PLANNING LEGISLATION AMENDMENT BILL 2000

Second Reading

Resumed from 7 September.

MS MacTIERNAN (Armadale) [1.02 pm]: The Opposition has resolved not to support this legislation. The Government's attempts to restore the law to the interpretation used prior to the Supreme Court case of the City of Bayswater versus Family and Children's Services is out of keeping with current societal expectations about the rights and prerogatives of government. It is clear that the general community no longer supports the view that the Government or the Crown should be immune from engaging in proper planning processes. For that reason, the attempt to reimpose crown immunity in this area is unwise and out of keeping with the way in which society has evolved and the expectations of a modern democracy.

I will outline the City of Bayswater case so that members understand how this situation has arisen. The case of the City of Bayswater versus Family and Children's Services relates to a hostel that the department was attempting to build within the city's boundary. Putting aside the moral and planning rights and wrongs of having the hostel at that location, the City of Bayswater argued that the Government should be required to obtain planning approval. The Government relied on the Town Planning and Development Act 1928, which provided a crown immunity for public works. In the first instance, the court found in favour of Family and Children's Services. However, when it went on appeal to the Full Bench of the Supreme Court, that court found in favour of the City of Bayswater. The ruling was that, while the Town Planning and Development Act contained an exemption, there was no exemption from planning approval requirements in the Metropolitan Region Town Planning Scheme Act 1959. That latter Act required the Government to obtain planning approval for any developments on land zoned under the legislation. Therefore, we had land subject to a development scheme under the 1928 Act but also subject to the 1959 Act. While the Government had immunity under one Act, it did not under the other. The 1959 Act contained a savings provision stating that the two Acts should be read together. Notwithstanding that provision, the court found that that was completely incompatible, therefore the crown exemption in the 1928 Act did not extend to cover the land covered by the 1959 Act.

The upshot was that the Government was required to obtain planning approval for public works. I sympathise with the Government's subsequent actions. I presume that as a result of discussions with the Western Australian Planning Commission - the Government may have directed the commission and perhaps the minister can clarify that - it was decided to withdraw the local authority's delegation relating to town planning approvals for any developments that constituted public works. Because local government authorities hold their power to approve developments as delegates of the WA Planning Commission, the commission can withdraw that delegation at any time for some or all planning decisions. The commission decided it would withdraw the delegation in respect of public works, and the Opposition did not object because it was a reasonable course of action. A State Government must put in place many facilities and it will confront opposition no matter where those facilities are located. We will hear later about the concerns of the residents of Bassendean about the location of a prison. One of the most infamous examples of residents fighting back was the Tresillian case in the early 1970s. The good burghers of Nedlands decided that they did not want a facility for handicapped kiddies in their suburb and mounted a concerted campaign to have it moved. As a result, the facility was relocated away from Nedlands and an art gallery took its place.

State Governments will always face these difficulties. Those decisions that require consideration of the broader interests of the State - not those of the local community - should be the domain of the State Government, not local government authorities. The Opposition supported the Government's actions in withdrawing the Planning Commission delegation granted to local authorities in that situation. However, this legislation is an attempt to go one step further and to restore the State to the position we thought we were in. I am sure that the minister will say that the Labor Party operated under this system throughout the 1980s and he will ask what is wrong with it now.

Mr Kierath: You are not wrong.

Ms MacTIERNAN: The Opposition could let this go through to the keeper. As you are probably aware, Mr Deputy Speaker, it is likely that in two or three months members currently on this side of the Chamber will be occupying the treasury benches.

Mr Kierath: Don't count on it!

Ms MacTIERNAN: The Minister for Planning obviously knows something that the rest of the Western Australian population does not.

Mr Kierath: The number in the metropolitan area must have been a whole nine people out of my 23 000. The member for Armadale should not bet her life on it.

Ms MacTIERNAN: The minister is confident that he will be returned, is he?

Mr Kierath: I am very confident that we will be returned.

Ms MacTIERNAN: That is good. What do they say in the Council - dreaming? The Minister for Planning aside, it is generally accepted that we have a good prospect of moving onto the other side and it is likely we will have to bear the brunt of the situation we are seeking to implement. I note that the colleagues of the Minister for Planning in the upper House are not nearly as confident, because three times during question time ministers have in their answers said things such as, "Well, when you are over here next year", but then said, "Oh, I did not actually mean that."

