

THE SHOPS AT ELLENBROOK — RESTRICTIVE COVENANT

Motion

MR M. McGOWAN (Rockingham) [4.00 pm]: I move —

That the house condemns the Premier and the member for Swan Hills for breaking their election promise to remove the restrictive covenant over The Shops At Ellenbrook.

I will be the lead speaker on this motion. It is very interesting that we are debating this motion now. I say that in light of the fact that in question time yesterday, the Minister for Commerce answered a question on this issue. The reason that we are pursuing this issue today is that we are aware of a great deal of concern and consternation in the community of Ellenbrook about the promise made by the Liberal Party before the last state election that it would remove the restrictive covenant over the land surrounding The Shops At Ellenbrook. We want to point out to the Parliament and the people of this state that the Liberal Party has broken a firm commitment that it made to the people of Western Australia during the election campaign. The member for Swan Hills, Frank Alban, was elected by a narrow margin at the last state election. One of the significant issues in his electorate was the removal of the restrictive covenant that has been placed over The Shops At Ellenbrook. The now member for Swan Hills made it very clear during the election campaign that he regarded the abolition of that restrictive covenant as one of the core promises that he was making to his constituency. He placed advertisements in the local paper to advise people in the community of that promise. After the election, he said that his first priority would be to remove the restrictive covenant from The Shops At Ellenbrook. He was very forthright about that promise. It is very interesting that there was a firm understanding in the community of Ellenbrook that the member for Swan Hills was campaigning on that issue and that if the member for Swan Hills was elected as part of a Liberal government, that restrictive covenant over that part of Western Australia would be removed. Therefore, in our view, the Liberal Party should comply with that promise that was made to the people of Western Australia at the election.

It is very interesting to read a letter that was sent to the editor of the local paper in Ellenbrook in October of last year. I think a copy of that letter was even faxed by the member for Swan Hills to the Premier's office. Actually, I have a copy of the freedom of information request. The fax was actually sent by the member for Swan Hill's electorate officer. The purpose of that letter to the editor was to express the view of the local community about the restrictive covenant. The letter to the editor was from a fellow by the name of Raymond B. Horton of Ellenbrook. The letter is titled "Election pledge on covenant not forgotten", and it states —

About two weeks before the last state election, then premier Alan Carpenter visited Ellenbrook.

I had a conversation with him outside the main shopping centre.

The main subject of our discussion was the restrictive covenant that was in operation at Ellenbrook and how the residents and businesses were being held to ransom by this monstrosity that was in our midst.

He agreed and said he would look into why.

I said if nothing was done it could cost him the election.

In the meantime, Liberal candidate Frank Alban said he would have the covenant removed.

Frank won the seat and I would suspect most, if not all, of the swing against Labor in Ellenbrook was because of this very subject.

If it had gone the other way, Carpenter would still be in power.

So I would remind Frank Alban—your minority Government is on a knife-edge on this one item.

We the residents of Ellenbrook will return the compliment ten-fold if nothing is done.

You and your party must give this your urgent attention.

As I have said, a copy of that letter to the editor of the local newspaper was sent by the member for Swan Hills' office to John Hammond in the Premier's office. The government has made a commitment on this issue, and it should deliver on its commitment.

Mr C.J. Barnett: What was the commitment?

Mr M. McGOWAN: The Premier missed the commencement of the debate, but I can show him a range of advertisements by the member for Swan Hills, in which he says that the covenant will be removed. In fact, on election day, the now member for Swan Hills had signs put up to that effect. I will tell members about one of those ads. It is titled "A message from Frank Alban", and it states that the Swan Hills electorate is a great place

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

to live, work and raise a family. There is a little tick at the bottom of the ad next to the words, “An end to restrictive covenants that block businesses and deny shopping choices and local jobs”.

Mr C.J. Barnett: That is good, because I want to know what the commitment was.

Mr M. McGOWAN: Where is the end to that restrictive covenant? The now member for Swan Hills went to the election campaign on that issue—and good luck to him. He won that seat based on that issue. That is quite clear from Mr Horton’s letter to the editor. The member for Swan Hills won the election based on that issue. It is now up to the member for Swan Hills to deliver on the commitment that he made to the people of Ellenbrook. The restrictive covenant was put in place in 2002-03 by the Insurance Commission of Western Australia.

Mr F.A. Alban: And that was under your watch, by the way. I was not there.

Mr M. McGOWAN: That is true. It was when we were in office. My understanding of the gestation of that covenant is that it goes back a number of years. It was put in place to encourage the establishment of a shopping centre at Ellenbrook. Indeed, I have another FOI document from none other than the Treasurer, in which he indicates that a private sector developer could have done the same thing and imposed a restrictive covenant, but, as it turned out, it was the Insurance Commission of Western Australia that put on that restrictive covenant as the basis of the attempt to get a shopping centre established in that area. The problem with the argument that has been put by the member for Swan Hills and the Premier is when they say that that happened during our term in office.

Mr C.J. Barnett: It did.

Mr M. McGOWAN: That is true, and its gestation went back to the Liberal government before that. That is true, too. But the problem is that this government made the commitment that it would remove that covenant. That is where the problem lies. We did not make the commitment to remove it. The Liberal Party went to the people of Ellenbrook and said that it would remove it. That is the basis of the argument that we are putting today. It is not about the history of the matter. Some things do stretch over a number of governments. This is one of those things that does stretch over a number of governments, of both persuasions. It is not about the history of the matter. I can go to the history and to 1998 and 1999 when the Court government was part of the commencement of this covenant. But who promised to remove this covenant? It was the member for Swan Hills who promised to remove it.

Several members interjected.

Mr M. McGOWAN: What the commitment does —

Mr M.P. Whitely: They were the words of the member for Swan Hills.

Mr F.A. Alban: I have my words here. You are not going to get much of your words through after this lot. The man speaks with a forked tongue; try to tell the truth!

Mr P. Papalia: You made two promises and you broke both of them.

Mr F.A. Alban: You were there with me when I said that, were you? You seem to know about everything! You had to be there too. Were you?

The ACTING SPEAKER (Mrs L.M. Harvey): Order, members! The member for Rockingham has the call.

Mr M. McGOWAN: Thank you for your protection, Madam Acting Speaker. As I outlined, the history of the covenant is that it was part of the establishment of the shopping centre known as The Shops At Ellenbrook. Restrictive covenants are not good in ensuring competition or providing a wide range of shopping opportunities for residents. I met recently with a professor who is a national expert on this issue. His view was that covenants were the worst thing for providing competition and choice for consumers around Western Australia. This covenant was no doubt established on the basis that it would provide protection to the major supermarket in the shopping centre, Woolworths. A consequence of the establishment of a restrictive covenant is that it will push up rent for the existing tenants in the shopping centre. It is a fast-growing area. There is now a restriction on the number of shops that are able to be accessed by local residents. There is a restriction on shopping choice. As I recall, the restrictive covenant prohibits 50 or so different types of shops from establishing on land surrounding the shopping centre, which makes it very difficult for the establishment of other alternative shopping opportunities.

The member for Swan Hills—I will go into this in a little while—has written a few letters to the Treasurer and to the Premier on the matter. His electorate officer demanded a meeting with the Premier, and so forth. I know that happened.

Mr F.A. Alban: I have had lots of meetings.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Mr M. McGOWAN: The member has not achieved much!

Mr F.A. Alban: It is more than you lot achieved.

Mr M. McGOWAN: The member for Swan Hills has had meetings but he has not achieved anything. What the member does not understand about the style of democracy in this state is that one side forms the government and the other side the opposition; the government has the power and the opposition does not. When the member for Swan Hills asks what the opposition has achieved, it is a little difficult for us to resolve the issue he has raised because we are the opposition.

It is interesting what the freedom of information documents I have obtained have revealed. They are very interesting in light of what the Premier had to say yesterday in his answer in question time. The Premier seemed to imply that he had achieved a great thing in allowing small retail operators of fewer than 300 square metres to establish in the surrounding land area. From some of the FOI documents I obtained—for example, the briefing note that went to the Treasurer—that was something that the Insurance Commission of Western Australia had been working on since early this year. It was not exactly something that was a great achievement on the part of the Premier because it is something that is permitted. The note reads —

... small-scale retail operations may be permitted under the existing Covenants subject to the ICWA's approval.

It is something that is entirely within the scope of ICWA to approve under the existing arrangement. If the Premier claims that as a victory and something that he has done to resolve this issue, it was already possible. That is according to the Premier's briefing note from the Department of Treasury and Finance, which I obtained under the freedom of information laws. One of the Premier's briefing notes indicated that it was already possible to do that. First of all, when the Premier claimed to have resolved the issue, as he indicated yesterday —

Mr C.J. Barnett: No-one claimed to have resolved it.

Mr M. McGOWAN: The Premier is not claiming he resolved it?

Mr C.J. Barnett: No.

Mr M. McGOWAN: The Premier indicated yesterday in his answer that there was some resolution.

Mr C.J. Barnett: I did not claim that it was resolved, by any means. You need to be truthful. You have a complete lack of accuracy. You walk into this place and make all sorts of wild claims, none less so than your wild claims over The Cliffe, which will play out over time.

Mr M.P. Whitely: No-one made claims.

Mr C.J. Barnett: You did! Read *Hansard*.

Mr M. McGOWAN: Name one! I did not make any claims.

Mr C.J. Barnett: The ramifications of that will flow, and I will sit back and watch.

Mr M. McGOWAN: What are the ramifications for me out of that?

Mr C.J. Barnett: I did not say that there were ramifications for the member for Rockingham; I said that the ramifications will flow and I will sit back and watch.

Several members interjected.

The ACTING SPEAKER: Order! The member for Rockingham has the call.

Mr M. McGOWAN: The truth of the matter is that I did the Premier a favour.

Mr C.J. Barnett: I do not think so, my friend.

Mr M. McGOWAN: That allegation would have sat here, hanging over the head of the Premier of Western Australia, unless it was resolved. I did the Premier a favour. The Premier was not going to do that. I did not say that any of the allegations were truthful. I said that these are the allegations —

Mr C.J. Barnett: We will see how it plays out.

