

Hon Paul Llewellyn; Hon Adele Farina; Deputy Chairman; Hon Murray Criddle; Hon George Cash; Hon Simon O'Brien; Hon Kate Doust; Hon Donna Faragher

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## RAILWAY DISCONTINUANCE BILL 2005

### *Second Reading*

Resumed from 21 March.

**HON PAUL LLEWELLYN (South West)** [5.52 pm]: This has been one of the most disjointed discourses I have been involved in, but before dinner yesterday I managed to get to the point -

**Hon Ken Travers** interjected.

**Hon PAUL LLEWELLYN:** I have another 27 minutes. I will present my contribution as a disjointed but incremental discourse about railways, because that was my very next point.

**Hon Kim Chance:** I think you are adding value to my speech.

**Hon PAUL LLEWELLYN:** That was my next point. Yesterday before I was rudely interrupted I was calling for a coherent light rail transit plan that was forward looking so that we would not get involved - honest to God, this is what my notes say - in disjointed incremental planning, just like the second reading speech. Disjointed incremental planning means that every time one problem arises the government has to solve a whole series of other complicated regional and broader issues, and it makes one bad decision or compromise after another. In fact, that subject is part of the academic literature on planning. This is precisely what we have got ourselves involved in with the Railway Discontinuance Bill. I have 27 minutes left.

**Hon George Cash:** You will have to use all of them.

**Hon PAUL LLEWELLYN:** No, I do not want to use time unnecessarily and wastefully. I am concerned to make an appropriate point just before we break for dinner, because I would not want any of us to miss out on our vittles.

**Hon Simon O'Brien:** We won't.

**Hon PAUL LLEWELLYN:** The Railway Discontinuance Bill rescinds the purposes of particular railway reserves, one that runs through Welshpool, with which we have very little difficulty, and one that discontinues a proportion of railway running between Fremantle and Rockingham or Coogee. This bill gives the minister - I will find out who the appropriate minister is - the power to hand the land over to the Public Transport Authority, which will in turn hand the land over to the WA Planning Commission, as we were told in the second reading speech, which will in turn on-sell it for the Port Coogee development. Anybody who has lived in Western Australia for the past 20 years would have heard about the Port Coogee development, because it goes back a long way. In fact it goes right back to those dark ages in the 1980s - 1987, I think - when a certain Labor government was involved in large land dealings. I have a quote about what that government promised the community in relation to the Port Coogee development. Before my speech becomes even more disjointed, I will mark that page and come back to it.

We are talking about the transfer of a public railway reserve, and the loss of an opportunity to have any rail transit facilities constructed on it, although I believe they have been accommodated in another railway reserve that has been created slightly inland. I am not opposed to that. However, the land subject to the discontinuance will be handed over to the Port Coogee developers, who will get it for a song. They will get this land for approximately \$50 a square metre - that is a very good deal - as a result of an agreement they have entered into with the government to proceed with the development, when the market value of decontaminated industrial land on the coast is approximately \$250 to \$300 a square metre. This I gleaned from the second reading speech, which states that there is a certain amount of land to be transferred for a certain amount of money that will change hands. By a reverse calculation of those figures I found that not only are we enacting the discontinuance of a railway line, but also we are taking the entire road reserve and giving it to some coastal developers. I am not strictly opposed to that, but we will give it to them really cheaply, for approximately one-fifth of its market value.

**Hon Simon O'Brien:** Is that really the case, because it was not otherwise to be used as industrial land, was it?

**Hon PAUL LLEWELLYN:** No. This is an extremely important matter. Under the metropolitan region scheme it is currently zoned for urban areas. It is old industrial land that has been decontaminated and is now zoned for urban land. In fact its value should be a great deal more. We are not talking about its value as decontaminated industrial land; we are talking about its value as urban residential land. The government footed the bill to clean up that land, and to take away the old sleepers and sell them to gardeners and whoever, and it has then flogged off the land for a development that is supposedly in the public interest. In the minutes I have available I would like to present a scenario to members.

**Hon Bruce Donaldson:** You have three minutes left.

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**Hon PAUL LLEWELLYN:** I can tell members about this imagined scenario in three minutes. I ask members to imagine the difference between the Hillarys boat harbour and marina development and the Port Coogee development. Imagine the public facilities and opportunities at Hillarys marina, with public access to the coastline, public facilities, public boat landings and whatnot. I ask members to imagine the Hillarys marina some 25 kilometres to the south at Port Coogee, with two-thirds of the moorings, pens and boating facilities not for public use, but private canal developments and housing. That is what will happen. Imagine 80 per cent of all the shops and public facilities that are currently located at the Hillarys marina not being available at Port Coogee. I am now speaking to the members who represent the south west region. This will be a watered down, poor cousin of the Hillarys marina with no public beach.

**Hon Kate Doust:** There is a public beach. This will provide better access for a range of people, including those who are disabled and cannot get to the beach. You are holding up this process.

**Hon PAUL LLEWELLYN:** In the few seconds I have left before the dinner break, I want to read what Hon David Parker said in 1987 in relation to the Port Coogee development. I am sure this will help members understand what has happened in the interim. He said -

All beaches are to be upgraded, dunes restored and public access improved.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon PAUL LLEWELLYN:** Just before the dinner break - during which other members went for dinner and I went for a swim - I had been talking about the Port Coogee development and the land that is subject to the Railway Discontinuance Bill. I had also been making a comparison between Hillarys Boat Harbour and the marina development and the Port Coogee development. Hillarys Boat Harbour has public amenities, public access to boat landings and a vibrant commercial centre. Only 80 per cent of the area is covered in private properties, canal developments and so on. However, the Port Coogee development will be the poor cousin of Hillarys Boat Harbour, certainly for the people of Coogee and the south metropolitan area, because it will be just an exclusive piece of real estate for those people who can afford to live there. It will be a losing proposition for the community of the South Metropolitan Region.

I had also started to quote from what was said by a former member of Parliament and minister, Hon David Parker, during those dark days in 1987 when stamp collections and other things were so important. Hon David Parker made certain promises about the Port Coogee area; for example -

All beaches are to be upgraded, dunes restored and public access improved. All run-down industrial buildings on the South Coogee foreshore are expected to be removed. The entire Coogee coastline from Woodman Point to South Fremantle will be zoned parks and recreation.

However, that is not what we will get. What we will get is an exclusive private residential development that is partly built over the water.

The railway reserve that is proposed to be discontinued runs next to the ocean. There is only about 40 metres between the edge of the water and the area that is proposed to be reserved for exclusive private use. To demonstrate how unpopular the Port Coogee development proposal is, I need to go back a few years to a survey that was conducted by Dr Carmen Lawrence, the federal member for Fremantle. The survey found that only 12.6 per cent of the 887 surveyed residents in the Fremantle electorate supported the Port Coogee development proposal. The vast majority were opposed to it. In fact, the federal electorate of Fremantle happens to coincide roughly with the catchment of the Coogee area.

**Hon Simon O'Brien:** Do you have a copy of that survey?

**Hon PAUL LLEWELLYN:** Yes, I have a copy right here. A very small group of respondents supported a waterside residential development around the marina, but there was much more support for residential development constructed behind the foreshore. I have a copy of the questionnaire and the results of the survey. As a result of promises going back to 1989, the subsequent development of Port Coogee and now the discontinuance of a railway reserve to enable the Port Coogee development to happen, the residents of the Coogee area of the South Metropolitan Region have been fundamentally ripped off. There is no equivalent to a Cottesloe or Swanbourne beach. There is no equivalent to a Leighton beach. I have a calendar at home of iconic Australian beaches. It has pictures of Bondi and Manly beaches, showing intensely developed urban beachfronts. It also has a picture of Cottesloe beach. It is one of the iconic beaches of Australia. Looking back from the water, it is extraordinary. That is precisely the kind of vision we could create - a Cottesloe for the Coogee area, where there is an interesting and diverse built environment. This is a planning decision that could still be made right here in this chamber by people on both sides of politics.