Mr Kierath: We have an election to go through, and I would rather be in our position than that of those opposite.

Ms MacTIERNAN: I hope that confidence continues. I am sure it will endear the minister to the community. What we are proposing will most likely create difficulties or administrative inconvenience for us, but we believe the mood of the community is changing and that it is no longer acceptable to have legislation which says that everyone else within society must comply with proper planning processes but the Government can institute its building or development program without being subject to those same processes. This legislation states that the Crown does not have to seek or obtain planning approval for public works.

The minister's staff has said that this is creating a huge problem because they now have a whole range of minor works. They receive approximately 40 planning applications a month for public works, and pursuant to the legislative regime those applications still go to the local authority - although it has no decision-making power - and then they go to the Western Australian Planning Commission. Every time people want to put up shade cloth in a primary school they have to go through that process. That is clearly inappropriate, and we would support a provision that provided exemption from those sorts of minor amendments. The Government is using arguments about a piece of shade cloth over a sandpit at a primary school to justify removing the requirement for planning approval for works such as prisons. The issues are not complementary.

Mr Kierath: Does the member think a prison application should go through that process or not?

Ms MacTIERNAN: I think it should go to the Western Australian Planning Commission.

Mr Kierath: Did the Labor Government do that when it was in power?

Ms MacTIERNAN: I understand that this will be the minister's argument. We have moved on. Everyone understood that that was the law. We now discover that we were wrong about what the law was. The question for this Government and for our side of politics is: We had the law wrong, but what should we do about the situation? It is our judgment that the community's level of sophistication on planning matters is such that it objects violently to any suggestion that State Government's should be able to make decisions about major developments without planning approvals. I do not want this to get bogged down with discussions about shade cloth over sandpits. If the Government introduces legislation to lift various minor modifications to public works, such as schools and hospitals, that it wants exempt from this planning process, we will happily agree, but that is not the crux of this legislation. By providing an exemption to the shade cloth over the sandpit situation, the Government is providing exemptions for a whole raft of developments and major government facilities, such as aged housing or any form of public housing, road developments, prisons, hostels, theatres or anything the Government might decide it wants to develop - anything that is developed in the public name becomes a public work and therefore is immune to the planning processes.

As I say, we - the members of the previous Labor Government - similar to this current Government, were of the view that there was an exemption. It turns out that we were all wrong. The question now is: What do we do about it? My view is that we should accept that the community has moved on and has a high level of demand for the Government itself to abide by planning processes and that it should follows the "do-as-I-do" and not the "do-as-I-say" model.

The legislation apparently contains a provision that would retrospectively approve all decisions that were made prior to the City of Bayswater case. I think it is a bit extraordinary, but it is the view of the minister's advisers that, for example, someone could challenge the location of the Mitchell Freeway because it did not have planning approval. We understand that this failure to obtain planning approval occurred in good faith, and we would be prepared to support legislation that retrospectively validated those prior developments, so the fact that they did not have planning approval would not invalidate them and subject them to challenge or open the Government to claims for compensation. We are prepared to provide an exemption and accept some provisions that might separate minor modifications to public works. However, in relation to the big-ticket items or the sorts of items for which any private developer, for example, would expect to receive approval, we say that if it is good

enough for the private sector, there should be no reason for the Government not to subject itself to the same conditions.

Bearing in mind the way the Government moves, I cannot see that there will be an inordinate delay for the bigger projects. The local authority has 42 days to look at a submission and make a recommendation, and if it has not made a recommendation during that time, that is its problem. The matter then goes to the Western Australian Planning Commission for a decision. It does not seem that this will unduly add to the length of time it will take for a decision to be made.

The Opposition's proposal would provide a workable situation in which the Government could say, "We consult on any of these matters. In any event, we consult with local government." It would not make it a longer process. The Western Australian Planning Commission would consult with government before making its decision. The Government already has an obligation to consult with the Western Australian Planning Commission. In the Opposition's view, the fact that the WAPC makes a final decision rather than a recommendation means that it is not likely that there will be any greater delay in going through these processes.