Several members interjected.

The ACTING SPEAKER: Order, member for Bassendean. The member for Rockingham has the call.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Mr M. McGOWAN: It is also clear that on this issue the government could take some action, if it wanted to, above and beyond the action it is taking. That is very clear.

Mr J.H.D. Day: What would you do?

Mr M. McGOWAN: I can read the Premier's own briefing notes.

Mr J.H.D. Day: What would you do?

Mr M. McGOWAN: I would deliver on my election promise. If members opposite do not want to deliver on their election promise, they should not make the promise!

As the Premier's briefing note says, he can take various approaches that would resolve the issue. The truth of the matter is that the Premier will not. The Treasurer, in a letter dated 1 June, indicates that he does not think it is appropriate, and I will read what he says —

I do not think that directly instructing the ICWA to remove the Covenants is an appropriate or practical option. However, the State Government is currently investigating possible alternative measures to ease some of the restrictions contained in the Covenants and I am hopeful that we will make some progress on this in the future.

The Premier has the opportunity available to him to do that. Later on in some of the briefing notes that the Premier received, this briefing note from David Morrison, the director of economic reform, that I think went to both the Treasurer and the Premier—certainly it went to the Treasurer—indicates that it is entirely possible for there to be legal action. Mr Morrison's briefing note states that it was important that the ACCC had noted that the Trade Practices Act would not be breached and a definitive ruling on whether the restrictive covenants were in contravention of the Trade Practices Act can only be obtained through legal action. In other words, the Premier has another opportunity. According to advice from Treasury, the Premier can direct ICWA or he can take legal action to find out whether the restrictive covenants breach the Trade Practices Act. All the government is doing at the moment is consulting with Woolworths and doing what it is already able to do under the existing arrangements, and his own briefing notes indicate that is in fact the case.

I refer now to another letter that was drafted for the Premier in which he says —

Although there are processes available for removing restrictive covenant, without the consent of the parties to the agreement, these can be costly and time consuming.

One of the Treasurer's letters—it does not have a date—reads —

I believe that although there are processes available for removing a restrictive covenant, without the consent of the parties to the agreement, these can be costly and time consuming.

Both the Premier and the Treasurer had letters to the effect that they could do something about it. In fact, they have sent letters to that effect. They can do something about it and remove the covenant.

Mr C.J. Barnett: Yes, that's right.

Mr M. McGOWAN: The clear and unambiguous advice that the Premier is giving to us and that he is sending to the community is that he is not prepared to take the actions that he could in order to deliver on his election promises.

Mr C.J. Barnett: How do you know that?

Mr M. McGOWAN: Because I have heard the Premier's answers to questions and I have seen his letters. I have just read some letters in which he said that he is not prepared to do it. I can go back to the letter from the Treasurer in which he says that he does not believe it is appropriate to do so. He states —

... I do not think that directly instructing the ICWA to remove the Covenants is an appropriate or practical option. However, the State Government is currently investigating possible alternative measures ...

The Premier is not prepared to take action to resolve the issue, even though all the advice that we have indicates that he could do so if he decided to. That is the core of this issue. Despite these interesting letters from the member for Swan Hills to the Premier's office and to the Treasurer, the Premier is not going to do anything about it. Some of the correspondence from the member for Swan Hills is quite amusing. There are demands for meetings, a description of advice from the Insurance Commission as being "a lot of BS" and a bunch of other —

Mr F.A. Alban: Does that have my name on it, member?

Mr M. McGOWAN: I will read it out to the member.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Mr F.A. Alban: Who's it from?

Mr M. McGOWAN: It states —

Please find attached a fax from Janie Brown, electorate officer —

Mr F.A. Alban: That's right. It was from Janie Brown; it wasn't from me at all.

Mr M. McGOWAN: The electorate officer of the member for Swan Hills wrote to John Hammond in the Premier's office. I will read it to the member. It states —

Dear John,

Please find attached a letter we received from Vic Evans yesterday. Frank would like the Premier to see this letter urgently. Frank believes it to be a lot of BS to undermine what we are doing.

The member for Swan Hills obviously did not sign the letter, but his electorate officer either imagined that he said that or else she made it up. In any event, it goes further. In other pieces of information that I have here there are threats by ICWA to gag the media. The member for Swan Hills describes things that the Treasurer says are rubbish and says he does not agree with what the Treasurer has had to say and so forth. In any event, the point I am attempting to make is that the advocacy of the member for Swan Hills on this matter has not worked. It has been ineffective. What he promised he would achieve he has not achieved through these rather heated letters that he sent to the Premier. We can also establish that the restrictive covenant is damaging, as the Premier said, in the election campaign —

Mr C.J. Barnett: Labor should never have put it in place.

Mr M. McGOWAN: As I said to the Premier before, things gestate over a long period of time. The advice I have received is that it goes back to the 1990s. The Premier seems to indicate that everything related to the Gorgon project happened on his watch, when in fact it took a while. The intensity of everything that happened in the past year is what brought it to fruition. It is not as though the intensity of everything that happened in the last year of the restrictive covenant is what brought it to fruition. I am advised that it took a long time to get to that point. In any event, I am also advised that without the restrictive covenant, there may not have been a shopping centre in Ellenbrook. I can understand why it happened. If that was a requirement for getting a shopping centre into that area, I can understand how it came into being. The Treasurer indicated in some of his correspondence that private sector developers impose exactly the same requirements. Whether it was government or private sector, in one of his letters he said that it could quite easily have been a private sector operator who had done it.

The point I am making is that irrespective of all that, we are merely asking the Premier by way of this motion today to deliver on his election promise. That is where we think the main crux of this issue lies. He made a promise and he should deliver on it. As I have outlined to the house, he indicated in his own correspondence three separate methods by which he could comply with what he promised to the people of Ellenbrook. I realise that some of them might be difficult, some of them might be expensive and some of them might involve taking on some people via legal action and, indeed, taking on big companies via legal action. If the Premier wants to remain true to the promise he made to the people of Ellenbrook, he should undertake one or all of those actions in order to deliver on the promise. I know that he will stand up and say that this was something that happened under the Labor government and how dare we. Again, he would be missing the point.

Mr F.A. Alban: And it was. Two terms you were there and you did nothing.

Mr M. McGOWAN: The government was elected by one seat. The member for Swan Hills would be right down at the end of the pendulum. He was elected to the seat of Swan Hills based on this promise. We will go to the people of Ellenbrook and tell them at length that the Premier made the promise and he has all these ways of ensuring that he delivers on the promise and yet he is not delivering on the promise. I recall going out there—I think the Premier may have been there also—giving them government facilities, schools and the like. They have had a second-rate opportunity to get choice in the shopping environment. It is about time they got what they were promised by the government that they participated in electing. They did not elect an opposition member. It would be impossible for us to deliver on that promise in any event because we are not the government. The people of Ellenbrook did not elect an opposition member; they elected a member of the government. This is the member who thinks that we should deliver the rail line to Ellenbrook. He asks why Labor is not delivering the rail line to Ellenbrook. I do not think he realises —

Mr F.A. Alban: That didn't work for you either, did it? You didn't get elected. Haven't you learnt yet, member? They don't believe you out there. It wouldn't matter if you were promising them a helicopter each.

Mr M. McGOWAN: I hope Hansard got that.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Mr F.A. Alban: Give us your best shot, member. You're stumbling there a bit.

Mr M. McGOWAN: I am looking forward to the contribution of the member for Swan Hills to this debate. This is the fellow who said that Labor should build the railway to Ellenbrook when we were in opposition. Now Labor in opposition should promise to remove the restrictive covenant. Why are we not doing it? Maybe I will go up to my old office in Governor Stirling Tower and demand the staff take up the issue and sort it out. If the government gives us a mill key, I will go down and sort it out.

That is the basis of our argument. That is why we have raised this issue. I know that the government is nervous about it, otherwise the Premier would not have asked that that question be asked yesterday in question time. In his answer he indicated that he was not going to deliver on his promise to remove the covenant completely. He was going to take the steps that he could, as the briefing notes show, under the existing arrangements. As I read out before, shops less than 300 square metres in size can be established as long as they are not part of the shopping centre. The Premier can deliver that under the existing arrangements, which he said yesterday he would do. That is hardly a great achievement. He can meet with Woolworths and demand that it remove the restrictive covenant. The briefing notes show that he can do that already. Of course he should do that. If the Premier is going to remain true to his promise, he should have the covenant completely removed, not just have some arrangement in which it phases out by 2018, as it already would under the existing arrangements. He should deliver on the exact commitment that he made to the people of Ellenbrook.

MS R. SAFFIOTI (West Swan) [4.29 pm]: I rise to speak to this motion. As some members will be aware, my seat encompasses Henley Brook, which is just south of Ellenbrook. Many people in Henley Brook are serviced by the shops and facilities in Ellenbrook. This is an issue about a government election commitment and what the government is doing to honour it. A clear commitment was made before the last election.

Mr C.J. Barnett: What was that?

Ms R. SAFFIOTI: Does the Premier not believe that the Liberal Party made an election commitment?

C.J. Barnett: You said there was a commitment; I'm asking what it was.

Several members interjected.

The ACTING SPEAKER (Mrs L.M. Harvey): Order, members.

Ms R. SAFFIOTI: Let me read from a campaign advertisement released by the member for Swan Hills prior to the last election. It promises —

... an end to 'restrictive covenants' that block businesses and deny shopping choices and local jobs.

Mr C.J. Barnett: What are you reading from?

Ms R. SAFFIOTI: An advertisement placed in the *Hills Gazette* by the member for Swan Hills.

Mr F.A. Alban: It would be better to read the same one.

Ms R. SAFFIOTI: Why? Was the other one wrong?

Several members interjected.

Ms R. SAFFIOTI: If the member for Swan Hills wants to interject, I ask him: did he have signs at the polling booths in Ellenbrook on election day saying that he would end the covenant?

Mr F.A. Alban: I said that.

