

**HARDEY PARK, CLASS A RESERVE 12237, SUBMISSION NO 18 OF 2000**

*Motion for Disallowance*

Resumed from 21 September on the following motion moved by Hon J.A. Scott -

That submission No 18 of 2000 - Proposal to grant a land exchange between portion of Class "A" Reserve 12237 "Hardey Park" and portion of Swan location 33 being Lot 712 tabled in the Legislative Council on 23 May 2000 under section 42(4)(a) of the Land Administration Act 1997 be and is hereby disallowed.

**HON J.A. COWDELL** (South West) [4.35 pm]: The Opposition notes the comments of Hon J.A. Scott in moving this disallowance, and also notes the following update provided by Michael Ryan on behalf of the Save Hardey Park Action Group, since we last debated this matter -

I am writing on behalf of a group of local people regarding the above matter, which in all likelihood you will be called on to decide later in the week.

We are simply trying to save Hardey Park from being destroyed, and with it, in turn, the vast majority of the remaining open riverfront land in Belmont.

Submission No 18 of 2000 now before you in Parliament, when read without the distraction of the proposed land exchange, simply states that Hardey Park is being carved up to "provide alternative access to adjoining private subdivisions, to the west and east". These properties are already, and will continue to be accessed by Great Eastern Highway, and this "alternative" access, will only serve to enhance the financial returns for many developments on these sites. This is achieved by giving the sites right turn access from Great Eastern Highway, in addition to the left-in, left-out access they now enjoy.

He further stated -

We cannot, however, accept that an A-class reserve can be destroyed, and 5 000 m<sup>2</sup> of public land, worth in the region of \$2.5m, can simply be given free of charge for the benefit of adjoining private developers. Whilst I would rather not confuse the issue by discussing the Lot 712 exchange, I feel I must, given in forms part of the rationalisation in the submission before you in Parliament. . . . Regarding the question of "deemed equal value". This term, I am told by an experienced professional valuer, is used simply to address situations where properties are not in fact of equal value, but where an arbitrary decision to deem them equal has been made.

These two properties will, in relatively short time, be proven to be of widely disparate worth, with Hardey Park shown to be of far greater value. I would simply send you proof in the form of a written independent valuation, but given the City of Belmont has sworn out a Supreme Court appeal against the Freedom of Information Commissioner's decision giving me the original valuations to properly test, this cannot be done until the appeal is heard.

The "widespread support for the proposal" is based on 207 "tick the yes box" responses to a brochure and letter selectively sent to 800 ratepayers of the 15 000 ratepayers in the City of Belmont. The brochure and accompanying letter contained spurious and misleading information, a statement I can easily support should you wish to see these particular documents. . . . I have always believed that the parliamentary process is there to protect these reserves from being pillaged, but from my experience so far in this charade some opposing motive seems to be driving the disposal of Hardey Park as it cannot be seen to be of any benefit to the wider community to be disposing of our heritage, under any circumstances.

To those of you not aware, the National Trust is currently assessing Hardey Park for listing, given it is the oldest sporting ground in Belmont. . . . In the end, it becomes a choice between the Council's story and the one we have put to you for consideration. We can back up everything we say with extracts from the Council's own minutes, given there is a will in Parliament to simply read this and consider the facts.

I note those points made by the action group, and add that the Opposition expresses its concern about the refusal of the City of Belmont to release the land valuations.

The Opposition does not believe that claims of commercial confidentiality are appropriate in this case. I note the persuasive case put by the City of Belmont in a letter that reads -

The proposal is for 0.9403 ha of the original 3.1105 ha of Hardey Park to be relocated to Lot 712 Great Eastern Highway, Ascot a distance of some 700 metres north-east towards Ascot Waters. The new park

(Lot 712) which is also 0.9403 ha in area, will be at the same level as the river. This will afford great views in comparison to the limited views available from Hardey Park. Additionally, road access across Hardey Park will allow two car parking areas to be built to accommodate more people, enabling them to enjoy the panoramic views that are only available from the retained portion of Hardey Park.