Although the minister denied it, the Western Australian Planning Commission Act 1985 gives the minister the power to direct the WAPC, if he so desires. Presumably, if time was a problem, he could direct the WAPC to make a decision within a particular time frame. He could also direct the WAPC to make a particular decision. It is important that Western Australia has an open and transparent planning approval process, to which the Government must subject itself. We should bear in mind that the Government appoints the WAPC. One example is that of the Pyrton site, which the Western Australian Planning Commission did not recommend. The minister ignored that recommendation and allowed that development to go ahead. If the Government is confident that it is right and that the WAPC is wrong, not only does it have the power to direct the WAPC, but also, by legislative fiat, it can seek to introduce an Act, as occurred when the Prisons (Pyrton) Amendment Bill was introduced.

Mr Kierath: I was told that I could not direct specific matters, but that I could direct general matters. I tried to direct the Western Australian Planning Commission on the Swan Brewery development, but I did not have the power to do so and I am not able to direct it on this specific matter.

Ms MacTIERNAN: Was that advice given to you by the Crown Solicitor?

Mr Kierath: Yes.

Ms MacTIERNAN: That is interesting. I spoke to Dennis McLeod - one of the senior planning lawyers in this State - and he took the view that the minister's power was broad and its operation was not limited in the legislation.

Mr Kierath: I tried everything, but the strong legal advice that I received was that I could not do anything. I could direct the WAPC on matters of general policy, but not on specific issues. If I said that I wanted it to consider the bush in the metropolitan area, generally I could do that. However, I could not go to a site and direct it on a specific matter, such as the brewery, the Pyrton site, Casuarina Prison or anything else.

Ms MacTIERNAN: That may well be the case.

Mr Kierath: It is black and white.

Ms MacTIERNAN: There are a variety of opinions on that within the State. In what way was the minister attempting to direct the WAPC with regard to the Swan Brewery development?

Mr Kierath: Never you mind. I was trying to retain all the public areas, such as the escalator and other services, without any changes. I did not want any changes in the public areas, but I could not do that.

Ms MacTIERNAN: The escalator in the Swan Brewery?

Mr Kierath: Yes.

Ms MacTIERNAN: When was this? Was it recently?

Mr Kierath: When the Western Australian Planning Commission gave approval to have residential units at the site.

Ms MacTIERNAN: Right. While we are on this topic, will the minister enlighten us about discussions he has had with the WAPC on specific issues, such as Mindarie. Has the minister discussed the Mindarie jetty development with the WAPC?

Mr Kierath: I have not discussed it with the WA Planning Commission. I have discussed those issues during meetings with the chief executive officer and, sometimes, the chairman. We are getting off the track a little,

aren't we? I gave you an illustration that my strong legal advice was that I could not direct the WAPC on specific matters. I am interested in any advice you have received from Dennis McLeod because at the time -

Ms MacTIERNAN: It would give the minister a lot more power.

Mr Kierath: Exactly.

Ms MacTIERNAN: Even if that is not the case, the WAPC exists. The argument against local authorities making decisions on things like prisons, homes for the disabled or any other facilities that are considered to be socially undesirable, is that they will take a localised view and will not consider the needs of the State. The Opposition accepts that and supports the minister's decision to withdraw the WAPC's delegation to local authorities on those matters. However, the Opposition does not believe that that applies to the WAPC. This has not been argued here. There has been no explanation in the second reading debate about why the WAPC should not make decisions on these matters. It is the Opposition's view that if the WAPC made a decision that the Government believed was unwise - as the Government of the day it is entitled to do that - the Government should come to Parliament with a piece of legislation to override that decision.

Mr Kierath: You would support that measure?

Ms MacTIERNAN: Bringing in legislation?

Mr Kierath: You would support allowing the minister to override the WA Planning Commission?

Ms MacTIERNAN: If the Government did not agree with a WAPC determination that a development proposal - for example, for a prison - was inappropriate, and was rejected on planning grounds, the Government should bring that proposal to Parliament.

Mr Kierath: You would have the Parliament dealing with planning applications?

Ms MacTIERNAN: Yes, if the Government felt the WAPC was wrong. The minister has a problem because he appoints the WAPC -

Mr Kierath: As an independent body.

Ms MacTIERNAN: Yes. The minister appoints the WAPC on the basis that its members understand, and have expertise in, planning matters. If the Government put up an application and the WAPC said, "This is rubbish. It is a bad proposal. In planning terms it is wrong", and if the Government rejected that decision, that must surely call into question the nature of the minister's decision. The Opposition is saying that if the Government wants to stick to that -

Mr Kierath: Nobody is perfect; nobody gets everything right.