Ms R. SAFFIOTI: Did he have signs in Ellenbrook on polling day saying that he would end the covenant?

Mr F.A. Alban: The signs were put out before the election, so whatever I put out on polling day would have been the same. I'm not sure which signs you're talking about. They all had the same information.

Ms R. SAFFIOTI: The signs at the polling booths in Ellenbrook on election day said that the member would end the covenant.

Mr F.A. Alban: I said that I, the member for Swan Hills, would end the restrictive covenant. I actually said those words.

Ms R. SAFFIOTI: That you would end the restrictive covenants?

Mr F.A. Alban: No. Do you want me to read what it says? I said that I would campaign for the Ellenbrook business district to develop free from any restrictive covenant. That is in English! It is very straightforward. That was my commitment.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Ms R. SAFFIOTI: So the member never made a clear commitment to end the covenant?

Mr F.A. Alban: Do you think a local member of Parliament can end a restrictive covenant?

Ms R. SAFFIOTI: So the member never made a commitment to end the covenant?

Mr F.A. Alban: I made a commitment to campaign against the restrictive covenant.

Ms R. SAFFIOTI: So all the articles that reported the member as having made a commitment to end the covenant were false? On every occasion the member went to the media saying that he would end the covenant, he never made a promise —

Mr F.A. Alban: Do you have evidence that I said that? Show me something that says “Frank Alban is going to get rid of the covenant”. You’re talking in puzzles. Give us some straight facts.

Several members interjected.

Ms R. SAFFIOTI: I could refer to letters to the editor, media articles and signs at the polling booth on election day, but the general impression given to the community of Ellenbrook was that the member for Swan Hills was going to end the covenant. That was a key commitment.

Mr F.A. Alban: The general impression was that I was the only person even talking about it. Your bunch didn’t.

Ms R. SAFFIOTI: When did the member start talking about the covenant?

Mr F.A. Alban: The day I found out about it—3 June 2008.

Ms R. SAFFIOTI: Is that the day the member found out about it?

Mr F.A. Alban: Exactly that date.

Ms R. SAFFIOTI: So when the member was a member of the council from 2003 —

Mr F.A. Alban: That’s when I found out about it. It was a Labor council and there was a Labor member of Parliament; I couldn’t find out.

Ms R. SAFFIOTI: The member was on the council from 2003, a covenant was placed on Ellenbrook, and the member never mentioned it until he won preselection in May.

Mr F.A. Alban: I mentioned it the day I found out about it.

Ms R. SAFFIOTI: So the member was on the council, but never knew about it?

Mr F.A. Alban: I knew about it when I found out about it.

Several members interjected.

Ms R. SAFFIOTI: I will tell members about the member for Swan Hills’ commitment to Ellenbrook. I go back to 2006 when there were issues about how much funding was going to Ellenbrook compared with other parts of the City of Swan. An article that appeared in the *Echo* on 1 April 2006 states —

But Cr Frank Alban said Ellenbrook’s wealth needed to be balanced with the rest of the wards.

“Ellenbrook is acting like a spoilt brat and cannot keep putting its hand up every year,” he said.

Mr F.A. Alban: What’s that got to do with the covenant? Get back to the covenant; you’ve lost the plot!

Several members interjected.

Ms R. SAFFIOTI: The member was a councillor from 2003, and was so concerned about the covenant that he never knew about it. He actually went to the media, arguing against funding going to Ellenbrook.

The issue of the role that the City of Swan could have played was included in a briefing note that was provided to the Treasurer on 2 October 2008. This was information provided to the Treasurer and obtained under freedom of information by the member for Rockingham.

Mr F.A. Alban: You’re very good at FOI; you could’ve just come into my office and you’d have seen it on a whiteboard. Half your members are in my office, anyway; they could’ve just taken a photo of the whiteboard and saved themselves all that money.

Several members interjected.

Ms R. SAFFIOTI: I do not know whether this was on the whiteboard. It states —

The City of Swan may have some power to dissolve the Restrictive Covenant. If this were to occur, the Insurance Commission may be entitled to compensation.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Again, it was an issue in which the City of Swan could have played an active role. Obviously the member for Swan Hills only found out about the covenant, even though it was in existence since 2003 —

Mr F.A. Alban: The City of Swan only found out about it when I found out about it.

Mr B.S. Wyatt: When did you find out about it?

Mr F.A. Alban: In 2008, and the City of Swan swore black and blue that it was not aware of it either. There is an amount of stealth in there.

Several members interjected.

Ms R. SAFFIOTI: Does the member still stand by his comments of 2006 that Ellenbrook was getting too much?

Mr F.A. Alban: That's got nothing to do with the covenant. You tried that during the election campaign and you failed! You tried to make me look bad. It doesn't work, member! Stick to the facts and you might stand a chance.

Several members interjected.

Ms R. SAFFIOTI: Does the member stand by his comments of 2006 that Ellenbrook was getting too much?

Mr F.A. Alban: Too much what?

Ms R. SAFFIOTI: Too much funding.

Mr F.A. Alban: Too much of what? It's got nothing to do with the covenant.

Ms R. SAFFIOTI: I will read the quote again. It states —

“Ellenbrook is acting like a spoilt brat and cannot keep putting its hand up every year ...

Mr F.A. Alban: Probably true; depends on what it was about. What was it about?

Ms R. SAFFIOTI: It was about funding being allocated to Ellenbrook by the City of Swan.

Mr F.A. Alban: What sort of funding?

Ms R. SAFFIOTI: Funding for community facilities.

Mr F.A. Alban: Was it for roads, was it for the helicopter you probably wanted to promise to get elected?

Ms R. SAFFIOTI: It is the member's quote, he should tell us.

Mr P.T. Miles: You're quoting it.

Ms R. SAFFIOTI: I read the article earlier. If the member for Wanneroo wants to listen, he can.

Since the election, there has been a lot of debate about the restrictive covenant. Some promises were made prior to the election, and the member for Swan Hills said that it was his first priority.

Mr F.A. Alban: You saw me do nothing the whole time, did you? You weren't out there to see me do anything at all, member. When was the last time you came down our way?

Ms R. SAFFIOTI: This is about an election promise and whether it has been kept.

Mr F.A. Alban: I've got the election promise here; I'll repeat it often enough.

Ms R. SAFFIOTI: It is easy to keep election promises if the promise is rewritten.

Mr F.A. Alban: It's the same one. It's an old ad.

Ms R. SAFFIOTI: No, it is not. When we argued about the Ellenbrook rail line, which was another broken election commitment, there was a redefinition of the Liberal Party commitment to the Ellenbrook rail line. In fact, the member for Swan Hills said that we do not yet need the Ellenbrook rail line because there is nothing for it to run to. This is the member who is fighting for Ellenbrook; he does not believe that the Ellenbrook rail line is justified, even though he made a commitment to it.

Mr F.A. Alban: Tell me when you get to the covenant, will you?

Ms R. SAFFIOTI: I will go to the covenant; I will go to 11 July this year when Vic Evans from the Insurance Commission of WA—I acknowledge him in the gallery—was quoted in the *Echo* as having said —

The Ellenbrook restrictive covenant will stay in place until 2018 ...

Mr P.T. Miles interjected.

Mr Mark McGowan; Ms Rita Saffioti; Mr Frank Alban; Acting Speaker; Mr John Quigley; Mr Colin Barnett;
Mr Eric Ripper; Mr Christian Porter; Mr John Day

Ms R. SAFFIOTI: Is the member for Wanneroo saying that the head of the Insurance Commission of WA is feeding me information?

Mr P.T. Miles: I've seen his letters.

Ms R. SAFFIOTI: What is the member saying?

Mr P.T. Miles: Has he been feeding you your information?

Ms R. SAFFIOTI: The member's allegation is that the head of the Insurance Commission of WA is feeding me information?

Mr P.T. Miles: I asked the question: has he?

Several members interjected.

The ACTING SPEAKER (Mrs L.M. Harvey): Order, members!

Ms R. SAFFIOTI: I have here secret under-the-table information in the *Echo* newspaper!

Several members interjected.

Ms R. SAFFIOTI: It is pretty underhanded!

Mr P.T. Miles: Show the member for Rockingham that FOI stuff.

Ms R. SAFFIOTI: The member for Wanneroo is surprised that we were given documents, more than anything, not that there was a freedom of information request. As I said, the managing director of the Insurance Commission of WA, Mr Vic Evans, said that the covenant will not be removed. That is where we are at: basically, the covenant will not be removed.

Mr F.A. Alban: Are you sure about that?

Ms R. SAFFIOTI: Is the member for Swan Hills saying today that it will be removed?

Mr F.A. Alban: Well, is it?

Ms R. SAFFIOTI: The member interjected. Is he saying it will be removed?

Mr F.A. Alban: I just asked whether you are sure about that.

Ms R. SAFFIOTI: I am quoting the managing director of ICWA, who has said that it will not be removed. If the member for Swan Hills wants to stand up today and say that it will be removed, we will welcome that. If he stands up and says that the election promise will be kept and the restrictive covenant will be removed, I will welcome that. We look forward to hearing from the member for Swan Hills.

As the member for Rockingham said, advice was provided to, I think, the Treasurer on 14 May 2009 that there was some ability for some movement within the restrictive covenant. The briefing notes stated that there is a possibility of allowing retail operations smaller than 300 square metres operating on encumbered land.

It is very similar to the answer provided yesterday by the Premier during question time. There is some movement within the confines of the restrictive covenant. But the key issue is that that restrictive covenant is still in place.

Mr F.A. Alban: Are you happy with it staying in place? You are my neighbouring member of Parliament. Make a statement. Are you happy for the restrictive covenant to stay in Ellenbrook?

Ms R. SAFFIOTI: I want the member for Swan Hills to deliver on his promises.

Mr F.A. Alban: Do you want me to do it, then?

Ms R. SAFFIOTI: It was the member for Swan Hills' promise. Does he want me to do it?

Mr F.A. Alban: Tell Vic Evans you oppose it too.