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I said earlier that the bill has three components: the discontinuance of the railway reserve, the capacity to sell off any assets that relate to that reserve and the capacity to transfer the crown land resulting from the discontinuance of the railway to the Public Transport Authority. Then, by a mechanism not laid out in the bill but alluded to in the second reading speech, there will be subsequent land transfers to the WA Planning Commission, and subsequently the land will be traded with the Port Coogee developers. I said that they will be getting the land for a fraction of its actual value. That is not for me to prove or disprove here, but it is quite clear that \$50 a square metre versus \$250 a square metre for land only a few kilometres to the north - this could be subject to a valuation - is an extremely good deal for the Port Coogee joint venturers. What should come back to the people of the South Metropolitan Region and the people of Western Australia is the small contribution of a genuine regional beach. Under the WA Planning Commission "Statement of Planning Policy No 2.6 State Coastal Planning Policy", a beach is defined as an area between 100 and 150 metres wide - an area equivalent to Cottesloe or Scarborough. The opposition and the government could take some leadership and create a win-win situation here.

The Port Coogee community does not have a home for its surf club. It has a bit of a shed, but it does not have a proper home. We have an extraordinarily large piece of coastline with a burgeoning population and the surf club, with 400 members, is looking for a home. A surf club should be located in the residential zone to give people easy access to it. However, in this case, the surf club will be located in the Woodman Point reserve. I am told that because of some rare plant species on that reserve, the Department of Conservation and Land Management is not happy that the surf club will occupy that reserve. That is not the main point I am making: my point is that the Coogee area has no place for its surf club. How un-Australian is that? The surf club will be located in the Woodman Point reserve and CALM is not happy about that. It is certainly in a position that will be impractical for the majority of people, particularly young people, to access. It will be accessible only by car.

**Hon Sheila Mills:** The Coogee surf club is happy with what has been offered.

**Hon PAUL LLEWELLYN:** That is not the message I am getting.

**Hon Sheila Mills:** That is what the president of the club told me.

**Hon PAUL LLEWELLYN:** I am talking about the opportunity to create a regional beach in the Coogee area that is equivalent to the icon beaches in the north metropolitan regions. We should not look back into the dark days. Members should look forward and consider the extra hundreds of thousands of people whom we plan to put into that landscape. We should look forward to the residential and urban development and determine what infrastructure will be required and the regional recreational opportunities that will create. Let us look forward to the lifestyle that those people, as residents of Perth, should be entitled to have. It is not unreasonable. Imagine the outcome if this house made a decision tonight on this issue. Then, when members drive through Coogee, they could say they were responsible for reserving a regional beach for the south Coogee area. Members would also then be able to sleep easily.

We should not hand over the land to private interests through this innocuous discontinuance bill. It will result in an inadequate dividend for the community and the public good. I thought that the land required within the Port Coogee zone, which is a planning zone, was calculated as approximately 5.4 hectares. In fact, the total area I am referring to is a little larger than that. However, approximately 5.4 hectares is needed to create the Coogee regional beach and that would include a setback of approximately 140 metres. There will be no loss of amenity for the people whose properties are immediately behind that area. Instead of being 40 metres from the water's edge, they will be about 100 to 150 metres from it, and they will have all the public facilities and amenities of a Cottesloe or a Scarborough. It is not a lot to ask considering the size of this development. The Port Coogee developers, Australand, which is 58 per cent owned by the Singapore government, will make a windfall profit if this bill is passed. We can reverse that tonight. We can actually take a stand to get a reasonable outcome. This is not disjointed incrementalism.

I am sorry that this bill rose quickly up the agenda and the Greens had to deal with it at short notice. By consulting widely and unpacking the planning issues, we have exposed the solution.

The solution is to give us a little bit to get a lot. Under the tabled "Port Catherine Agreement Number 2" it is quite within our power to make an amendment and a change to the contract without any compensation being payable. I know I will get nods and shakes of heads, but it is within our power under section 28.1, which reads -

The Parties agree that there are a considerable number of factors which could materially change the obligations of the Parties under this Agreement and the implementation and completion of the Project. Each party agrees to confer in good faith as and when reasonably required by the other party with a view to agreeing on variations to this Agreement to ensure the completion of the Project to the reasonable satisfaction of PCD and WAPC.

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That is section 28.1 under the heading "Variations". Do members want more?

**Hon Ljiljana Ravlich:** Not really.

**Hon PAUL LLEWELLYN:** The minister does not want more. I have only four more minutes. How disjointed is that? We make fairly light of these issues but this is a serious public planning and public interest matter. We could sit and feel very relaxed about it and let this bill go through or we could take a stand and send it back to the other place to give the Labor government a chance at rethinking the implications of its decision. Maybe it will be disputed and argued to the bitter end, but maybe it will not be and maybe some enlightened discussion is happening here. It could be sent back in the full knowledge that we could make a better decision, which is what this house is about; that is, making better decisions for the community. I did not know that I would get so passionate. How about that? I will go back over my points and make a little summary of them in the last few minutes that I have available.

**Hon Bruce Donaldson:** Do you want extra time?

**Hon PAUL LLEWELLYN:** No, I do not need any more. I think I have made my point.

**Hon Ken Travers:** The Greens do not filibuster in the same way as Hon Bruce Donaldson.

**Hon PAUL LLEWELLYN:** Take it easy! We are not having that debate here. I want to summarise. We are talking about the quality of debate and decision making in this house. I look at all members with my eyes wide open, because every one of them can change this decision. Part of the Welshpool railway line will be discontinued, and we do not disagree with that. The government can go ahead and do that, because it seems like reasonably good planning. For the government to establish some rivers of blue would be a great concession and I do not want to be cynical about it. The government must do the best it can, and the rivers of blue plan is a fine initiative. To establish a bus station or some sort of service station on that land is a good thing. To facilitate public transport development is a good thing. When considering the closure of urban transit routes, we need a coherent light rail infrastructure plan, and it should not be done as a disjointed incremental exercise. I am going back over my points. We must be forward looking and conscious about the choices we are making when we undo decisions. To reallocate the public transit reserve at Coogee to create a regional beach is a simple request. If the house makes the decision tonight to support the amendment that we will put up, it will be a win-win situation for both this and the other side of the house and it will be a win-win situation for the community. The agreement needs to be renegotiated. The government should not hold on to a position because it has decided something and it says that it is too hard to change its position now because it has entered into an agreement. These agreements are renegotiable, just like everything else.

I will move one simple amendment to this bill in the committee stage. I hope to get some support and some robust debate in this committee stage. I also hope that the public decision makers in this state will reconsider their actions as a result of the intent of an upper house of state Parliament.

**HON ADELE FARINA (South West - Parliamentary Secretary) [7.51 pm]:** The government would like to thank the opposition and the National Party for their non-opposition to the Railway Discontinuance Bill 2005, subject to clarification of some points, which I will raise in the order that they were raised by the members who spoke. Hon Donna Faragher sought clarification on the government's intention on the railway section between Daddow Road and Pilbara Street - in particular, whether that section had already been discontinued. The bill will discontinue the railway section of the Midland Junction-Welshpool railway between Pilbara Street and Railway Parade. The section between Daddow Road and Pilbara Street is not the subject of the bill. The second reading speech incorrectly refers to Daddow Road; it should refer to Pilbara Street. I apologise to the house for that error and any confusion that may have arisen as a result. I reiterate that the description in the schedule to the bill is the correct description of the portion of railway that is to be discontinued. The government intends that the section of railway between Daddow Road and Pilbara Street will continue to operate to allow railway access to continue through the Kewdale freight terminal and to the west of Kewdale Road to Sadliers Transport. There is no lease arrangement in place for that section of railway, which was another matter raised.

