

REHOBOTH CHRISTIAN COLLEGE — PROPERTY ZONING

Grievance

MR P. ABETZ (Southern River) [9.37 am]: My grievance is directed to the Minister for Planning. I preface my remarks by saying that this grievance is about Rehoboth Christian College and I have a personal interest in that my five children attended that school and my wife and I continue to be members of the association that operates the school.

Rehoboth Christian College purchased 5.9 hectares of land on the corner of Brixton Street and Kenwick Road in Kenwick in 1975 for the purpose of building a high school and primary school campus. When the land was purchased, it was completely zoned R17.5—that is, appropriate for educational purposes. The general area around there is what is called a palusplain wetland, which means it is partly submerged in winter. In 1979 construction of the high school commenced. A metre or so of sand was brought in and the site levelled to build the school. In 2004 the school was ready to build the primary school campus. At the time, a development application was submitted to the City of Gosnells. The school was not aware that since it had purchased the land some three hectares at the Wanaping Road end of the site had been deemed a conservation category wetland because it contained specimens of declared rare flora. Various exchanges of correspondence subsequently took place between Rehoboth and the state and local government agencies. After the school was made aware that there were environmental issues, it engaged various environmental and other consultants to try to modify its building plans to accommodate the situation and minimise any ecological impact. Rehoboth's final amended proposal would have impacted on only 0.6 hectares of the wetland, leaving the remaining 2.3 hectares untouched.

In spite of various requests to the Department of Environment and Conservation to reconsider the matter, the department refused to support any of the proposals. In May 2004, it became clear that because three hectares of land was then unavailable for building a primary campus on the site, the site would no longer be viable for that purpose. I understand that the school made several unsuccessful approaches to various authorities to see whether any form of compensation would be available from the government that would enable the school to purchase some nearby land so that it could proceed to build the primary school.

In November last year, I forwarded an email, on behalf of Rehoboth Christian College, to the Minister for Planning, requesting advice about the payment of compensation on the basis of the environmental values which had been identified on the site and which would prevent the site from being used for its intended purpose. I explained that what the school was seeking was either compensation, or for the government to buy the 2.9 hectare section of the Kenwick site. The minister kindly responded promptly in mid-December and stated that no compensation would be available, for a number of reasons. The first reason was that no part of the school site is within a Bush Forever site. This is despite the fact that one of the reasons that the Department of Environment and Conservation would not accept any modification was because the site does link to Bush Forever sites. The second reason was that under the Environmental Protection Act, there is no provision for compensation to be paid in circumstances in which development cannot be made environmentally acceptable. The third reason was that under the Planning and Development Act 2005, there is no provision for compensation to be payable, because the land has not been reserved in either a regional planning scheme or a local scheme.

I am sure that all of us can see the injustice of this situation. A community organisation purchased this land, which did not have any encumbrances placed upon it, in good faith, for the purpose of building a school. The R17.5 zoning of that land was effectively a government guarantee that the whole site could be used for a school. If we as a community value conservation category wetlands and believe they should be preserved for posterity, I do not have a problem with that, and nor does anyone in the school community. The issue is that this land was bought in good faith. The community group invested money in this land for a specific purpose. However, the people who will now have to carry the can, so to speak, for the preservation of this land are the hapless people who happened to own that land at the very time when some government department decided that this land should be preserved for posterity. From a moral perspective, I find that totally unacceptable. The school community is made up of working families. The school community made a huge effort to raise the funds to purchase that land. The land in that area is valued at \$1.25 million a hectare. So, basically, the school has lost \$3.6 million worth of land. Again, for a small community group running a parent-controlled school, that is a huge loss.

I therefore call on the Minister for Planning to instruct the Western Australian Planning Commission to include this conservation category wetland for preservation by way of an amendment to the metropolitan region town planning scheme so that compensation can be paid and so that the school community can purchase another site and achieve its desire to build a primary school campus.

MR J.H.D. DAY (Kalamunda — Minister for Planning) [9.44 am]: I thank the member for Southern River for raising this issue. As the member indicated, he did write to me about this issue towards the end of last year, and I did provide a response explaining the situation at that time.