Ms R. SAFFIOTI: It is the member's promise.

Mr F.A. Alban: Be a hero for today and say, "I oppose it too, on behalf of my constituents."

Ms R. SAFFIOTI: It is the member's promise, made by his government.

Several members interjected.

The ACTING SPEAKER: Order, member for Swan Hills! I have given the call to the member for West Swan.

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Ms R. SAFFIOTI: Today it is about whether the government's election promise will be delivered. I think also that it encompasses more broadly the promises made to the people of Ellenbrook. For example, we have heard about the Ellenbrook rail line. A commitment was made to begin construction of that rail line in 2012. But that commitment has been redefined. I am not exactly sure about the status of that rail line in the scheme of things. Two feasibility studies are being undertaken, one for a busway down Alexander Drive —

Mr F.A. Alban: That was your promise. You campaigned with "Trains Are Us". You were going to give us a train, and one down your way as well. I have the article with me. It says "Train for West Swan".

Ms R. SAFFIOTI: We are in opposition. If I could build a railway line tomorrow, I would, but we are in opposition. The member for Swan Hills must understand that he is a member of the government. Government promises are the ones that have to be delivered on because government members are in power. His government made a commitment to build the Ellenbrook rail line. I look forward to seeing its progress. The government has delayed the construction date by a term.

Mr F.A. Alban: Is this to do with the covenant?

Ms R. SAFFIOTI: The member for Swan Hills said that he did not care about the rail line until the covenant matter was resolved.

Mr F.A. Alban: I said that to you in confidence. We had a little coffee and a chat, did we?

Ms R. SAFFIOTI: He is quoted in the paper; he said that the Ellenbrook railway line would not be a priority until after the restrictive covenant was dealt with. This affects not only the people of Ellenbrook but also the people of Henley Brook, a suburb south of Ellenbrook, who are my constituents, and, more broadly, the people of the whole region. It is about meeting commitments. If the member for Swan Hills wants to rewrite commitments, he can do that. But let him be clear about rewriting the promises made to the people in the area.

MR F.A. ALBAN (Swan Hills) [4.44 pm]: As I said earlier, I have a copy of the advertisement. All my ads were the same and my handouts contained the same promises. They are quite interesting. I am really proud of them. The first one states "Make our streets safe again". I cannot imagine anyone saying that the Liberal-National government has done nothing about that. The hoon law has been passed, the graffiti bill is being debated, and —

Several members interjected.

Mr F.A. ALBAN: — mandatory sentencing has been passed.

I have plenty of time. The second point, not the first point, states very clearly, member for West Swan —

2 Campaign for the Ellenbrook business district to develop free from any restrictive covenants.

Every day since I have been a member of this place, I have campaigned and campaigned and campaigned on this matter. I have been the only person with the courage to stand up and campaign because that lot over there did nothing. This gives me a great opportunity, members opposite, to finally get this off my chest. I would like to thank the member for Rockingham. I will start this saga with a recent quote from the local paper. It reads —

Ellenbrook seems to be set for tragedy again under the restrictive covenant set out by the Insurance Commission of Western Australia.

I hope Mr Evans is listening to me. To continue —

Another much needed amenity, Toyworld, has recently been instructed to put its development on hold...

This is a little toy shop.

and if it continued they would be in breach of the restrictive covenant.

Is it not wonderful: we cannot have a toy shop in Ellenbrook. Apparently that is okay now; it is all kosher and everyone is happy.

For the benefit of members of this house I will tell them the sad story of this restrictive covenant and my involvement. The member talking is interested, is he not? I first became aware of this on 3 June 2008. I was invited to an Ellenbrook Business Association meeting. The member for Girrawheen, as the then Minister for Local Government, was at that meeting. The mayor and councillors from the City of Swan were also there. The covenant had been implemented in 2003, and the City of Swan had not known—this comes from the former mayor and councillors—nor were they contacted when it was applied to the land at Ellenbrook. In my opinion, it was covered up. Something like that cannot usually be hidden from a local government unless there has been —

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Mr A.P. O’Gorman: Are you saying the Insurance Commission acted improperly?

Mr F.A. ALBAN: There must have been an amount of cover-up, otherwise why would the local government mayor, councillor and CEO tell me that they were not aware of something for four years? I cannot vouch for the truth of what they said, but they are exactly the words they used. The interesting point is that for the whole of that time, the issue was under the watch of members opposite when they were in government. I am not sure what they are excited about. I know they are happy for me to fix it for them. For the whole duration of 2002-08 the situation was under the watch of members opposite. What did they do? Not a terribly much.

Mr W.J. Johnston: What did you do?

Mr F.A. ALBAN: I thank the member for the question. I was a councillor; I was not the member for Swan Hills. Immediately I found out—almost the same day—I moved a motion in a City of Swan meeting to have an investigation into whether it affected the Ellenbrook business district.

Mr W.J. Johnston: You set up a committee.

Mr F.A. ALBAN: It was not a committee, Mr Smiley—it was not. This question might make things interesting: why would a local government like the City of Swan say, “We didn’t know; we were not consulted”? Those are their words. The story continues. In my opinion, there were three perpetrators.

The ACTING SPEAKER (Mrs L.M. Harvey): Order! There is a lot of feedback in the house at the moment, and I am not quite sure how much of it is coming from members and how much is coming from the public gallery, but in the interests of recording this debate accurately in *Hansard*, I request that we keep the noise down.

Mr F.A. ALBAN: There were three parties to this covenant: LWP Holdings Pty Ltd, Woolworths and the Insurance Commission of Western Australia. All three parties stood to benefit from this arrangement, to the detriment of the Ellenbrook community. LWP stood to benefit, because it received more money for the land it sold to the Insurance Commission. Woolworths is a real worry for me; I have not been able to understand it. From whom did Woolworths need protection? I thought it was the biggest retail chain in all of Australia, but it needed a covenant to protect it. Poor Woolworths! There had to be a covenant to get Woolworths involved. It just could not subsidise one shop in Ellenbrook. However, Woolworths has also said quite publicly that it had never asked the Insurance Commission to enforce the covenant. I am not sure exactly what is going on there. I am not sure whether Woolworths wanted the protection. Is it possible that it was trying to give us cheaper shopping as a result of being protected from competition by this covenant? I do not think so. The Insurance Commission of Western Australia hit the jackpot. A businessperson could not buy land and set up a business. Anyone wanting to open a business in Ellenbrook had to do so on the Insurance Commission’s land, in its premises and on its terms, paying rent that is equivalent of Perth central business district prices. I believe it is somewhere between \$800 and \$900 a square metre, when the market price in Ellenbrook is probably \$300 a square metre. There are heroes all round here, except in the eyes of the people of Ellenbrook. ICWA’s reasoning was that this covenant was for the proper development of Ellenbrook, otherwise it would be a mess. I could ask ICWA how the development could be a mess when it owned all the land where the town centre was going to be. Who was going to mess it up?

A good example of how this is holding up the development of Ellenbrook is that just recently Prime Developments Pty Ltd built a complex on Main Street, which is close to my office. Anyone who has been there lately will know that it is the Dome shops. Everyone likes to see the Dome, and it is a magnificent development. That is where the little toy shop is now. I acknowledge the courage of a guy called Joe Passione, who constructed these buildings in spite of all the threats from the Insurance Commission. He built it notwithstanding that it was in contravention of the covenant, and now the Insurance Commission has to deal with that. It has been shown up to be exactly what it is.

Mr P. Papalia: What is that?

Mr F.A. ALBAN: It is enforcing the covenant.

Another gripe that I have when I go to my office every day is that opposite my office there is a sign that says “Site of future tavern”. Anyone in a new town would be excited by such a sign, but apparently it has been there for seven years, and I am still holding my breath. Apparently it is happening soon; there will be a sod-turning soon. Christmas is coming soon too. A really interesting aspect of the story is that one of the parties to this covenant, LWP, continued selling this land to people coming to Ellenbrook, who would then build premises and then be unable to operate. LWP knew of the grief that had happened to the previous people and continued to sell the land, and is still doing so today, apparently. By the time I became aware of this, dozens of businesses had bought land from LWP and were being threatened with legal action and prosecution.

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This covenant, which appears to be legal and which everyone says is legal, but I believe is completely immoral for the people of Ellenbrook, will continue until December 2018. It has already resulted in broken lives and broken families, and it is having a negative impact on each and every resident of the town of Ellenbrook, through the lack of jobs, lack of shops, lack of competition and lack of choice. This is all for the benefit of large companies at the cost of ordinary people.

Mr M.P. Whitely: What are you going to do about it?

Mr F.A. ALBAN: I am coming to that.

Where were the champions of the ordinary working people? The businesses of Ellenbrook came and asked for the previous government's help, approaching various members, including ministers. Finally, out of desperation they went to see the former Premier, who came to Ellenbrook and promised a train service instead of doing something about the covenant. What did the Premier do? Have a guess! Nothing! It is the nothing party, and members opposite accuse me of not doing anything. He came, he saw and he mucked up and lost Swan Hills to little Frankie.

Point of Order

Mr M. McGOWAN: Madam Acting Speaker, when members are referred to in this house, they should be referred to by their titles and not by nicknames. I request that the member for Swan Hills —

A government member: He was talking about himself.

Mr M. McGOWAN: I know that, but the member should refer to himself by his title, and not by a silly nickname.

The ACTING SPEAKER (Mrs L.M. Harvey): There no point of order.

Debate Resumed

Several members interjected.

Mr F.A. ALBAN: I am hurt!

Mr M.P. Whitely: That was little Frankie talking there.

Mr F.A. ALBAN: It was. I am hurt. I am really upset. The member for Bassendean is really intimidating!

There was another development. Since becoming the member for Swan Hills, I have campaigned to have this disgraceful situation ended.

Mr M.P. Whitely: But what have you done?

Mr F.A. ALBAN: If the member just listens, he might learn something. I know he talks a lot, but I do not think he listens very much.

My campaign includes a recent petition to this Parliament from the community of Ellenbrook, asking for the Parliament's help. The community did not ask only for the Liberal Party's help; it asked members opposite as well.