Hon Donna Faragher is correct in saying that the section of the Fremantle-Kwinana railway to be discontinued by the bill forms part of the Port Coogee development. Only 50 per cent of it does, and it will ultimately be on-sold to Port Catherine Developments. The honourable member also stated that some of those sections were already being developed. It is important to clarify that they are not currently being developed. The developer has been allowed access to that land in order to bring services to the land that is the subject of the development and to use it as storage. There is no development on that section of the railway that is proposed to be discontinued.

In regard to Hon Donna Faragher's concerns about the Fremantle port and the Fremantle to Welshpool standard gauge rail, I confirm that the discontinuance of this portion of the railway that is detailed in schedule 1 of the bill

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will not have any negative impact on the port or any of the port activities or the transport of freight to and from the port. I hope I have covered all the issues that the honourable member raised.

Hon Murray Criddle sought clarification on where the money that is received as a result of the sale of the portions of discontinued railway would be spent. With respect to the schedule 1 land and that land within the Port Coogee development, the WA Planning Commission has paid the Public Transport Authority \$2.3 million, conditional upon the passing of this bill. The WAPC is party to the agreement on behalf of the government. With the passage of this bill, the WAPC will on-sell that land to the developer, Port Catherine Developments. The figure of \$2.3 million is the identified value of the railway reserve through the Port Coogee development area. That was valued at \$1.5 million at the time of signing of the development agreement number two in 2000, and the valuation also allows for the 5.7 per cent per annum variation provided in that agreement. The proceeds from that portion of the railway to be sold will be directed towards retiring PTA debt under the debt repayment program. The balance of the railway reserve land detailed in schedule 1 - that is, not within the Port Coogee development area - will be sold at current market value and, again, the proceeds from the sale of that land will be directed towards retiring PTA debt or funding part of the approved capital works program.

A portion of schedule 2 land is proposed to form part of the living streams network that will reduce the flow of nutrients into the Canning River, and the land will be transferred to the WA Water Corporation to form part of the state drainage network. A portion of the land - an area of about one hectare - is also proposed for the development of a Transperth bus depot. The balance of the land identified in schedule 2 will be sold at current market value and the proceeds, again, will be directed towards retiring debt or funding part of the approved capital works program. It is anticipated that the sale of the balance of the land in schedules 1 and 2, in view of the recent escalation of land values since the second reading speech in this place, will return more than the \$1 million identified in the second reading speech. As already stated, that money will be directed towards retiring debt and for part funding of the approved capital works program.

The matters raised by Hon Paul Llewellyn require a response. Hon Paul Llewellyn raised a concern that the government does not have a light-rail plan in place for the metropolitan area. I find it staggering that he would raise these issues in connection with this bill, particularly when the sections of railway that have been identified for discontinuance are not currently being used and have not been used for a very long period. I reassure Hon Paul Llewellyn and all other members that the government has a strong commitment to public transport and to passenger rail, and I believe that we have demonstrated that. It was a Labor government that reopened the Fremantle line, it was a Labor government that built the rail line to the northern suburbs, and it is a Labor government that is building the south metro rail line. I do not believe that any member can question the Labor government's commitment to passenger rail and to rail transport.

**Hon Ray Halligan:** Of course, at the expense of road transport.

**Hon ADELE FARINA:** In my personal view, the proposal is an abuse of process. Hon Paul Llewellyn is proposing in his amendment that we ignore the planning process and all the planning approvals, and make a planning amendment to a railway discontinuance bill. In my view that amendment is outside the terms of the bill. The Port Coogee development has been through an exhaustive public consultation process as part of the town planning approval process. It has been the subject of appeals, and also an action brought in the Supreme Court - unsuccessfully, I add. All the planning approvals are in place and are final. The Railway Discontinuance Bill does not incorporate a town planning aspect. The use to which the land in the schedule 1 discontinued sections of the railway will be put is identified in the metropolitan region scheme, the town planning scheme and the Port Coogee development structure plan. In my opinion it is an abuse of process to seek to use consideration of the Railway Discontinuance Bill to revisit the planning approvals in place for the Port Coogee development, as I have already expressed, and it is outside the scope of the bill.

Hon Paul Llewellyn argued in particular that this rail reserve should not be discontinued so that we do not cut off options for a light rail service to the area. However, his remarks on his proposed amendment indicated that, rather than it being a matter of not allowing the railway discontinuance, he wants that section of the rail to be used for a different purpose than that which is proposed. Therefore, protection of the rail reserve would not eventuate as a result of his proposed amendment. It is also important to note that the rail reserve south of the Port Coogee development was discontinued in 1973. It is absurd to argue that we should not discontinue that section of the railway, because it goes nowhere. A light rail option as part of the Port Coogee development is being considered in great detail in the planning process. As a result, it is proposed that the roads within the development be wide enough to support a possible light rail in future. Light rail as a proposal is clearly shown in the structure plan and the other plans.

Hon Paul Llewellyn referred to the need for a regional beach in the southern region. The government could not agree more with his suggestion. The government supports 100 per cent the argument for a regional beach in that

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area. In fact, we are way ahead of him on this issue, because we have identified a regional beach site just south of the proposed Port Coogee development.

**Hon Murray Criddle:** Show us the map you have in your hand.

**Hon ADELE FARINA:** Hansard reporters do not like maps but I do not have any other way of describing this. The Port Coogee development is indicated in one area and that is where the regional beach starts.

**Hon Murray Criddle:** Is that at 500 kilometres?

**Hon ADELE FARINA:** It is zero - almost at the edge. The government agrees with the need for a regional beach. Its location has been identified.

With regard to Hon Paul Llewellyn's comments about the need for a surf club in this area, as members pointed out to him by interjection, a surf club is proposed at Woodman Point. He argued that the proposed site for the surf club is unsuitable. However, it is within the regional beach, which I think is a very sensible place to build a surf club.

Hon Paul Llewellyn also referred to some aspects of the agreement between the state and the developer. However, he ignored one very important provision in the agreement; namely, item 2.4, which provides an interpretation of commercial viability. That item acknowledges that the project must be commercially viable. If we exclude all that portion of the rail reserve within the Port Coogee development area from the development intentions, as shown in the planning approvals, that would place the viability of the project at risk. An inquiry into this was established by the Legislative Assembly and it found that the viability of the project would be touch and go subject to what was approved. That has been subsequently confirmed by the developer, supported by accountants' statements that the developer has provided the minister in response to the minister's further inquiries.

The minister has achieved many concessions for the Port Coogee development through the planning process, including public interest concessions. It is unfair and unreasonable to argue that there is no public interest in the development of this project or in the discontinuance of the rail reserve. Some of the additional benefits for the public that the minister has negotiated through the planning process include the creation of a public beach within the marina, the reduction in the number of residential marina lots, an increase in the number of public boat pens and the removal of the development behind the Port Coogee dunes in the southern development area. This last benefit coincided with the metropolitan region scheme amendment modification that extended the parks and recreation reserve in this location, in compliance with state coastal planning policy 2.6. Significant concessions have been made.

Any amendments that are proposed at this late stage could place the state in a position whereby the developer could claim for costs, which could be quite significant. The developer has already invested \$17 million in this project, and a variation in the cost of the project could create a problem for the state government. It certainly is not in the public interest to amend the bill at this stage, particularly when the very objectives Hon Paul Llewellyn has raised in his proposed amendment are already in place. The development includes a regional beach, provision has been made for the development of a surf club and ample public open space is provided for within the development area and south of the development area. The government is disappointed that the Greens (WA) will either oppose the bill or seek to amend it. The amendments go outside the scope of the bill. It is a case of the Greens taking an opportunity to review a planning process that has been concluded, is in place and should be made final.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chairman of Committees (Hon Louise Pratt) in the chair; Hon Adele Farina (Parliamentary Secretary) in charge of the bill.

#### **Clause 1: Short title -**

**Hon PAUL LLEWELLYN:** I need to respond to two aspects. The long title states that this is a bill for -

An Act to provide for the discontinuance of certain portions of railway and to authorise the disposition of certain material and land, and for related purposes.