Ms MacTIERNAN: Nobody gets everything 100 per cent right. The Opposition agrees that minor developments could be separated out and it would be happy to support legislation that dealt with minor amendments. However, if the minister could not attract the support of the WAPC for a major development - something of the scale of a prison or a hospital - that development proposal should come before the Parliament. One hopes that the Government is not getting it so wrong and is not so completely out of kilter with its planning commission that a number of those situations would occur. This would provide greater public confidence in the planning processes of this State.

If the Government believes that the WAPC is an appropriate decision-making structure for private sector development, the Opposition says that it should also make decisions that relate to government development. The days of executive fiat, and the degree to which people are prepared to accept that Government be immune from the processes that govern the rest of the community, are gone. Any consultation with the public about the Government's proposals would not receive a great deal of support.

I hope the minister has understood the Opposition's position. We support that part of the legislation that retrospectively approves the developments that took place prior to the City of Bayswater case; we believe they are appropriate. If the minister were to come back to the Parliament with an amendment to the Bill seeking exemptions for minor works, such as erecting a shade-cloth over a sandpit, we would support that provision. However, the general principle is that the WA Planning Commission is the appropriate body to make decisions in this matter. If it were to make a wrong decision, the minister would retain the opportunity to bring legislation into Parliament.

MR BROWN (Bassendean) [1.30 pm]: I shall also make some observations on the Bill and start by quoting part of the minister's second reading speech in which he outlined the purpose of the Bill. He said -

> The purpose of the Bill is to amend the planning legislation to ensure that state agencies are not required to obtain development approval under the metropolitan region scheme in respect of public works.
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> Section 32 of the Town Planning and Development Act relieves state agencies and local governments, when undertaking, constructing or providing any public work, from the specific requirements of approval under a local government town planning scheme. Instead, state agencies are required to consult the local government prior to such development taking place. In the case of the metropolitan region scheme, it was previously understood that a similar exemption applied to land zoned under the MRS, and approval was not required for public works carried out by or on behalf of the State Government.

The minister referred later in his speech to a decision of the Full Court of the Supreme Court of Western Australia that tested the question of whether development works required approval under the Metropolitan Region Town Planning Scheme Act. The minister said -

> The full court, by a majority of 2:1, reversed that decision holding that there was an inconsistency between the requirements of the MRS and section 32. The full court accordingly held that the provisions of the MRS will prevail, and will require an application for development approval for the works concerned.

The minister said the purpose of the Bill is to enable the Government to go ahead with development works without seeking approval under the Metropolitan Region Town Planning Scheme Act and, until such time as the full court held by a majority that it was a requirement, the Government understood that it did not require the consent of the Western Australian Planning Commission to go ahead with development works on public land.

The purpose of the Bill currently before the Parliament is indicated further in the minister's speech as follows -

> The Bill modifies the provisions of the Metropolitan Region Town Planning Scheme Act to exempt the Crown from the approval requirements of the MRS for public works on both zoned and reserved land.

This issue is particularly important in my electorate where the Government has for some considerable time sought to establish a women's minimum security prison at what is generally known as the Pyrton site in Eden Hill. For the purpose of this debate I shall go through the history of that matter because it is germane to the Bill now before the Parliament.

On 28 April 1998 in the other place Hon Nick Griffiths asked a question of the Attorney General, which can be found in that year's *Hansard* at page 1962. It reads -

> (1) Has the Government decided to locate a prison at the old Pyrton site adjacent to Lord Street, Eden Hill?
>
> (2) If so, what type of prison will it be?
>
> (3) If not, has the Government under consideration the location of a prison at this site?

The Attorney General replied -

> (1)-(3) We certainly have under consideration the location of a minimum security women's prison there but at the moment we are in the course of somewhat delicate negotiations with some of the local people. A final decision will not be made until those negotiations and discussions have been completed.

On 30 April, at page 2261 of the *Hansard* of that year, Hon Nick Griffiths asked another question about those discussions. Subsequent to that question being asked and its being given local publicity, a demand was made for public meetings to be held to discuss the Government's proposals. I arranged for a meeting to be held on Monday, 11 May at the Swan Districts Football Club. However, at that stage the Government and the Ministry of Justice were keen to retain control of the process. A deal of debate ensued about whether it was appropriate for a local member of Parliament to call such a meeting or whether the meeting should be called by the Ministry of Justice. The upshot of the debate was that the meeting was called by the ministry so that ministry officers could attend, it having been indicated to me that ministry officers could not attend the public meeting if it were called by me.