Mr J.R. Quigley: Then you'll vote with us on the motion.

Mr F.A. ALBAN: Does the opposition have one?

Mr J.R. Quigley: Will little Frankie vote with us?

Mr F.A. ALBAN: That is okay; I have no problems with that.

Several members interjected.

Mr F.A. ALBAN: Hansard will be having a field day.

Mr P. Papalia: You were comfortable at the council, weren't you?

Mr F.A. ALBAN: I was quite successful too. Was the member on council?

Mr D.A. Templeman interjected.

Mr F.A. ALBAN: I believe that it is necessary to deal with this issue on behalf of all the people of Western Australia. That includes the member for Mandurah.

Several members interjected.

The ACTING SPEAKER: Order! Members, I have given the call to the member for Swan Hills, and I would like to hear the end of his speech.

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Mr F.A. ALBAN: Thank you for your protection, Madam Acting Speaker; I am intimidated.

Mr A.P. O’Gorman: You need protection.

Mr F.A. ALBAN: I probably do.

I am incensed that a government instrumentality of this state could behave like this, and we must make sure that it does not happen again. While members opposite are all very chirpy, do they know what the previous government did? I think they like that part. From 2002 to 2008, considering that this covenant was imposed during the previous government’s watch, did it do anything at all? The former member for Swan Hills knew, and did nothing. Various ministers were asked for help and did nothing. As I said earlier, the former great white hope of Labor did nothing as well. Very simply, the people of Western Australia have not believed members opposite in the past. That is why they were dragged out of government. They also do not believe the grandstanding today by members opposite. The people of Western Australia, particularly the people of Ellenbrook, are tired of Labor members’ spin, which includes their spin today. It is about time members opposite added some action to their rhetoric of looking after ordinary working Australians. They know the rhetoric I am talking about that they use all the time. Let us see opposition members condemn this covenant. Let us see them stand in this place and condemn it while Mr Evans is in the public gallery and let us see them offer the government support. Better still, why would they not support a bill that would ensure the people of Western Australia are never again subject to this disgraceful monopoly? Let us see members opposite come up with more than empty words and cheap political shots, like they have come up with today, and let us see them make up for their indifference in the past.

MR J.R. QUIGLEY (Mindarie) [5.00 pm]: I rise to speak on the question of restrictive covenants and to reply to the last comments of the member for Swan Hills. From time to time in the development of society and in the development of any community there is a need to promote commerce in uneconomical circumstances. We have seen these sorts of measures taken before—for example, the twin-airline policy of Australia and the monopoly in Western Australia that was granted to the former MacRobertson Miller Airlines because the monopoly would service uneconomical routes. The protection of private enterprise, therefore, in a start-up situation is neither novel nor objectionable. However, circumstances change. When Ellenbrook was originally started as a greenfields site, there was little prospect of a large company moving in to start the retailing that would be needed to support the community once it arrived. Hence the Insurance Commission of Western Australia, which was the original holder of the land, was granted a restrictive covenant so that it would become more attractive for companies to move into what at that stage was a reasonably remote area of the metropolis, although it is not now. This gave confidence to people leasing in the area, most notably the national chain Woolworths, and that attracted other traders to the area.

The member representing Ellenbrook referred to Prime Projects, a company with which I am familiar. The member referred to the problems experienced by the chairman of Prime Projects, Mr Joe Passione—a businessman, I understand, of exceptionally high integrity. People from Prime Projects have also met with me and explained the difficulty with the latest strip of shops they have developed. They tried to and succeeded in going beneath the restrictive covenant, which prohibits the development of other businesses that exceed 350 square metres in gross floor area. Therefore, by keeping the development and the shops below 350 square metres, they do not offend the covenant. An objection was then made that another clause in the covenant provided that any shop that started in the area had principally to service the Ellenbrook community. That was the other part of the covenant. As I understand the representations in the letter I received from Mr Passione of Prime Projects, one of the shops put up for lease was to be a toy shop. ICWA said that the lease to a toy shop was not to a local business and that it offended the covenant because it was not a shop that would service the local community in the same way that a local fruit and vegetable shop would. Prime Projects responded to that—through lawyers, as I understand it—saying that it could not be argued that a business for toys would service a community outside Ellenbrook and asking why families in Ellenbrook could not shop locally for their Christmas presents instead of having to travel to Midland. Bit by bit, therefore, the covenant was attacked and concessions were made.

ICWA said that it was the lead tenant, Woolworths, that was against the toy shop, not ICWA. ICWA’s lead tenant, Woolworths, has made it well known to Prime Projects and to other landholders that it is now at the point at which it does not see a need for the restrictive covenant to benefit its business, as its business is established. As can be seen with a lot of national chains, they prefer to have critical mass around them. It is the same old story of having two ice-cream sellers on the beach, one at one end of the beach and one at the other. However, when the two ice-cream sellers are in the middle of the beach, there is a lot more activity and both traders do better. So it was that Woolworths came to recognise that more shops meant more people would visit the area and its trade would therefore increase. The lead tenant was therefore attracted initially to Ellenbrook by the

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restrictive covenant because it served a social purpose. One wonders whether the shopping centre at Ellenbrook would ever have got up in time had there not been that restrictive covenant.

The restrictive covenant runs until 2018, as the member representing Ellenbrook pointed out, but no-one really expected any of these suburbs to spread as fast as they have. I include suburbs such as Clarkson in my electorate, which is miles from the member's electorate. The developer of Clarkson, Urban Pacific, sold out the development at Clarkson in about two and a half years but had about an eight-year budget time to sell it. The development at Butler has nearly gone; Settlers has nearly sold out its development at Butler.

Mr A.P. O'Gorman: And Brighton.

Mr J.R. QUIGLEY: The developments at Brighton have nearly gone and that is why developers are moving to Alkimos.

Again, the restrictive covenant was granted until 2018, as it was thought that 15 years would see the community up and running. It all happened more quickly than expected. The restrictive covenant then, instead of working for the social good of the local community, started to work against it because the community's needs had outgrown it. ICWA, therefore, remains as the last corporate entity opposed to the release of the restrictive covenant, which by the way is registered on all the titles. These restrictive covenants are not private contracts; they are registered on the titles at the land titles office.

Mr C.J. Barnett: I just told you that.

Mr J.R. QUIGLEY: I know, but every restrictive covenant gets registered.

Mr C.J. Barnett: No, not necessarily, I don't think. There are variations.

Mr J.R. QUIGLEY: Most of them are registered. The Premier did remind me of that as well; I do not shy away from that. When developments in the north are registered, they are put on the title to protect the people buying into them. However, the last legal entity with an interest in the restrictive covenant in Ellenbrook is now ICWA itself. It has a legitimate interest because it has put in the commission's money to buy up greenfield and broadacre sites. It developed the shopping centre and now owns land around the shopping centre that it is yet to develop. If the restrictive covenant goes, it might adversely affect the prices that ICWA could get for new tenancies on the land around the big shopping centre. ICWA, therefore, has a legitimate interest.

The reason I jumped to my feet to speak on this motion, and I know the Premier is keen to speak on this motion —

Mr C.J. Barnett: Very keen.

Mr J.R. QUIGLEY: I jumped to my feet to speak to extend an invitation to the government, because it is really up to the government as to which way it wants to go in this matter. When we face a situation in which the only entity protected by a restrictive covenant is a government entity, it is up to the government ultimately to decide whether it will hold that restrictive covenant. If the government does not want to hold the restrictive covenant, it is simply a matter of compensating ICWA. It is the last entity that can be affected by the release of the restrictive covenant. That could be done legally. As the Premier knows, Prime Projects has consulted senior counsel—I think Mr McCusker, QC, and possibly another silk in Sydney with whom I have spoken. The restrictive covenant could be released very quickly for the member for Swan Hill's electorate. It is a question of economics, as it would require some compensation to ICWA. However, because ICWA is a government entity, ultimately that does not mean the compensation must be in dollars. One way of compensating ICWA may be by giving it access to land elsewhere in the metropolitan area that is of equal value, and on the same sorts of terms. That is one way out of this problem. A restrictive covenant of itself is not an evil thing. This restrictive covenant is no more evil than the monopoly that was given to MacRobertson Miller Airlines after the war. That monopoly was given because the state would never have developed without MacRobertson Miller Airlines. People would not have been able to fly to Broome without MacRobertson Miller Airlines. That is because that route was not viable in terms of passenger numbers. However, once MacRobertson Miller Airlines had been given that monopoly, in the 1960s towns like Mt Newman and Karratha were also able to get an air service, because that airline was able to service routes that would otherwise have been uneconomical. It was the same in Ellenbrook. Who would have wanted to develop on this greenfields site this big shopping complex that one day would be needed for the community? The suburbs of Karrinyup, Scarborough and Innaloo are old suburbs that in the 1960s had been serviced by grocers such as Charlie Carters and Tom the Cheap. In Ellenbrook, would anyone have wanted to wait for 20 years to build a shopping centre, as they had to do in the suburbs of Karrinyup, Scarborough and Innaloo until a critical population had been built up and they could start to build Karrinyup Shopping Centre? No. That is why they wanted to start back to front in Ellenbrook and put in the services at the start. They wanted

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to make Ellenbrook attractive to young families. They wanted young families to know that they only needed to go just down the road and all the shops would be there. However, to do that, they needed the protection of a restrictive covenant. I do not think that was an evil thing to do. I do not know whether the local shire was involved in that. It was certainly involved in the planning and the structure plan for the centre.