I realise now that that gives some scope for the kind of amendments and proposals that the Greens (WA) are putting forward. While the Railway Discontinuance Bill simply discontinues the railway land, it also provides considerable powers for the Public Transport Authority of Western Australia to transfer the land, deal in the land and fulfil other obligations. It is a fairly simple bill, but it is not in itself without significant implications. They

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are actually planning implications. The only reason for this bill is to fulfil obligations that were committed to under a planning process. Therefore, it is quite proper that we should be in this chamber talking about some of the fallout of the planning process and some of the fallout as a result of this bill.

I want to make a correction to and a clarification of my points about the light rail transit plan. I would be interested in the parliamentary secretary tabling the light rail transit plan that the government has. However, more importantly, members should not misconstrue the proposition and the line of argument that we were making about this discontinuance in the Port Coogee area. We were pretty clear that it makes some sense to discontinue that section of rail transit line but that there is an opportunity to get an expanded result from that discontinuance, not just for the developers, but also for the Port Coogee community.

I will not go into the technical details about section 24 of the agreement relating to Port Coogee. However, it says that it had something to do with commercial viability. This project could not have been given more opportunities to be commercially viable than it has been. I cannot believe that a project of this scale could stand or fall financially or commercially on the basis of reallocating a small length of coast to the south of the Port Coogee development. Either this government is entering into a very shaky fiscal arrangement and is putting up our money for a very shaky contractual agreement, or this project stands on its commercial legs. We know that we were talking about handing over this land for ostensibly much lower than market value. I cannot believe that a project of this scale, with experienced commercial partners, could suffer any commercial hardship as a result of a proposition to take out a small fraction of the foreshore and reallocate it to public use.

I agree that there has been an extensive planning process. The action in the Supreme Court, which the community entity lost, was lost on a technicality; it was not necessarily lost on the merits of the arguments. In fact, the community entity could not bring the case before the court. Therefore, the actual merits of the planning arrangements were never challenged. The community entity lost the case because it had no standing in the court and had no right to represent itself. That clearly suggests that the real case for the veracity of the planning arrangements has not been heard in that forum at all.

The proposition that we will put to the committee is a relatively simple one. There is no hoodwinking; there is no sleight of hand. It is a very simple proposition. It is not a difficult proposition to accept that if the railway transit reserve is to be discontinued, it will liberate an area of land that has commercial value, which land could be used in part to establish a regional beach. In fact, we have planning approvals. The parliamentary secretary referred to the metropolitan region scheme and to the Port Coogee structure plan.

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** Hon Paul Llewellyn needs to confine his comments to clause 1 of the bill. He is discussing a proposed amendment, and it is outside the standing orders to raise that matter now. The amendment will be dealt with at clause 6.

**Hon PAUL LLEWELLYN:** I take your point, Madam Deputy Chair. I will now refer to the authorisation to dispose of material and land and for related purposes, and the capacity of the committee to make a decision on the disposal and reorganisation of that land that will be in the public interest, rather than for the benefit of a few.

**Hon GEORGE CASH:** In the parliamentary secretary's response to the second reading debate, she raised some questions about a proposed amendment that has been circulated. Hon Paul Llewellyn has referred to that amendment in his comments. It seems to me that this is the appropriate time to decide whether the amendment is within the scope of the bill. We could wait for the particular clause if we wanted to argue the point, but debate on the short title gives me the opportunity to indicate to the committee that this bill is for a particular purpose. It is called the Railway Discontinuance Bill 2005. The long title states that it is a bill for an act to provide for the discontinuance of certain portions of railway and to authorise the disposition of certain material and land, and for related purposes. If that long title is broken up into its elements, we find that there are at least four separate elements. The first is that it is an act to provide for the discontinuance of certain portions of railway. I think we all agree with that. The second element is to authorise the disposition of certain material. The third element is to authorise the disposition of certain land. The fourth element is that the bill is for related purposes. Hon Paul Llewellyn has talked about planning issues. This is not a bill about planning issues; it is a bill about the discontinuance of a railway line that exists now. Planning issues are quite separate.

I do not want to extend the debate on clause 1, but we need to understand what the bill is about. Clause 4 clearly refers to the discontinuance of scheduled railways, and that is broken into two parts. It refers to the scheduled railways, which means schedules 1 and 2, and then it refers to the material comprising the scheduled railways. They are quite separate issues that are not hard to identify. Clause 5 deals with the disposition of land. Clause 6 deals with the power of the authority to deal with land. The only question that arises is not necessarily a planning question; rather, it is a question of whether the committee has the power to deal with the amendment in clause 6. Does the amendment fall within the scope and purpose of the bill? I would argue at this stage that, in its present form, the amendment falls within the scope and purpose of the bill. I say that on the ground that the

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amendment purely imposes a qualification on the disposal of certain lands - and no more. That is something we will deal with in due course. This bill is all about the discontinuance of a railway and the disposition of certain materials. It is not a bill about the planning for certain lands. That has been dealt with in previous legislation, and it is also the subject of certain contracts. The parliamentary secretary's suggestion that the legislative ability of the Parliament is fettered because the government has entered into contracts with respect to certain lands is absolute rubbish. The Parliament has the absolute legislative capacity to deal with this land in the manner it believes to be appropriate. No contract whatsoever will or can fetter the right and power of this Parliament.

**Hon ADELE FARINA:** I make one point in relation to the comments by Hon George Cash. I was not suggesting that the agreement fetters the decision-making power of Parliament at all. I was putting forward the case that because the agreement is in place, we have to consider the ramifications if the amendment were approved.

**Hon George Cash:** Perhaps you should have thought of that before you entered into any contracts.

**Hon ADELE FARINA:** The contract was initially entered into by the Court government.

**Hon George Cash:** That is not the point.

**Hon ADELE FARINA:** Perhaps Hon George Cash should have thought about that before his government entered into the contract.

**Hon George Cash:** I do not have any problem at all. A contract cannot fetter the right of the Parliament to deal with this land.

**Hon ADELE FARINA:** I am not suggesting that it does. I am suggesting there could be ramifications because the state could be liable to a claim by the developer. The agreement is very clear in assuming an area of land development, and an opportunity and a viability for the project. I was not suggesting in any way that the agreement fetters the role and decision-making power of Parliament. It is important that I make that clear.

**Hon MURRAY CRIDDLE:** I am interested in what the parliamentary secretary said with regard to arrangements made by the previous government. I hope she is not trying to give the impression that there was an arrangement with regard to this legislation. The arrangement related to the development, not this legislation.

**Hon ADELE FARINA:** The agreement referred to the development of that portion of land; it did not refer to the passage of the Railway Discontinuance Bill. It is necessary to arrange the discontinuance of the railway reserve before that development can proceed.

**Hon GEORGE CASH:** On the same issue, I just want it understood that this is at least a two-step process. The first step in relation to the amendment is to determine whether it is within the scope and purpose of the bill. If it is agreed that it is, the second step is to decide whether the Parliament agrees with the amendment. It is very much a two-step process. I do not want there to be any confusion. The mere fact that the amendment is held to be within the scope and purpose of the bill does not in itself suggest that the amendment will be carried, because that is a separate issue. I want to make it very clear that this is a very simple bill. When we are determining the scope and purpose of a bill, our decision often depends upon the complexity of the bill. There is little complexity in this bill. The elements and issues can be clearly identified, and that is why I can say that, from my point of view and from my party's point of view, we believe the amendment is within the scope and purpose of the bill. Once that is established, we can move to the next stage of deciding in due course whether the amendment is agreed to by the Parliament. That is a completely separate question.

