run kennels is regularly under centimetres of water. Those clearly, as you yourself would know, Mr Deputy President (Hon Matt Benson-Lidholm), are entirely unsatisfactory conditions under which to run kennels. My constituent is therefore now threatened with the loss of her livelihood.

In all these decades that have gone past since this original error was made, these people and every single person who has looked at this matter agree that it is an administrative error made by the Shire of Murray. It is not my intent tonight to heap the blame at the door of the Shire of Murray. The Shire of Murray is a small shire; it does the best it can with limited resources. Nevertheless, an administrative error was made all those decades ago and my constituents are still living with the nightmare outcome of that error. It seems to me to be not beyond the wit of government to intervene. The government of which I was a member in 2007 made some attempt to intervene to sort out this situation. I refer to a letter dated 19 January 2007 from Alannah MacTiernan writing in her capacity as Minister for Planning and Infrastructure to Councillor Noel Nancarrow. I should point out also that Councillor Nancarrow is no longer shire president; indeed, he is no longer a shire councillor. None of the officers who made these decisions and errors is there anymore. I stress again that I am not seeking to lay the blame at the door of the Shire of Murray. I do not think the Shire of Murray is in a position any longer to rectify the mistake that was originally theirs. To go back to the letter from Hon Alannah MacTiernan, she says in her concluding paragraph —

... members of the Nambeelup community have made various approaches to the State Government, seeking resolution of this matter. Resolution of this problem has been significantly impeded because the land has been in private ownership. However, Lot 500 Gull Road has been placed on the market for sale and therefore an opportunity may exist to address some of these concerns. As any responsibility to remedy this situation must rest with the Shire, I would recommend the Council examine the possibility of purchasing Lot 500.

Subsequent to that letter Hon John Day has been involved as Minister for Planning in the Barnett government. The Minister for Local Government, Hon John Castrilli, has been involved. Everybody agrees and everybody understands exactly what the problem is, but nobody is taking responsibility for solving it. The very latest chain of correspondence in this sorry saga is from Hon Michael Mischin. Subsequent to him becoming Attorney General on 8 August, he wrote the following letter —

Dear Mr Kitching

Thank you for your email dated 3 July 2012 to the Western Australia Government regarding your earlier email dated 9 February ... —

This is Mr Kitching looking for an answer —

... in the absence of new information ... future correspondence will not be responded to but will be noted and placed on file.

The reason for not responding to your earlier email ... is due to the above explanation in the letter to you dated 25 October 2011.

As the Attorney General there is nothing I can do to assist you further in this matter.

We have to go further with this matter. We cannot allow an administrative error to wreck the lives of these people.

House adjourned at 10.18 pm