There has now been a population explosion in Ellenbrook and a critical mass of people has been achieved that would make another shopping centre in Ellenbrook viable. The traders at this shopping centre no longer need the protection of this restrictive covenant. The traders, the principal one being Woolworths, have made it known to senior counsel and to Mr Passione and to Prime that they are no longer relying upon this restrictive covenant. Therefore, it distils down to the situation of ICWA. ICWA, as a wholly owned government enterprise—albeit an off-budget statutory enterprise—needs to be compensated. If the Premier and the government want to deliver a release of this restrictive covenant for the community, it is a question of whether the government will have the resolve to compensate ICWA, perhaps not in dollar terms but by a land swap or some other means. That is the answer, as I see it, to this problem. It is not a question of ideology. It is not a question of people having done an evil thing back in 2003. Everyone tried to help this community to get up and running. It is not a matter of party politics. I can understand where the Liberal Party is coming from in its election pamphlet. I can understand what happens in the heat of battle during an election campaign, but now that the dust has settled a cool decision needs to be made by the government. The government needs to make that cool decision. Is it now time to deliver to the people of Ellenbrook a release from this restrictive covenant? If it is time, then it is for the government to negotiate some compensation with ICWA. If the government is not ready to help the people of Ellenbrook, it can put its hands in its pockets and walk away. But if the government really wants to help the people of Ellenbrook, it will come to an agreement with ICWA.

ICWA is not an independent trading body that is competing with the government or anyone else. ICWA has a statutory responsibility to protect its balance sheet, and to keep premiums as low as it can. Therefore, ICWA cannot just throw away a right or have a right stripped from it. This restrictive covenant is not about protecting the traders. Woolworths does not want this protection. This covenant is about protecting ICWA's value in the land that it holds around this shopping centre and that it has yet to develop. If this restrictive covenant comes off, it could be argued that the land that ICWA has yet to develop will depreciate somewhat in value. The Valuer-General, or the Treasurer or Treasury, would be able to work out through the actuaries what the cost to ICWA would be if the covenant were to be removed now in 2009, nine years early. If the government really wanted to deliver to the constituents of the electorate of Swan Hills, it would find some way in which it could compensate ICWA. If the government does not compensate ICWA, it means that at the end of the day it does not give a rat's tail about the constituents of the member for Swan Hills. So it is up to the government.

MR C.J. BARNETT (Cottesloe — Premier) [5.15 pm]: I want to go through some of the history of this matter, particularly insofar as it involves me. During the election campaign, the now member for Swan Hills raised with me the issue of the restrictive covenant at Ellenbrook. I met with the member for Swan Hills, and I met with some of the property owners and some of the people who wished to see more retail outlets established in Ellenbrook. During the election campaign, I promised to look into whether this restrictive covenant contravened the Trade Practices Act. Indeed, on 25 August 2008, I wrote to the then Liberal candidate for Swan Hills, Mr Frank Alban, about this matter. I concluded that letter by saying, "If elected, a Liberal government will immediately seek advice on whether the Ellenbrook restrictive covenant complies with the Trade Practices Act". That was the commitment that the Liberal Party took to the election. Implicit in that commitment was that we would work to remove that covenant. I accept that.

The reference to the Australian Competition and Consumer Commission related to the fact that the ACCC had held an inquiry —

The ACTING SPEAKER (Mr P.B. Watson): Premier, are you the lead speaker on this motion?

Mr C.J. BARNETT: No; I did not nominate myself as that.

The ACTING SPEAKER: That is all right. The Clerk just asked me about that.

Mr C.J. BARNETT: That line of inquiry followed a report by the ACCC into the effects of restrictive covenants. That report had been released on 5 August 2008. In that report, the ACCC said that a restrictive covenant in a lease would contravene the Trade Practices Act if it had the purpose of substantially lessening competition—that is, the test that was put in place was that a restrictive covenant would be in breach of the Trade Practices Act if it substantially lessened competition. Therefore, that seemed to be a matter that was worth pursuing. We undertook that inquiry. The response that ultimately came back from the ACCC was that the ACCC had examined the restrictive covenant, and that although it might limit competition to some extent, the deputy director of the ACCC in Western Australia had advised that he did not consider the lessening of competition to be substantial, and also that he needed to take into account the whole geographic market, which

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he considered to be broader than just Ellenbrook. Accordingly, in his view, the relevant provisions of the Trade Practices Act had not been contravened. So we did what we committed to do in the election—we explored whether the covenant breached the Trade Practices Act. Obviously, that would have been one way of getting rid of the covenant. We made that inquiry, and the answer that we got was that the covenant did not lessen competition to the extent that it would be a breach of the act. Therefore, we did not give up, as has been suggested by members opposite.

I met with the Insurance Commission of WA last year, and I have met with it subsequently. In fact, I have met with the chief executive officer and chairman of ICWA on this issue. I have also met with Woolworths—Woolworths being the major tenant of this shopping centre—and I have sought and received an assurance from Woolworths that it would not stand in the way of the removal of this restrictive covenant. Indeed, members of my staff, and the Treasurer and others, have also pursued this issue. ICWA has advised the government and me that the reason for the difficulty in removing the covenant is that it is registered on the titles, as the member for Mindarie has just said. It is registered on the titles of all the land in the town centre. So, it is not a matter of simply waving a wand. The covenant is registered on the titles of all the properties in the town centre, whether they are developed or not developed. That is the reality. Members opposite should remember that this covenant was put in place in 2003 under a Labor government. The Labor Party had been in power for two years when this covenant was put in place. Maybe it was the right thing to do at the time—I do not know. But it is a bit rich for Labor members of Parliament to come in here and attack this government over something that was put in place under their authority two years into their term in government.

Mr M.P. Whitely interjected.

Mr C.J. BARNETT: The member for Bassendean did not listen!

Mr M.P. Whitely: I did listen, and you should listen to your own promises.

Mr C.J. BARNETT: I just read out the commitment that I gave as Leader of the Opposition during the last election campaign. I put this commitment in writing and gave it to the member. If the member for Bassendean cannot grasp that, I suggest that he goes outside, and I will give him a copy of the letter and he can sit down and read it carefully, slowly and digest it! I will continue.

Several members interjected.

The ACTING SPEAKER: I am trying to hear what the Premier is saying, as I am sure is everyone else, including Hansard.

Mr C.J. BARNETT: I made very clear the commitment I gave during the last election campaign. I gave that commitment in writing to the member for Swan Hills. If any member wants a copy of that letter, I am happy to provide it to them.

Mr P. Papalia: Such a good commitment they elected him; he is so convincing.

Mr C.J. BARNETT: The member for Warnbro is the most ordinary performer in this Parliament. The member has an ego way above his competency level.

The negotiations with ICWA got pretty tense. I am extremely frustrated that this issue has dragged on and has not been resolved. Any suggestion from members opposite that the government claims it is resolved is false. I do not know how members opposite could possibly reach that conclusion. However, some progress has been made, albeit at a snail's pace. The situation now is that ICWA has stated that, subject to agreement being reached with Woolworths, which I do not think is a difficulty; the Ellenbrook developers, which may not be a difficulty; the City of Swan; and the private developers, ICWA will relax the interpretation of what constitutes local needs. Basically, that will allow shops up to 300 square metres as long as they are not constructed or formed in such a way to constitute an alternative shopping centre. That will allow some movement at the station, albeit not everything I would want or that the member for Swan Hills would want. However, at last there is some movement.

ICWA will need to consult the existing tenants in the shops. Those tenants took up leases on the basis of that covenant. The member for Swan Hills and others will have to consult other property owners in the area. It is complicated, because it is on the title. People purchased land and entered into leases in good faith on the basis of a covenant established in 2003 under the previous Labor government. We have to deal with that. We are not going to wipe away people's legal rights, as much as the covenant is something we would prefer not to have, as it does limit competition. It is limiting new entrants into Ellenbrook and is limiting the choice and variety of retail outlets for the people of Ellenbrook, and we are not happy about that at all. That is why my staff and I have put so much time into the issue. ICWA is working on the issue. I would probably prefer that it worked harder, and we have had some tough meetings over that.

The government is taking the issue forward. There is now some movement. It is not resolved but there is some movement. I take some comfort from the fact that, as part of this, ICWA has negotiated with the developers to bring forward the development of stage 2. Stage 1 consists of 35 or 36 shops. That is in place. Stage 2 comprises a further 60 shops, which is a major expansion and a more than doubling of the centre. Construction work on stage 2 is due to start early next year, with the new centre shops opening at Easter 2011. That will provide a lot more outlets in a comparatively short time. We are looking 18 months into the future, when hopefully there will be another 60 shops. That will relieve the pressure and meet the demand, as will lifting the restrictions on premises of 300 square metres or less. Maybe it will work out in some way.

It is rich that members opposite profess that my government does not care about the issue and, in their words, “breaks election promises” and the like. This covenant has been around since 2003. The problem emerged relatively quickly. Indeed, people took it up with the previous Labor government. Correspondence, which I am happy to make public, from the former Premier, Hon Alan Carpenter, member for Willagee, to Mr T. Tough reads —

I am advised that ICWA has been co-operative and sought to resolve your problem in a conciliatory manner. I am also of the view that the ICWA has acted properly.

The former Premier washed his hands of it. Basically, the Labor government washed its hands of the issue, yet members opposite have the hide to come in here, when we have been in government for one year, and say that we have done nothing about it. Members opposite washed their hands of it!

The project was set up under Labor’s jurisdiction and presumably ICWA reported to the Treasurer of the day, now the Leader of the Opposition.

Mr E.S. Ripper: Actually, it was to the Minister for Government Enterprises.

Mr C.J. BARNETT: It was a different structure; I accept that. When the issue was raised with the former Labor Premier, he basically washed his hands of it. Members opposite come in here and claim that the member for Swan Hills, or me as the now Premier, have broken election promises. We did exactly what we said we would do. It did not give us the result that we wanted because it was found by the Australian Competition and Consumer Commission not to be in breach of the Trade Practices Act. We did not stop at that. We have continued to pursue the issue, and we will continue to pursue it. I hope that we will see an accelerated phasing out of this covenant. I hope that we can reach agreement.

In theory, under the act, the minister responsible, the Treasurer, could come in and give a direction to ICWA. Responsible governments do not lightly give directions, particularly over financial matters. ICWA has its own responsibility in the development and to property and land holders in the area, and it has an overriding responsibility to the people who fund ICWA, who are basically motorists; ICWA has a responsibility to those people who may be injured in traffic accidents. ICWA has a responsibility to protect its role and the people whom it serves. ICWA is an insurer of motor vehicle accidents. That is ICWA’s role and it has to be responsible in that role. I respect and understand ICWA’s position.