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** As I highlighted to Hon Paul Llewellyn, we are seeking not to debate this issue twice. Therefore, with agreement, it might be helpful if we can move on and save this point of debate until we reach clause 6, if it arises all.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Discontinuance of scheduled railways, and incidental matters -**

**Hon MURRAY CRIDDLE:** Clause 4 deals with the disposal of materials and states -

- (1) The scheduled railways are discontinued.
- (2) The material comprising the scheduled railways, or any portion of that material, may be -
  - (a) used in the construction or maintenance of any Government railway, as defined in the *Government Railways Act 1904* . . . ;
  - (b) used in the construction of any railway authorised to be constructed under any other Act; or

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(c) sold, disposed of, or otherwise dealt with.

Does the parliamentary secretary have any idea what will happen with the material that will be disposed of and what it is worth?

**Hon ADELE FARINA:** It is unlikely that any material of any value will be left on either of the sections of railway proposed for discontinuance; and, if there is, it is likely to be only of scrap value.

**Hon MURRAY CRIDDLE:** There is an indication in the following clauses where the money will go. If any money is received, where will that money go specifically?

**Hon ADELE FARINA:** As I have said previously, any proceeds from the sale of land or materials will go towards the retirement of Public Transport Authority debt and also to partially fund the works program.

**Hon PAUL LLEWELLYN:** I will turn the question inside out and assume that authority is given for the discontinuance of the railway and the disposal of things. Surely it will cost the state some money to dismantle these structures. Will any expenditure be involved in the remediation of the land; and, if so, how much?

**Hon ADELE FARINA:** I assume that in referring to remediation, the member is talking about contamination. Government deals with contamination as part of its due diligence process in dealing with land. Obviously that has yet to happen. In the case of the section of rail reserve through to Port Coogee, no remediation was required.

**Hon PAUL LLEWELLYN:** Does that mean there will be no cost to the state in the discontinuance of this railway reserve?

**Hon ADELE FARINA:** Is the member referring to both the schedule 1 and 2 reserves?

**Hon PAUL LLEWELLYN:** I am referring to the land in schedule 1, which is the Fremantle-Kwinana railway. I understand that area has historically had an industrial use. That would mean that, instead of making money out of selling bits of scrap, the discontinuance would involve a cost to the state.

**Hon ADELE FARINA:** That section of the railway line was an operating line. There were no depots along that line. It is usually at depots that contamination issues come to the fore. I restate that no remediation was required and no contamination was identified in that rail reserve through the Port Coogee development area.

**Hon MURRAY CRIDDLE:** Are there any contaminated sites in either of these areas?

**Hon ADELE FARINA:** The government has not located any contaminated land on the Welshpool rail reserve. That was an operating line that had no depots, which are usually the cause of contamination. There could be some contamination on a section of the land that was subject to a lease. That is currently being investigated.

**Hon MURRAY CRIDDLE:** Under the contaminated sites legislation, responsibility could come back onto the government for remediating that area. I remember well what happened in Geraldton. The old station site cost the government quite a substantial amount of money, so there could be some costs in the longer term.

**Hon ADELE FARINA:** As I said, we are currently investigating any potential contamination on the lease over a portion of the rail reserve. Theoretically, there could be a cost to the government for remediation if contamination is identified. It may or may not be identified; we do not know. There was a depot on the Geraldton land, so a slightly different situation applied there.

**Hon PAUL LLEWELLYN:** What is the present state of the land described in schedule 1? What does it actually look like? What kind of structures remain on it?

**Hon ADELE FARINA:** I understand that, on the portion within the Port Coogee development area there is a path that is used by pedestrians and cyclists. The rest of the land just looks like part of the road reserve. That is the best description I can provide.

**Hon PAUL LLEWELLYN:** Through this process of discontinuance of the railway, is there an obligation to clear the land of any debris or material, or could it just be left the way it is?

**Hon ADELE FARINA:** Clause 4(2) refers to what may be done with the material on the land. It does not impose any obligations. The various activities outlined in that subclause may be done, but there is no obligation.

**Clause put and passed.**

**Clause 5 put and passed.**

**Clause 6: Power of Authority to deal with land -**

**Hon MURRAY CRIDDLE:** Subclause (2) states that the authority is to credit the proceeds of any sale or disposal of land to the Public Transport Authority account. On what will that money be expended? The

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parliamentary secretary made some comments earlier on where the money will be used. I hope it will go towards the railways.

**Hon ADELE FARINA:** The second reading speech indicates that the value of the portion of the rail reserve in the Port Coogee land was \$1.5 million, which was the market value at the time of the second agreement that was signed in 2000. That agreement also allowed for a 5.7 per cent per annum variation, which brings the value of the land to \$2.3 million on the current day value. That is the amount of money that will be returned to the Public Transport Authority for that land. The balance of the remaining portion of the land that will not be used for living streams or the Transperth bus depot in Welshpool will be sold at market value. It will be whatever the Valuer General determines the market value to be at the time of sale. I cannot give the member an exact figure for the balance of the land.

**Hon Murray Criddle:** Where will the money be used?

**Hon ADELE FARINA:** The money will be used to retire PTA debt and for part funding of the capital works program.

**Hon PAUL LLEWELLYN:** Madam Deputy Chair, I need some guidance on moving the amendments in my name on the notice paper.

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** I recommend the member move amendment 2/6 before 1/6. The first amendment on the supplementary notice paper is consequential to the second amendment; therefore, it would be better for the member to move the second amendment first.

**Hon PAUL LLEWELLYN:** Thank you, Madam Deputy Chairman. I will follow your guidance. I move -

Page 3, after line 17 - To insert -

- (3) The Minister must not give the approval under subsection (1) in relation to any land referred to in Schedule 1 unless he or she is satisfied that a Class "A" reserve has been established under section 42(1) of the *Land Administration Act 1997* that is -
  - (a) for the purpose of a foreshore reserve;
  - (b) subject to an order for the care, control and management of the reserve by the City of Cockburn under section 46(1) of the *Land Administration Act 1997*;
  - (c) no less than 5.4 hectares in area;
  - (d) located at the southern end of the Port Coogee Development Area as defined in Improvement Plan No. 26A issued by the Western Australian Planning Commission pursuant to the *Metropolitan Region Planning Scheme Act 1959*; and
  - (e) abutting Class "A" Reserve No. 24306 under section 42(1) of the *Land Administration Act 1997*.

I do not want to go over old ground. The amendment does something very specific. Clause 6 gives authority to deal in the land and some direction on the way in which zoning of that land will be shifted and indicates who has those powers. The aim of my amendment is to give some guidance to the way in which the land is dealt with, particularly by the authority. My amendment will specifically ensure that the land described in schedule 1 for the Fremantle-Kwinana railway is allocated to a public reserve.

I want to make a point of clarification on that matter. The railway reserve runs right next to the coastline. Adjacent to the railway reserve is Cockburn Road reserve, which I imagine will also be discontinued in order to establish the Port Coogee development. I imagine that the structure plan is not set in concrete but is indicative, which is the type of structure plan that is used in all planning arrangements to give councils and people some tangible framework for making a decision. The structure plan and the schedule for procurement of the land show the railway reserve running north-south, and immediately adjacent to it is another piece of public land in the Cockburn Sound reserve. To establish an A-class reserve for the purpose of a regional beach would require very little by way of acquisition of any land other than land the public already owns. All that we propose with this amendment, in extremely simple terms, is that the authority can deal with the land, subject to the creation of an A-class reserve under the Land Administration Act for the purposes of a foreshore reserve and subject to an order for the care, control and management of the reserve by the City of Cockburn. That is the normal procedure for the creation of a regional beach. We have examined the precedent for the creation of a regional beach and worked out that the appropriate authority to manage that land is the City of Cockburn.