In any event, a public meeting was held on 14 May 1998 at which it was agreed that a community consultation committee would be established to discuss these matters with the Government. It was also agreed that the committee would comprise two councillors from the Bassendean Town Council; a councillor from the Shire of Swan; a representative each nominated by the Swan Valley Nyoongah community, the Success Hill action group and the Lockridge progress association; and two residents each from Eden Hill, Bassendean and Lockridge.

Interestingly, the ministry then sought to establish its own committee and invite residents directly onto it. A fair amount of local debate ensued about who would be appointed to which committee and about the nature of the negotiations. There was a fair bit of disagreement about that, as it appeared to the local people that the Ministry of Justice sought to control the negotiation and consultation process so that it could determine the outcome.

Mr Deputy Speaker, you would be aware of the antics used by some agencies to try to get an "agreed" community view. It is, first, important for agencies to appoint the appropriate people to a consultation group. Some mischievous actions were taken by the Ministry of Justice to ensure that outcome. The ministry eventually set up a so-called community advisory panel, which met on 24 June and 1 and 8 July 1998. To say that the panel meetings were hostile is probably an understatement. An attempt was made by a chairperson appointed by the ministry to control the debate and the outcomes. Other people were equally adamant to ensure that did not occur.

That was a fairly acrimonious beginning. At about that time, the ministry engaged the consultant group, Market Equity, which produced a report entitled "Evaluating Community Attitudes Towards The Proposed Prison In Eden Hill" in July 1998. It is pertinent to refer to the first page. Under "Key Findings" it states -

> A large proportion of the community feel that the proposed Women's Prison would have a major impact on the area if the proposal goes ahead. Over all, 45% of respondents felt there would be a major impact, with 28.8% indicating there would be some impact, although they did not think it would be major. Only 10.0% of respondents felt that there would be no impact at all by the proposed Women's Prison.

The community study undertaken by the Ministry of Justice shows that there was a strong feeling at the local level about the issue. I can attest to that because about 300 residents attended the half-dozen or so meetings that were held then or which have been held since. While it is not unusual to have a number of people attend initial meetings when matters are still fresh in their minds, it is unusual for that level of attendance to be maintained for a very long period. In the two years since the decision there have been six or more public meetings. I believe the last meeting was held six months ago. I think more people attended that meeting than the first meeting. The issue is not something about which the community has forgotten or about which it has not continued to exercise strong opinions.

The process got off to a rocky start and that resulted, after some fairly heated slanging matches, in a meeting held at my electorate office on 24 August 1998 with members of the community committee that had been established. The Attorney General, Hon Peter Foss, and his personal private secretary also attended. Various matters were discussed, including the question of who should be the chairman, the timing and location of meetings, whether they should be open to the public and the terms of reference. Also discussed at the meeting was the need for an ethnographic study of the area, given that it is an area of great significance to the Aboriginal community, particularly the local Swan Valley Noongar community. The minister indicated at the meeting that he understood that the Western Australian Planning Commission had responsibility for examining matters concerning significant Aboriginal sites. In any event, the meeting was held and there have been further discussions.

The WAPC took the opportunity to write to me on 23 September 1998 about the Pyrton site. The letter was headed "Pyrton Site, Lord Street Eden Hill: Land Use Structure Plan." The chairman of the WAPC, Simon Holthouse, wrote as follows -

> As you may be aware, the Pyrton site in Lord Street, Eden Hill, is owned by the Disability Services Commission but in 1999 will no longer be required by that agency for their own operations. The site was therefore included in 1997 in a proposed omnibus major amendment to the Metropolitan Region Scheme, with a view to changing the site's zoning from Public Purposes - Hospital to Urban, to allow other uses to be developed.
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> However, after considering submissions on the proposed amendment, the Western Australian Planning Commission (WAPC) determined that the Pyrton site should be excluded from the amendment to allow issues identified during the submission process to be investigated further.

The letter then discusses what may happen in terms of the planning commission. The letter shows that a proposal to rezone the site went to the planning commission in 1997 to change it from public purposes to urban use. The planning commission did not pursue that proposal.