Under the covenant as it is, the size of local stores will increase from 300 square metres to 1 000 square metres after 2014. While the covenant in its current form will expire in December 2018 or when the population of Ellenbrook reaches 63 000, I hope that we can negotiate with ICWA, Woolworths, the existing lease tenants and land holders to phase this out more quickly. In the meantime, I have encouraged ICWA to bring on the stage 2 development.

It is not an ideal result. I would much prefer that the covenant were not there. However, I am not about to ask the Treasurer to exercise his authority and give a direction to ICWA. That is not the responsible thing to do. We will continue to get movement and to phase this out and hopefully we will balance out the various factors and see development take place so that the people of Ellenbrook can have the sort of choice and number of retail outlets that they deserve.

The member for Swan Hills has driven me absolutely mad! I may be well advanced down that path in any case, but the member has been relentless: a dog with a bone on this issue. The member for Swan Hills has relentlessly pursued the Treasurer and me, and other members on this issue.

Mr M.P. Whitely: He is not smart enough to be a kelpie.

Mr M. McGowan: He likes to be called “little Frankie”!

Mr C.J. BARNETT: I do not care what he likes to be called. The member for Swan Hills is a hardworking member on an issue that is not within his capacity as a member of Parliament to resolve, because he is dealing with legal structure and titles on land established during the time of the last Labor government. The member is

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relentless on this and he is succeeding in at least getting some movement, and he and this government do not dismiss the issue as the previous government did. We did not do that. We take this up as a genuine issue. I find it a bit rich, to use that expression, but I am not surprised by the calibre of the contributions from members opposite. This was a “let’s have a crack at Swan Hills”! The member for Swan Hills is a decent, hardworking member, and, frankly, if members opposite want to talk about ethics and standards, the contributions opposite were pretty damn minimal!

MR E.S. RIPPER (Belmont — Leader of the Opposition) [5.30 pm]: The history of this matter is not the issue here. This is not a debate about the merits of Labor government policy with regard to the behaviour of the Insurance Commission of Western Australia or Liberal government policy with regard to the behaviour of the Insurance Commission of Western Australia. This is purely and simply about holding the Barnett government to account for an election promise that it made. Forget the history; it is not relevant. It is not a matter of whether we have the hide or the gall to raise the issue. The issue was raised by the Liberal Party during the election campaign. It is our role as an opposition to hold the Liberal Party to account for the promises it made. Let us go to those promises.

We all know how some people conduct election campaigns. The words are carefully crafted but the impression that people want to create is something different entirely. I will go to the official promise that the Liberal Party made. Ellenbrook’s *The Advocate* dated 3 September 2008 includes an advertisement for Frank Alban, Liberal member for Swan Hills. Under the heading “More Local Businesses”, it states —

A Liberal Government will investigate the legalities of the restrictive covenant being imposed on the Ellenbrook business district.

That is what the government hangs its hat on. That is all it promised—to investigate the legalities. That is not the whole story. I then go to page 3 of the *Hills Gazette* published on 30 August 2008, which includes “A message from Frank Alban”. Next to a box with a tick in it, it says —

an end to ‘restrictive covenants’ that block businesses and deny shopping choices and local jobs.

It was authorised by B. Morton, 640 Murray Street, West Perth. A written promise was made to end the covenant. The more important question is: what were the electors of Swan Hills led to believe by all the different activities of the Liberal Party and the Liberal Party’s candidate? I will again quote from Ellenbrook’s *The Advocate*. The second paragraph of the story on page 5 of the 20 August 2008 edition states —

Liberal candidate Frank Alban and Labor candidate Graham Giffard both promised to do all within their power to abolish the covenant if elected to the marginal Swan Hills seat.

That is what the electors believed. I will show members that the government is not doing all within its power to do that. It has the legal authority to act and it is refusing to exercise that legal authority. It is not doing what the electors of Ellenbrook were led to believe. That is not the only evidence of what the electors of Ellenbrook, taking into account the entire range of activities of the Liberal Party candidate, were led to believe. I have a letter from Ellenbrook’s *The Advocate* dated 18 February 2009. There is a letter to the editor from Raymond B. Horton, who reports on a couple of conversations he had during the election campaign. He reports on a conversation he had with the member for Willagee. He also reports on a conversation he had with the Liberal candidate. The letter states —

In the meantime, Liberal candidate Frank Alban said he would have the covenant removed.

That is what an elector from Ellenbrook reports he was told by the Liberal candidate, the now member for Swan Hills, during the election campaign. Lest we think that we should not take into account the testimony of a mere humble voter who does not hold any particular position, let me quote from someone who is now no longer with us, which I regret very much. He held a very important position. The Mayor of the City of Swan, Councillor Charlie Gregorini, wrote to the Treasurer as follows —

This was a significant issue in the lead up to, and during, the recent State election campaign. The new member for Swan Hills, Mr. Frank Alban, campaigned for the removal of the covenant as an election promise.

Mr Raymond B. Horton, an ordinary elector, believed the promise that the covenant would be abolished. Councillor Charlie Gregorini, who was the Mayor of the City of Swan and who knew the member for Swan Hills very well, also believed that that promise had been made.

We all know how some people operate in election campaigns. We all know that some people keep the words defensible but the impression they want to create is something else entirely. What they say when there is no tape

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recorder or journalist or document around for them to be held accountable to is something entirely different. I think the member for Swan Hills was out there telling people that the covenant would be abolished, or at the very least he was wilfully and negligently letting people believe that if he were elected, this is what he would do.

I am advised that the history of this event is that the developers approached ICWA and asked it to invest in a foundation shopping centre. It wanted to promote its development to deliver shopping services for that area ahead of a time when the market would normally deliver that. The developers approached ICWA to build the shopping centre. To sweeten up the deal for ICWA, it said that it would put a restrictive covenant around commercial land so that there would not be competition if ICWA invested in the shopping centre. This is primarily a matter of the commercial advantage, the investment protection, conferred on a government trading enterprise. There may be implications for some of the businesses that then leased the shops in the shopping centre, but so far as I can follow the debate, apart from ICWA, no other commercial body is putting up its hand to say, "Don't remove the covenant; this will disadvantage us." If there is a commercial body in the private sector that objects to the removal of the covenant, let us hear from that body. We have not heard from it in the entire debate. The Premier has not been able to cite a single private sector organisation that is protesting against the removal of the covenant. ICWA does not want to see the covenant removed. I can well understand ICWA's position. It is charged with running a commercial operation. Its directors have a statutory obligation as do the directors of a private sector corporation. It cannot and it should not make a non-commercial decision. Its view is that it is being pressured by the government to make a decision that would erode the value of ICWA and transfer value to the private sector, to those people who bought the land with the restrictive covenant—presumably with a lower price being paid because of the restrictive covenant—who will privately benefit as a result of the lifting of the covenant.

There are some issues of concern when we think about this matter. The government made a promise. Presumably, when the government made that promise, it took into account all these issues. My colleagues and I are passionate about this issue because we know that the government has the power to act. The government could fix this problem. The government is refusing to use the powers that it has.

I want to quote from section 10 of the Insurance Commission of Western Australia Act 1986. It is entitled "Directions by Minister" and states —

- (1) The Minister may give directions in writing to the Commission with respect functions, powers and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.
- (2) The text of any direction received by the Commission under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.
- (3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

I have checked the second act referred to, and it simply provides that the commission cannot be directed to do something unlawful. There are mechanisms through which the directors can seek to have the direction confirmed, if they object to the direction. However, if it is confirmed, it has to be complied with.

The government quite clearly has the power to implement the commitment made by the member for Swan Hills.

Mr J.H.D. Day: Is that what you'd do?

Mr E.S. RIPPER: I am saying that the government made the promise and we are holding the government to account. The government made the promise and it has the power to implement it. It may not be a good decision, but the government made the promise for better or worse. It is now telling the electors of Swan Hills that it is all too hard, that it cannot do anything about it, and that it is more complicated than originally thought. That is rubbish; absolute rubbish. The opposition will circulate to the electors of Ellenbrook section 10 of the Insurance Commission of Western Australia Act 1986. We will tell the member for Swan Hills' electorate that it is simply a matter of the Treasurer making a direction to the Insurance Commission of Western Australia.

There is another thing that needs to be done. I do not believe that the accounts of the Insurance Commission of Western Australia should be compromised by a direction to act in a non-commercial manner. There is a proper, open, transparent way for the government to deal with this issue. If the government wants a non-commercial outcome for social or small business reasons in the electorate of Swan Hills, it is within the government's power to produce that non-commercial social outcome. The government should make an assessment of the loss of commercial value to the Insurance Commission as a result of the removal of the covenant, and make a payment to the Insurance Commission so that it can implement a non-commercial decision in the interests of social and

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small business concerns in the electorate of Swan Hills. That is a perfectly appropriate way to go. The directors of the Insurance Commission would be comfortable because they would not be directed to do something non-commercial. They would not be asked to effectively breach their statutory obligations. It would all be above board and we would know the full cost of the government's promise, because we would know the value that ICWA will have had to give up. It would all be on the public record and it would all be open and transparent.

I get very concerned when I listen to the Premier talking about his proposed course of action. His proposed course of action appears to be to put pressure on the board of the Insurance Commission to make a non-commercial decision without issuing a written direction, and without providing any compensation from the consolidated fund. That is not right; if that course of action is followed, we will never know what this promise will cost the taxpayers of Western Australia, and the motorists of Western Australia who pay compulsory third party motor vehicle insurance premiums. We will never know what this promise will cost them because the government, after all, appoints the directors of the board of the Insurance Commission, so they will be feeling the pressure; the Premier is an important person. They will read the *Hansard* of this debate and see that the Premier has expressed his displeasure. The Premier, instead of using the open, honest, direct and accountable mechanism, which provides information to the Parliament and the public about what is going on, is trying to use the tricky, dodgy, indirect method. He is willing to do a deal and hide the true cost of this silly promise—if that is what he thinks it is, member for Swan Hills—by pressuring the Insurance Commission.