Just to summarise, as the member has mentioned, the land concerns Rehoboth Christian College, located at 94 Kenwick Road, Kenwick. The school community wants to expand the school buildings onto land that has had environmental restrictions placed upon it. The land has been zoned residential, with a relatively low density coding of R17.5. The land is located in an area with a high watertable. The school buildings are currently located on the southern portion of the lot. The northern half of the lot exists as a conservation category wetland, with declared rare flora and threatened ecological communities. Therefore, the Environmental Protection Authority has made it very clear that no development should occur on that part of the lot. Clearly, wetlands and ecological communities of this nature require adequate protection to ensure that their environmental qualities are not compromised. The remaining wetlands within the Swan coastal plain have been protected since the 1980s.

The member claims that compensation should be made available to the school for its inability to develop part of its site. However, the essential problem is that the payment of compensation for this purpose would probably require legislative change. It would certainly require a major policy decision by the government. I believe there would be a great deal of reluctance to make such a decision, because it would create a major precedent. The situation that the school finds itself in is, in principle, no different from the situation of any other landowner who has had conditions imposed with regard to what can be done on his or her land. There is, I think, a misconception among some people in the community that because they own an area of land, they can do what they want on that land. Clearly, that is not the case. People need to undertake any development in accordance with the relevant planning scheme and any conditions that have been placed on the site. It is a reality that the state has available to it a very strong power of intervention in relation to any development that may occur on land. I believe that is a power that the community wants the state to have, whether that be to maintain urban amenity; to ensure that appropriate density of development occurs and the density is not excessively high—which I know some people are concerned about, such as the member for Alfred Cove in her area at the moment; or to ensure that important environmental values are maintained. For example, the construction of a residential dwelling normally has restrictions imposed upon it with regard to height and minimum distances from lot boundaries. The state does not pay compensation to people if restrictions have been imposed and they want to do something over and above what they are permitted to do on their land. Similarly, restrictive covenants are imposed on land to prevent vehicle access onto major roads such as Roe Highway and Kwinana Freeway. In some cases people may feel that that is unreasonable. I do not pretend that the magnitude of the problem in these particular cases is necessarily the same as it is for Rehoboth Christian College. But the principle is the same. Compensation is not paid when these sorts of restrictions are imposed on the type of development that is allowed on land.

In the case of this particular site, obviously a restriction has been applied. However, the school has been allowed to develop on part of the site. In principle, that is no different from a landowner who wants to build a house and is told that the house must be built within a particular building envelope, and that the remainder of the vegetation on the site needs to be maintained. The landowner may not be very happy about that. However, it is not the case that compensation is payable in those circumstances.

If the whole of this lot was available, and particularly if it was all covered in bushland, I would imagine that it probably would be designated a Bush Forever site and most likely would be proposed to be rezoned to parks and recreation; in other words, it would be reserved. In that case, under the arrangements that are in place now, compensation would be payable if no development on the site was possible. But, as I have said, the school has been able to develop, albeit not as much as it would like, on this site. Therefore, to pay compensation for the balance of the lot that the school has been told it cannot develop would create a major precedent, because there would be many, many other people in a similar situation who would also be seeking to claim compensation in that circumstance.

Mr P. Abetz interjected.

Mr J.H.D. DAY: I agree that it is certainly possible to argue that compensation should be paid in that case. If the government wanted to make a policy decision to do so, that would be fine, but it would have major financial implications for the state and taxpayers. I understand that this is not an ideal situation from an individual landowner's point of view, but it is a matter of balancing the various community needs and taking into account the availability of funding also.

To summarise, I understand the school's problem. Obviously this is disappointing from its point of view. However, in principle, the school is not in a different situation from any other landowner, whereby some conditions are imposed on the school about what it can do with the land. Some development may be possible, and that could be quite substantial development, but there are restrictions. To pay compensation in this case would set a major precedent that would have major funding implications for the state. If we wanted to develop a

policy to allow that, it would need to be considered, but I think that the Premier, who is now the Treasurer, would have a strong interest in that because of the financial implications to taxpayers. I know that is disappointing for the school, but I hope that explains the rationale behind the government's reasoning.