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We suggest that an area of not less than 5.4 hectares, which is not all the land in schedule 1, but an area which amounts to approximately 60 to 70 per cent of the total reserve land, should be allocated to this regional beach in the Port Coogee development area. Furthermore, the amendment suggests that there should be very little impact on the structure plan of the Port Coogee development. We say that there is already a very narrow beach right at the very southern end that could be made into a 150-metre wide reserve. That would require approximately 5.4 hectares of land. This is not an ambit claim but a very reasonable claim to establish a beach that meets recognised standards in the WA Planning Commission's guidelines on the creation of a regional beach. The amendment specifies quite clearly that the allocation of this additional portion of regional reserve is not meant to sprawl across and make an ambit claim on the Port Coogee development area or even sprawl into the Woodman Point area but would be fairly well contained in a small stretch of the coastline. There is not another piece of coastline like this in the Port Coogee development area. I have photographs of what happens in that area on a hot summer's day. I will not table them, but I can assure members that there is a great need for a regional beach at this point, and there is a great need to remove Cockburn Road so that people do not have to cross it in order to get to the water. The creation of a regional beach in that area would be very good planning and make intelligent design sense. We are not talking about a regional beach in the sense of a bit of bush. We are talking about industrial land - namely, the Cockburn Road reserve running straight down the coast. We are talking about land that was a railway reserve with an industrial breakwater running immediately alongside the coastline. A really dramatic urban regional beach will be created by supporting this amendment.

**Hon ADELE FARINA:** The government opposes the amendment moved by Hon Paul Llewellyn for a number of reasons. In my view, the amendment seeks to pre-empt the Parliament's decision-making role with respect to the creation of an A-class reserve. An A-class reserve must be approved by both houses of Parliament. This amendment seeks to direct the Parliament to create an A-class reserve. If the Parliament determines not to establish the A-class reserve, the minister will not be able to sell or dispose of the land. It is not clear what would happen to the land in the event that an A-class reserve is not created.

I am also concerned about proposed subclause 3(a), which refers to the creation of a foreshore reserve. The land between the rail reserve and the beach is privately owned. It would be impossible under the amendment to create a foreshore reserve over that privately owned land because that is not what the amendment proposes. This amendment proposes to simply reserve that portion of the railway reserve as a foreshore reserve. However, it is not foreshore land. Privately owned land runs between the rail reserve and the beach. I am unclear what is proposed and how we go about creating a foreshore reserve in those circumstances. The amendment is unclear.

Proposed subclause 3(b) refers to requiring an order for the care, control and management of the reserve by the City of Cockburn. The City of Cockburn has already approved a town planning scheme amendment and a structure plan for Coogee that does not incorporate a proposal for a foreshore reserve, as is proposed by this amendment. Clearly, that is not something that the City of Cockburn is supporting. There has been extensive community consultation through the planning process. Clearly, there is no support for creating a foreshore reserve over that piece of land. Also, Hon Paul Llewellyn ignores the fact that a management order cannot be imposed on a local authority. That is exactly what this amendment proposes to do. I fail to see how we can bring that about, because we cannot impose it on a local authority.

I am not clear what is intended in proposed subclause 3(d). I cannot make any sense of it, so I seek some clarification. With respect to the creation of the foreshore reserve being required to form part of the regional beach, as previously outlined, the regional beach exists further south of the Port Coogee development. Therefore, creating a foreshore reserve, as proposed by this amendment, will not enhance or contribute to the regional beach, which is further south of the proposed foreshore reserve. Also the description in paragraph 3(e) of the amendment is, again, ambiguous and unclear. It refers to abutting class A reserve 24306. That class A reserve actually abuts the rail reserve for about 10 per cent - if that - of the length of the rail reserve. Is it only that 10 per cent portion that the amendment proposes to reserve as foreshore; or is it a greater portion, in which case it is clearly not encompassed within the wording of the proposed amendment? Therefore, the exact proposal in the amendment is not clear. There is a lack of clarity in the proposed amendment - how it is intended to come into effect and how the government should bring it into effect, should it be supported by the committee. I, therefore, seek the support of members to oppose the amendment because of the lack of clarity within the amendment and clear problems with the implementation of the amendment as it currently reads.

**Hon SIMON O'BRIEN:** The land in question is in the South Metropolitan Region, which I have the honour to represent. I will give the chamber the benefit of some local knowledge, and perhaps other members may also wish to do so. I listened with great interest to the contribution of Hon Paul Llewellyn. I viewed his amendment before us in a similar light, and wanted to find out what he was on about. I think his intent is well motivated, as is he, I am sure, in all things. However, this amendment is another effort in a very long series of efforts to derail what is happening at Port Coogee, formerly known as Port Catherine. Whether this is related to earlier events, I

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do not know; I suspect it might be. It might be a coincidence that, like other actions in the past that I will come to in a moment, this amendment seeks to stop, hamper or make unviable that which has been progressing in Port Coogee for probably the best part of a decade, if not marginally longer, based on what has occurred since the embryonic stage of the plan. However, heavy-duty substance and form have been given to this plan, certainly since 1997. Some processes along the way could be described as real and measurable delays, and each time they happen a cost accrues. I believe that a time comes when a decision must be made about whether to abandon a project - in this case leave an area of wasteland to sit and rot for another 10, 20 or 30 years - or to proceed. We have passed the stage now at which the decision has been made to proceed, and in a number of ways, including the introduction of this Railway Discontinuance Bill, the whole process of developing Port Coogee is proceeding. This bill is a link in a chain. The amendment before us now is a very late attempt to change what is happening. I do not apportion any improper motive whatsoever to Hon Paul Llewellyn's amendment. However, with respect, it is far too late to throw into the mix propositions to undo the very advanced planning that has been done so far, and replace it with another idea to which he personally subscribes. Often when we consider these sorts of proposals, our views are inevitably shaped by subjective judgment. In support of that subjective judgment we search for other data and argument. This whole saga, which I have watched with interest since 1997 when I first became a member of this place, is no exception. All members, as representatives of regions, have experience in a number of these planning issues that involve land use that is to be radically changed. Understandably, many people in the local area and those from further afield who have an interest in the future of the state's amenity want to have their two bob's worth. However, there comes a time when decisions must be made, and a decision has been made about this development. I see no reason for that development to be derailed for another few years, which is what will happen if we entertain this amendment.

Now seems to be the appropriate time to comment on the group called the Coogee Coastal Action Coalition. I think it has come to everybody's attention as a result of the rallies it has held and so on.

**Hon Ljiljanna Ravlich:** It seems to have disappeared.

**Hon SIMON O'BRIEN:** There are not too many postings on the group's web site. I am not much of a boffin; I am trying to give the impression that I use this computer gizmo. However, in this case the computer has been useful because it has saved me from carting down from my office the bulging file on this issue, which I have kept in my office for years. It is massive and contains all the material I need for this debate. However, the debate has been brought on and I am down here without my file. Nonetheless, I have the information I need at my fingertips on my laptop.

I refer members to the material that has been seen in the public domain through the media or found on the web site I am now viewing. What I do not like about that campaign is the use of false testimony to advance the cause. In this case, I spotted very early the emotive pictures depicting little children holding buckets and standing on the sand. Those are the sorts of pictures people use when they want to save beaches. Who can argue about a little kiddie wearing a cute little hat and holding his sand bucket on the beach? What evil people would try to deny that kiddie fun in the sand? The pictures were complemented with images of undersea features such as coral. I was not aware that this part of the coast was known for rich coral; it is somewhat distant from Ningaloo. I am sure the Coogee Coastal Action Coalition comprises the same mob that would have marched for Ningaloo, many of whom have not even been there. I was struck with the way that group presented at its rallies in front of the media and used its web site, [www.awakeningaustralia.com.au/savecoogeebeach](http://www.awakeningaustralia.com.au/savecoogeebeach). The beach shown on the web site is indeed Coogee Beach, which that movement says needs saving. Members have read the bill and its accompanying documents, and have seen the maps that are available at the table showing pictures of a nice beach that is not to be disturbed. However, the photograph of the protesters on the white, sandy beach was taken at a location to the south of the development site! The Coogee development site is corrupted, contaminated and clapped out. It is nothing like the white, pristine beach that is shown in all the save Coogee beach propaganda. It always offends me when I see false images being used. I cannot help but think that if an argument cannot stand on its merits, it is likely to be faulty; and this argument is faulty. If people must resort to the use of false images, their argument does not have enough legs to stand on its merits. The Greens (WA) amendment does a number of things. Hon Paul Llewellyn has invited us to discuss these issues, and in time he will comment on my remarks. We are talking about setting aside a class A reserve of no less than 5.4 hectares. That is a lot of dirt. The member talked about prices per square metre earlier. I thought I heard him say that the area of land to be set aside under his amendment is a comparative sliver that would not affect the commercial viability of the proposed project. I query that. I am happy to stand corrected, but it occurs to me that if 5.4 hectares of this relatively small development area were to be diverted for another use - other adjacent areas would also have to be modified - it would have a massive impact on the project that would probably make it unviable.