That is the worst of all worlds. We do not get the outcome explicitly promised by the member for Swan Hills in at least one advertisement, and implicitly promised in many other communications, to the electors of Ellenbrook. Nor do we get transparency, honesty and accountability. If ICWA is to make a non-commercial decision, the direction should be in writing, it should be tabled in this house, and in the accounts we should be able to see exactly how much value has been sacrificed. The government should make up that value so that the motorists of Western Australia do not have to pay higher premiums for compulsory third party motor vehicle insurance because the government has forced a non-commercial decision on the Insurance Commission board.

I can see why the directors of the Insurance Commission might be concerned about the predicament they are in. In effect, they are being asked to make a non-commercial decision that will benefit commercial people in the private sector. Why should the directors do that? Why should they compromise their reputation for integrity and proper commercial decision making if the government has the power, should it wish to exercise it, to issue a written direction and to compensate ICWA?

The government is speaking with forked tongue on this issue. Perhaps the member for Swan Hills has not realised the full extent of the government's power and the way in which this issue should be solved. If I were to go about solving this issue, that is the way I would do it—issue the direction and make the payment; bite the bullet, and do the job properly. There could be argument about the merits of this course of action. I am not arguing about the relative merits of this course of action, or whether it is the appropriate course of action to take; I am saying that whether it is appropriate or not, the government made a promise, and for the government to uphold its democratic accountability, it now has to deliver. There is a proper, open, honest and accountable way in which the government can deliver. If the government is telling the member for Swan Hills that it does not have the power to do it, he is being misled by his leadership. I direct the member for Swan Hills to section 10 of the Insurance Commission of Western Australia Act. I have told him how it can be done; the Treasurer has power of direction under this act and control of the budget. It can be fixed openly, honestly and accountably, and it can be fixed in a way that enables the member for Swan Hills to honour the promise he made, explicitly and implicitly, to his electors. However, the member for Swan Hills' own government will not let him deliver on that promise. This is a broken promise, because the government has the power to deliver on it.

MR C.C. PORTER (Bateman — Attorney General) [5.47 pm]: I will make a very brief contribution to this debate and touch on a particular issue raised by the Leader of the Opposition. Although I was not here to hear the contribution from the member for Mindarie, it may be a matter that he also has raised. The Leader of the Opposition seemed to be putting the proposition that if a direction pursuant to section 10 of the Insurance Commission of Western Australia Act were to be given, the subsequent proceedings in the Supreme Court—in which ICWA would request the removal of the covenant—would be seamless, smooth and unlikely to encounter a great deal of opposition.

Mr E.S. Ripper: If there's consent from everyone, why would there be a problem?

Mr C.C. PORTER: That is right, but on my rudimentary reading —

Mr E.S. Ripper: What I pointed out was that we haven't heard any protests from anyone in the private sector. If you're able to cite an objection from the private sector, it might have a bearing on the argument, but no-one has cited one.

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Mr C.C. PORTER: I understand precisely the point. Although I have not heard any particular individual commercial interest cited as possibly objecting to it, looking over the history of this matter it would seem that at least some caution might accompany the idea that there would not be any objections or that there would not be any commercial interests involved. I will explain why I think caution should accompany the situation we have at the moment.

My understanding of the background involves four basic steps. There were negotiations between LWP Property Group and Woolworths about the development of the regional shopping centre. At that early point there was some discussion about possible restrictions on other land that might or might not be available for retail space. Secondly, at the time that these negotiations were ongoing, Woolworths approached the Insurance Commission of Western Australia to ascertain whether or not ICWA would acquire the land and develop the shopping centre, presumably with Woolworths as a foundation tenant. Thirdly, there was an agreement dated 13 December 2002 between ICWA, the State Housing Commission and the lot 1 owner, which was a joint venture of a number of different commercial entities. It was an agreement to purchase 18.7 hectares of land and develop the regional shopping centre in three stages. It was called “Sale Agreement”. At clause 39(b) the sale agreement sets out, among other things, that the State Housing Commission and the lot 1 owners of the joint venture group give a covenant that the other land that is owned by them in the Ellenbrook area, called the burdened land, would not be used for core retail purposes or purposes incidental or ancillary to a core retail purpose. I must confess that I am uncertain about how many individual lots or parcels of land constitute that burdened land. Presumably there are multiple lots and multiple parcels of land that constitute that burdened land. If that is the case, the procedure that the opposition leader does not necessarily advocate, but says is available, I suggest, must be viewed with at least some caution. If the Insurance Commission of WA went to the Supreme Court, which has exclusive jurisdiction in these matters, and sought to remove the covenant, then, of course, any person with an interest in the property would have the right to object to the removal. It does not appear that Woolworths or the like has a necessary objection to the removal of the covenant. If ICWA were directed to remove the covenant, presumably it would not object to its own action to remove the covenant, albeit it has an interest in the surrounding land. But the situation, it seems to me, is somewhat more complicated. To my knowledge, at this stage there is an unknown number of lots of what is burdened land—land that is subject to the restrictive covenant. I do not know whether that is in the tens or the hundreds of lots. Presumably it is multiple lots. Anyone who has an interest in any of those lots would have the ability to object to the removal of the covenant on that lot. There could be any number of circumstances that might not be known now and might not become clear until the action were taken by ICWA —

Mr E.S. Ripper: Why would someone with the ownership of the land object to removal of the covenant? Can you cite a circumstance?

Mr C.C. PORTER: No, because it is a broader issue than that. It is not someone with ownership in the land who might object; it is someone with an interest in the land. That is defined in much broader terms.

Mr E.S. Ripper: Give me an example.

Mr C.C. PORTER: It might be that someone with ownership or part ownership in other land who already has the ability to trade at a certain level because it does not meet the staggered effect of the covenant might object to other land nearby in which he has an interest having its covenant removed, because it might engage in competition for the first lot of land. That is not inconceivable. That could be replicated under a number of lots. I accept the Leader of the Opposition’s point that I do not know whether such a situation might arise.

Mr E.S. Ripper: In all this debate, not a single objector, except for ICWA, has emerged. I understand ICWA’s objection.

Mr C.C. PORTER: I understand the member’s point. I am saying that, given the complexity with the number of lots and the commercial interest that might flow among lots that are burdened, it is at least, not inconceivable, but, I would argue, quite likely there will be objectors coming out of the woodwork once the action in the Supreme Court is lodged to remove the covenant.

My contribution to this debate is that, in giving such a direction, some consideration would have to be given to the ease with which ICWA, as the applicant, would be able to have the covenant removed without objection. If we thought there was some possibility that that process would take some time because objectors could and might well come out of the woodwork, the approach suggested by the Premier, I think quite properly, is for everyone concerned to take a better and more responsible approach. I simply say that it seems to me that given the nature of these commercial matters—I am not a property lawyer—once an application is lodged to remove a covenant of that type, we might experience any number of commercial interests, other than Woolworths or ICWA, that see disadvantage in the covenant being removed from land in which they arguably have an interest. I am saying that

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without having knowledge of how many blocks are involved. I will end my contribution by saying that that is a very real consideration that must be, and was no doubt, taken into account by the Premier.

MR J.H.D. DAY (Kalamunda — Minister for Planning) [5.54 pm]: I will add a few comments on this issue. It is not primarily a planning issue as such; it is more a legal issue, as the Attorney General has just outlined. The main point that strikes me about this debate and the motion moved by the opposition is that there is a substantial degree of hypocrisy in the whole argument being put by the opposition. Indeed, from what we have heard, members opposite do not really believe in the issue themselves. They are simply trying to score a political point. We are in the game of politics, so I guess that is understandable. There is a substantial degree of hypocrisy for two reasons: one reason is that this restrictive covenant was put in place in 2003, when clearly a Labor government was in office. All of this was put into effect when that government was in office. If there is a degree of political responsibility for the current situation, it rests entirely with the previous Labor government. Secondly, members opposite do not even really believe in the issue themselves. As we have heard, the Leader of the Opposition has made the point quite clearly, implicitly if not explicitly, that he would not agree with the course of action that might be required to remove this restrictive covenant and certainly would not agree to the expenditure of taxpayers' funds to bring it about. As I said, the opposition's argument has no merit whatsoever.

Several members interjected.

Mr J.H.D. DAY: That is a very useful segue, because we need to look at the promise made by the member for Swan Hills, who I know takes up the concerns of his constituents very assiduously, including in relation to this issue. I have a copy of the advertisement that was distributed by the member for Swan Hills during the election campaign. I am sure the member himself has made the point. He said that he would campaign for the Ellenbrook district to be developed free from any restrictive covenants. That is exactly what he has been doing. He has been making the point very strongly to the Premier, and no doubt to the Treasurer, who has responsibility for the Insurance Commission, and to other members of the government that he wants this covenant removed, and, in particular, for business to be able to develop further in Ellenbrook without restrictive covenants in place. That is exactly what he has been doing. The opposition's argument has no merit, does not stand up to proper scrutiny and should be defeated.

Question put and a division taken with the following result —

Ayes (26)

Ms L.L. Baker	Mr J.C. Kobelke	Mr J.R. Quigley	Mr A.J. Waddell
Ms A.S. Carles	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Mr A.J. Carpenter	Ms A.J.G. MacTiernan	Mr E.S. Ripper	Mr M.P. Whitely
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	
Mr W.J. Johnston	Mr P. Papalia	Mr C.J. Tallentire	

Noes (29)

Mr P. Abetz	Mr M.J. Cowper	Mr R.F. Johnson	Mr A.J. Simpson
Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Dr J.M. Woollard
Mr J.J.M. Bowler	Dr K.D. Hames	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Mr C.C. Porter	
Dr E. Constable	Dr G.G. Jacobs	Mr D.T. Redman	

Pair

Mrs C.A. Martin

Mr G.M. Castrilli

Question thus negatived.