The council goes on to make the following observations -

- (a) Hardey Park has proved to be unsuitable as an active recreation area and the proposed significant widening of Great Eastern Highway will further reduce its suitability and increase its isolation because of additional increases in traffic and the lack of suitable access.
- (b) The practical functions of the Hardey Park reserve will remain the same, that being an area which allows protection of the steep bank to the Swan River, as well as a lookout. The views from the remaining section of Hardey Park (ie. near the escarpment) both towards the Hills and the Perth Central Business District, are outstanding and will be preserved . . .
- (c) By making Lot 712 a "Parks and Recreation" reserve (with A Class Reserve designation), and combining it with the abutting public open space foreshore land, wide and picturesque views of the inlet and river will be provided from Great Eastern Highway - towards the Perth Central Business district. These views will be greatly enhanced when Great Eastern Highway is raised to its finished level. Such valuable views were not previously appreciated when buildings fronted this section of the highway. If Lot 712 is allowed to be developed with buildings, as it can be under existing zoning laws, the public will lose outstanding river views and public access

It continues -

- (e) A fundamental component of Council's continuing pursuit of the park relocation is the strong support of the Swan River Trust based on the lack of public accessibility to the river from Hardey Park and the outstanding accessibility to the river provided by Lot 712. This is a factor the Trust sees as a very important community benefit accruing from the land exchange.

The council then refers to the issue of gifting. It notes -

The land was therefore not gifted or bequeathed to Council and the Attorney General has confirmed with Council that Hardey Park is not subject to a charitable trust or otherwise dedicated to charity.

The council concludes -

Council has been engaged in protracted negotiations with the owners of Lot 712 and their consultant to obtain agreement to the land exchange because of the significant community benefit that will result. There will be no windfall financial gain for the owners of Lot 712 because the exchange will be made on an equal value basis.

In subsequent communications, one dated 4 October, the council deals again with the statements raised by Hon Jim Scott in his speech supporting the disallowance - one being that the council will be a financial beneficiary of this land swap. The Opposition was concerned that the council may have obtained legal advice to the effect that either legislation was needed to remove such a trust on the land or that the approval of the Supreme Court was needed. However, the council apparently refutes this in communication provided to the Opposition.

Hon J.A. Scott interjected.

Hon J.A. COWDELL: I look forward to the response of Hon Jim Scott. Marion Blair, the acting mayor, concludes -

Obviously the City welcomes your cooperation in approving this land exchange when it is again raised for the consideration of the Legislative Council, presumably on 10 October when parliament resumes.

In a further communication on 5 October the council states -

Further to the Acting Mayor's letter dated 4 October 2000 relating to this issue, we are aware of reports that an approach has been made to the National Trust, presumably claiming that the portion of Hardey Park to be exchanged has heritage significance. The retention of the strategic section of Hardey Park incorporating the escarpment and viewing areas we believe would accommodate and preserve any heritage significance of this reserve if any exists.

The council's chief executive officer once again expresses concern should the deal fall over. He concludes that such an outcome would be a tragedy for the Belmont community. I understood that the form of this disallowance would mean that if Parliament either voted against it or failed to deal with it, the effect would be

the same - no disallowance would be effected. I now understand that, given the poor wording of the principal Act, the failure of Parliament to deal with such a motion could lead to protracted legal argument. In a sense this would be the worst of all possible outcomes. Parliament must therefore deal with the matter. In these circumstances the Opposition does not believe that sufficient evidence is available to overturn the proper planning determinations of the City of Belmont for Hardey Park. The Opposition will therefore vote against this disallowance motion.

I note that since the adjournment of this debate two weeks ago the City of Belmont has agreed to hold a public forum. I trust that in these circumstances the city will listen to the proper concerns of the community and not go ahead if it finds that it does not have the confidence of the local community. It is the view of the Opposition that it must be the decision of the local community.

**HON PETER FOSS** (East Metropolitan - Attorney General) [4.48 pm]: For reasons similar to those expressed by Hon John Cowdell, the Government will also vote against the disallowance. I congratulate the City of Belmont. Belmont is a beautiful city which has been given a poor appearance by the look of Great Eastern Highway. The city has been working seriously to improve the appearance along Great Eastern Highway and this is another step in that direction.