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The member is proposing to require the City of Cockburn to abide by an order for the care, control and management of the proposed class A reserve. The City of Cockburn has some very strong views on this. We often refer to local government as the area of government that is closest to the people. When people organise rallies and protests, and embark on campaigns of sending postcards to councillors in their thousands - the postcards not the councillors - with pictures of a child wearing a hat, sitting on the beach next to a bucket and spade, with the message that it is awful that it will all be taken away from him -

**Hon Graham Giffard** interjected.

**Hon SIMON O'BRIEN:** Hon Graham Giffard would probably lose the bucket too. However, if he lets me handle this, I think I will get there. I thank the member for his suggestion anyway.

As someone who has been close to the councillors of the City of Cockburn, I can tell members that its membership is diverse. However, they are absolutely united in their desire for this project to continue. The councillors are by definition very in tune with the rumblings of discontent within their own ward. Nonetheless, they reject the view that there is discontent, and want the development to proceed. It would give them a real double whammy if the project were derailed and then, to add injury to insult, the new class A reserve was put under their care, control and management. I wonder whether Hon Paul Llewellyn has consulted with the City of Cockburn. If he had, he would have been told by everyone, from the mayor to the chief executive officer to the bloke who stamps the library books, that they will not wear this; it is unacceptable. They are the elected representatives of that district. They are my reflections on the amendment. I hope that contributes somewhat to the debate.

**Hon PAUL LLEWELLYN:** I will respond to the parliamentary secretary's comments and to some of the other points that were made. However, before we go on about this, I point out that it is a very simple proposition. It is not a complex proposition; it is very clear. I do not want to be picky about the parliamentary secretary's tautology that it was clearly unclear. In fact, the proposition is really clear. It is spatially clear and it is administratively clear. The amendment was constructed in such a way that it is precise in what it is directing the Public Transport Authority and the Western Australian Planning Commission to do with the land, because that is what we are talking about. We are talking about the authority to deal with the land and the guidance that the Parliament can give to that authority in dealing with the land.

First of all, this is not a proposition to derail the Port Coogee development. I say that spatially - I do not want to argue the planning issues - this is a structure plan; it is not the last detail. Spatially, for the Port Coogee development to go ahead, it was contingent on the situation regarding this and a number of other reserves being resolved, so here we are resolving it. Spatially, this amendment will not make a significant impact on the Port Coogee development. I was interested to learn that it is a marginal project and that the proponents of this multimillion-dollar land and marina development cannot afford to reallocate even a minute fraction of some land to a community purpose. Therefore, far from derailing any planning arrangements, the proposition is simple enough to be put in place at the structure plan level and for progress to be made. The parliamentary secretary commented that some of the land is private. Is that private land to which the parliamentary secretary referred part of the subject of the Port Coogee agreement?

**Hon ADELE FARINA:** Yes, it is.

**Hon PAUL LLEWELLYN:** In that case, this is not a complex proposition. That land has already been transacted and dealt with in the same agreement; it is on the books. It is all subject to some negotiation. The entire agreement hinged on the discontinuance of the railway reserve, probably also on the discontinuance and rearrangement of all the public land on the site and on making it market ready. That is what we are doing. Is the purpose of this discontinuance and the arrangements being put in place today to make the land market ready?

**Hon ADELE FARINA:** Yes.

**Hon PAUL LLEWELLYN:** The simple fact about this discontinuance bill is that it is part of a broad set of arrangements that the Parliament must endorse to transact and deal in the Port Coogee development, and also to fulfil obligations under an agreement. In fact, all that will happen is a relatively small variation in the way in which the space and the cadastre - the legal boundaries - will be arranged. Far from being unclear, the amendment attempts to be very clear. We can argue that there are 100 metres of common boundary and we can put obstructions in the way. However, I appeal to members to go through a principled process of governance. That is what the upper house is about. It is about negotiating on the principles of public good. If we are to nitpick about whether the description is absolutely correct or ambiguous, I will refer to schedule 1 of the bill. I will show members how accurate the schedule is. It refers to the scheduled land for the Fremantle-Kwinana railway and in part states -

. . . which was 16 miles 70 chains by rail from Perth . . . and is approximately 350 m north of Fairbairn Road, Coogee.

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That is not very clear to me, because there is a chain and there is a metre. Let us debate this matter on its merits. Let us debate it on the substantive issues. The substantive issues are to not obstruct the project and not appease bucket-carrying three-year-olds, to provide for the long-term future needs of beachgoers in the Coogee area and to assign responsibility to a competent authority, which is the Coogee city council.

A government member: Cockburn City Council.

**Hon PAUL LLEWELLYN:** I am sorry; the Cockburn City Council. Members can tell that I come from the deep south, but I lived in the south metropolitan area for about 20 years.

**Hon Simon O'Brien:** It's a pity it wasn't the other way around!

**Hon PAUL LLEWELLYN:** It was probably longer than the member.

**Hon Simon O'Brien:** What's longer than me? I'm five foot eight!

**Hon PAUL LLEWELLYN:** I will go back; we will stay on track, as it were.

The parliamentary secretary has said that there is some private land involved and, therefore, that will make the situation difficult. That is not so. Private land is involved; it is part of the nature of the agreement we are dealing with and the decision we are making. We are making an allocation in a process, and part of that process is the discontinuance of a railway on some public land, reallocation of the land and empowerment of an authority to deal with that land. It is not complex. However, the issue is about not obstructing the project. The project will go ahead in almost identical form, except that rather than there being an exclusively private estate, there will be a public regional beach for the enjoyment of thousands of people.

**Hon Simon O'Brien:** You've got a public regional beach! There are photos of it on this web site.

**Hon PAUL LLEWELLYN:** Hang on; there is the matter of Woodman Point. There is confusion about this issue. We are dealing, with some fidelity, with the land that is subject to the Port Coogee agreement. We are not spilling over into an argument about Woodman Point and other places, even though we could do that. With regard to Woodman Point, in whom is the land vested and what is its purpose?

**Hon ADELE FARINA:** It is not possible for me to list all the vestings because I simply do not have that information in front of me. However, the land between the proposed Port Coogee development and the Coogee beach jetty is vested in and managed by the City of Cockburn. The land further south is held in various vestings, but it is all managed by the Department of Conservation and Land Management.

**Hon PAUL LLEWELLYN:** My point is made; that is, the land is CALM reserve for nature conservation and public recreation - it is not a regional beach. The Department of Conservation and Land Management has said that it is not happy about having the surf club on that particular reserve because that is not the purpose for which the land has been set aside. I want to construct an argument that the right place for a surf club and a regional club similar in principle to the one in Cottesloe is in an urban precinct and on land that is zoned for urban use. It should not be put on CALM reserve land and land allocated for nature conservation. I have a report that outlines CALM's concerns about the fact that the allocation of the land to the surf club -

*Point of Order*

**Hon KATE DOUST:** Madam Deputy Chair, what is the relevance of talking about issues that are not associated with this bill?

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** For the purpose of clarity, and to work out whether there is a point of order, I ask Hon Paul Llewellyn and the parliamentary secretary to explain whether the land being referred to is part of the land subject to the Railway Discontinuance Bill and the amendment.

*Committee Resumed*

**Hon PAUL LLEWELLYN:** I understand the question entirely. The area of land I am referring to runs almost into the Woodman Point reserve, and I imagine that in due course it will become part of that reserve. The point I am making is that the claim that there is already a regional beach is not accurate. We are actually comparing apples with oranges. We are talking about a uniquely built urban environment in which we are creating unique opportunities. I point out to Hon Simon O'Brien that this is not a step backwards to buckets and spades and bushes on the beach. We are talking about the construction of an urban precinct, an interesting landscape incorporating public facilities, restaurants or commercial facilities equivalent to those at Cottesloe and Scarborough beaches and the Hillarys marina. We are using some imagination. This is not winding back the scope of the Port Coogee development; this will expand the vision for the Port Coogee development and it will expand its capacity to be economically and commercially viable.

Hon Paul Llewellyn; Hon Adele Farina; Deputy Chairman; Hon Murray Criddle; Hon George Cash; Hon Simon O'Brien; Hon Kate Doust; Hon Donna Faragher

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The amendment we are proposing in good faith attempts to keep this argument simple. It does not collapse the issues about beaches and surf clubs, but keeps it simple. The area of land that is proposed in this description, which was unclear, but which was no less clear than any other description in the bill, is fairly discrete. In the structure plan it goes back towards what will be a major arterial road and it includes a foreshore area for the enjoyment and development of the community and for the expansion of opportunities. It is simple. We are not talking about encroaching onto the Woodman Point reserve or whacking a surf club a few kilometres down the road with all the parking issues that go with that. We are talking about incorporating a modern Australian iconic beach into an expanding urban area in a fairly precise way. That was the intention of the amendment. I take exception to the suggestion that the amendment is unclear. We are being as clear as we can about the construction.

**Hon ADELE FARINA:** In response to your earlier question, Madam Deputy Chairman (Hon Louise Pratt), the land being discussed by Hon Paul Llewellyn is outside the land that is identified in the bill; it runs alongside that land. Therefore, much of this discussion is outside the scope and purpose of the bill. We have entertained the proposition long enough, and nothing that Hon Paul Llewellyn has said has discounted my earlier comments about the lack of clarity in the proposed amendment, so there is no point in my repeating myself.

**Hon DONNA FARAGHER:** The opposition believes that Hon Paul Llewellyn's amendment is a very significant amendment for a bill that essentially deals with the discontinuance of two sections of railway. The bill is very defined in its scope, albeit with the qualification that has already been outlined by Hon George Cash. According to the parliamentary secretary, the planning process has been completed. As has already been mentioned, the bill does not deal with the planning of certain lands, which this amendment seeks to do; rather, the bill deals with the discontinuance of certain portions of railway and authorises the disposition of certain material and land and for related purposes.

I understand also that the developers of the land have fulfilled their obligations with respect to public open space. Therefore, for the reasons that have been outlined by the parliamentary secretary, the opposition will not be supporting the amendment.

**Hon GEORGE CASH:** Now that the opposition's position has been made clear by Hon Donna Faragher, I want to go back to some earlier remarks made by the parliamentary secretary. During the discussion on clause 1, the parliamentary secretary suggested that certain contracts in respect of the land were entered into by a previous government. I assume that in saying that, the parliamentary secretary was implying that that should deter me from raising any question about parliamentary procedure. Perhaps the parliamentary secretary should consider the doctrine of the separation of powers, because, irrespective of whether a previous executive entered into contracts, I will not be deterred from raising matters that are properly related to this bill and deal with parliamentary procedure. There is no question that this Parliament is supreme when it comes to enacting the laws of this state. This Parliament has the absolute right to consider matters relevant to this bill. I said earlier that on the face of it, this amendment appeared to be within the scope and purpose of the bill. I must say that, having listened to Hon Paul Llewellyn describe some aspects of his amendment, he was starting to convince me that perhaps the amendment was not within the scope and purpose of the bill; however, that matter has been dealt with. The fact is we are considering the amendment. I want to make it very clear that no matter which executive has dealt with this land, I happen to be a member of this place. It is our job to hold the executive to account, and that is what I intend to do.

**Hon MURRAY CRIDDLE:** I have been listening to the debate pretty closely. The parliamentary secretary concerned me a bit at one stage when she spoke about the town planning scheme. Can the parliamentary secretary confirm that when this legislation goes through, there will be no more impediments to the development and no more hurdles for the developer? Also, does this development comply with the town planning scheme, which will mean that it can go ahead?

**Hon ADELE FARINA:** Yes. The discontinuance of the rail reserve so that the land can be developed is in accordance with the town planning scheme. As I understand it, the developers have obtained environmental approval, the metropolitan region scheme amendment has been approved, the town planning scheme amendment has been approved, the structure plan has been approved, and all the attempts to bring appeals or injunctions before the Supreme Court have failed. Therefore, there should not be any further impediments. However, I do not have a crystal ball, so I cannot say that with certainty. However, all the approval processes of government are in place.

Amendment put and a division taken with the following result -

**Extract from *Hansard***  
[COUNCIL - Wednesday, 22 March 2006]  
p686b-701a

Hon Paul Llewellyn; Hon Adele Farina; Deputy Chairman; Hon Murray Criddle; Hon George Cash; Hon Simon O'Brien; Hon Kate Doust; Hon Donna Faragher

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Ayes (2)

Hon Paul Llewellyn

Hon Giz Watson (*Teller*)

Noes (28)

Hon Ken Baston  
Hon George Cash  
Hon Vincent Catania  
Hon Kim Chance  
Hon Peter Collier  
Hon Murray Criddle  
Hon Ed Dermer

Hon Bruce Donaldson  
Hon Kate Doust  
Hon Sue Ellery  
Hon Donna Faragher  
Hon Adele Farina  
Hon Anthony Fels  
Hon Graham Giffard

Hon Nigel Hallett  
Hon Ray Halligan  
Hon Barry House  
Hon Robyn McSweeney  
Hon Sheila Mills  
Hon Norman Moore  
Hon Helen Morton

Hon Simon O'Brien  
Hon Louise Pratt  
Hon Ljiljana Ravlich  
Hon Margaret Rowe  
Hon Sally Talbot  
Hon Ken Travers  
Hon Matt Benson-Lidholm (*Teller*)

**Amendment thus negatived.**

**Clause put and passed.**

**Schedules 1 and 2 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

**HON ADELE FARINA (South West - Parliamentary Secretary)** [9.40 pm]: I move -

That the bill be now read a third time.

**HON PAUL LLEWELLYN (South West)** [9.41 pm]: I thank my fellow members for bearing with me throughout this debate. Irrespective of what on the surface it may have appeared I was doing, I was trying to extract more value out of this bill for the Western Australian community. My contribution to this debate has been about fair play.

The Port Coogee development has gone through an extensive process, but it was never beyond this house to make a change to that process that would be in the public good. No construction of technical reasons would excuse making decisions that were not in the public good. If the decisions had been hard and the bill had to go back to the other place, the government would have been forced to reconstruct its thinking on the whole issue.

I do not feel as though the Greens (WA) have lost on this bill. We have created a story. It is good to have a debate in which we stand on principle on matters of public importance. I believe we came close in debate on this discontinuance bill to touching both sides of Parliament with a fairly plausible and believable scenario. As members of Parliament, it is a pity that we choose to be persuaded that just because a company has entered into an agreement we cannot in good faith and in the public interest negotiate variations to that agreement. We simply hide behind technicalities.

I found this debate invigorating. It tested me to take something quite simple and build out of it a case in the public interest. I actually tried to represent not only my constituency and the south west metropolitan region, but also the broader Western Australian community. The Greens are in this place to represent the public interest. I thank members for allowing the debate on this bill to proceed.

Question put and passed.

Bill read a third time and passed.