**HON J.A. SCOTT** (South Metropolitan) [4.49 pm]: Quite a few members have looked into this matter seriously and have brought up many of the issues that lie behind this disallowance motion. Hon Norm Kelly reiterated my concern at the low level of public debate and education on the proposals not only for Hardey Park and lot 712 but also for the whole area. In addition, the area of Hardey Park that is earmarked for this development is not exactly the area referred to in the small poll undertaken by the Belmont City Council.

Although I appreciate that the Attorney General may have been concerned about time, I am disappointed he did not address some of the issues that were raised in this debate.

Hon John Cowdell referred again today to the position taken by the Swan River Trust. The Belmont City Council said the Swan River Trust was supportive of the land swap. I do not think that is accurate. The Swan River Trust was against high-rise development on lot 712 Great Eastern Highway. As I pointed out earlier, the Swan River Trust is in the process of ceding any power over this lot. If it were concerned about it, surely it would have held onto the planning power over Hardey Park. I find the matter very mysterious. I had hoped the Attorney General would explain why on earth that occurred. After all, he was representing the Government's position in this debate.

I should also point out that the consensus debate has begun. Approximately 900 signatures have been collected in opposition to the land swap. The council's attempt at community consultation through a small poll, to which I think only a couple of hundred people responded, has been well and truly overridden by a much larger petition to the council, which petition, according to Mr Ryan, has been ignored.

The Belmont City Council referred to the fact that a charitable trust over the park does not exist. I do not think I referred to a charitable trust. I do not have my words written down in front of me, but I am sure I referred to a perpetual trust. If I heard him correctly, Hon John Cowdell referred to the fact that the council had received no legal advice about the removal of the perpetual trust that was given to the council. I have read a letter from McLeod and Co, which gave legal advice about the perpetual trust and advised that the Attorney General would need to take action to lift it.

Hon J.A. Cowdell: I think I asked whether legal advice was sought. I understood the council's letter to contradict that.

Hon J.A. SCOTT: Legal advice certainly was provided. I have a copy of the letter, which I can show Hon John Cowdell later. Unfortunately I did not know Hon John Cowdell was going to raise that matter. Perhaps I should have foreseen that he would do so.

I think some doubt remains about whether the change in use of the land can occur without further work by the Attorney General to lift the perpetual trust, despite this motion being defeated. I am surprised the Attorney General did not raise the matter during his very short reply. I would have liked him to take the matter more seriously and talk about those issues. This whole matter is very serious.

I refer now to comments that access to the river from Hardey Park is more difficult than access from lot 712 Great Eastern Highway because lot 712 is on the same level as the river. Any member who has visited lot 712 will know that it does not meet the river; it is set back, and parks and recreation areas already exist between lot 712 and the river, although the total area will be expanded. The argument that lot 712 will provide better access to the river does not stand up because it does not extend to the river.

Regarding insufficient public education or input into the planning process, I understand Hon John Cowdell said that the council would hold public meetings on the matter. That will not change the fate of Hardey Park. Unless public meetings are held in the near future, the change in use of land will be a fait accompli.

It is important to consider the future of not only Hardey Park and lot 712 Great Eastern Highway but also the whole piece of land in that area because the community is largely in the dark about its future. I hope the Belmont City Council will extend the public consultation process to discussion on the use of all the land near lot 712 to the Ascot brick kiln and what used to be called Parry Field, which occupied a baseball facility. A number of members indicated that they wanted to see more public consultation. I hope the Belmont City Council takes seriously the comments made in this Chamber because this motion has resulted from poor consultation. Had genuine consultation occurred in the first place, rather than the distribution of a handful of letters, community consensus may have been reached before the land swap took place.

Despite the arguments put this evening, I am not happy about this land swap. I have examined this matter thoroughly and many issues are involved on which I will not spend hours now because the Leader of the House wants to get on with other business. Many issues have raised questions in my mind. Before future development occurs in that area, there must be thorough public debate with the community based on a model of proper input and participation in the process.

Question put and negatived.