There was no agreement at local level to establish a prison on the site. The matter eventually went to the WAPC, which issued a media release on 29 June 1999. It states -

> The Western Australian Planning Commission (WAPC) has resolved to refuse the application by the Disability Services Commission on behalf of the Ministry of Justice for the development of a Minimum

> Security Pre-Release Prison Facility on the Pyrton site in Eden Hill. The application was refused on two grounds.
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> Mr Simon Holthouse, Chairman of the WAPC, said "The Commission recognised the importance of the site near the confluence of the Bennett Brook and Swan River and its strong Aboriginal associations. The Commission did not consider that the amenity issues relating to the impact of the proposal upon the Aboriginal interests in the site have been adequately addressed."
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> "The issue concerning the long term management arrangements for the remainder of the site, including residual buildings and open space areas, have not been addressed in the application," he said.
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> "The Commission therefore resolved there is insufficient information to be satisfied that the prison will not preclude suitable outcomes being achieved for the balance of the site and there was no commitment to future uses."

The WAPC rejected the application to use part of the Pyrton site for a women's minimum security prison on two grounds: Firstly, there was no overall plan for the whole site and the WAPC considered it to be a bad planning principle to allocate part of the site for the prison without knowing what the rest of the site would be used for; and, secondly, the WAPC was not satisfied that issues concerning the Aboriginal significance of the site had been properly addressed. Arising from that were questions about the degree to which the site and plans for the site would be addressed. Some action was taken at a local level and various discussions were held about the future of the site. One issue concerned developing a plan for the whole site and the second issue concerned the Aboriginal significance of the site. The Swan Valley Nyungah Community, under the leadership of Mr Bob Bropho, insisted on an ethnographic study being undertaken. There was some reluctance to do it, although I believe it is an appropriate step.

A consultation process was undertaken. The report on the process was prepared by Dr Pat Baines and Mr Ronald T. Parker of Australian Interaction Consultants on behalf of the Ministry of Justice. The report detailed consultations held with the Swan Valley Nyungah Community in order to inform the Aboriginal Cultural Materials Committee about whether it should approve the site as appropriate for the development of the prison under the legislation. The report is dated 6 March 2000, and it contains a number of recommendations. The recommendations arising from the report are -

> 15.1 It is clear that, whereas an alternative, appropriate, location would not harm the women prisoners, the proposed activity of a pre-release centre within the registered site of significance is anticipated to cause spiritual harm to a significant number of indigenous people, to their ancestors, to the land and to their successors.
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> 15.2 In the light of the ethnographic evidence supporting the opposition of many (but not all) Nyungah families associated with the site of significance to the proposed establishment of a pre-release centre within the site of significance, the proposed centre should not be given permission to proceed within the registered site.
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> 15.3 Further ethnographical research should be funded by the appropriate bodies to set the findings of this report into the wider context of the Rainbow Serpent Dreaming Track. So that the possible World Heritage value of the living tradition of the Waugal maybe considered.
>
> 15.4 Ground probing radar should be carried out at those places within the registered site where Nyungah custodians are concerned burials have taken place.

That was a fairly clear set of recommendations. One would think that, when those recommendations went to the Aboriginal Cultural Materials Committee, that committee would not have approved that part of the land being used for a minimum-security prison. However, the committee was confronted by legal advice that it had no power to refuse the permission that was being sought; the committee simply had to approve it, not on its merit, but because there were no grounds for rejecting it. That was despite the Western Australian Planning Commission's expressed concerns about the Aboriginal significance of the site, and its request for more work to be done. The consultants made the findings I have indicated, and the Aboriginal Cultural Materials Committee, when presented with those findings, neither approved or disapproved development on the site on the grounds that it has no legal right to do so.

The other question raised by the WAPC was the overall structure plan for the site. This is when it really gets interesting. It is a very large site estimated to be worth $6m. Having an overall plan for the site posed some difficulty for the Government, given that it wanted to establish the prison quickly, without going through the enormous consultation and planning process necessary to establish an overall plan. To overcome this problem, the Government provided $6m. Of this amount, $1.5m was paid by the Ministry of Justice to the Disability Services Commission by way of an agreement between the two agencies, which I can report on if there is time.

However, the other $4.5m is neatly tucked away in the budget papers, with no explanation. When the question was asked about what that $4.5m was for - from memory it is not even in the Ministry of Justice budget - the answer given was that it is for the remainder of the land. What is proposed to happen to this $4.5m worth of land? The Government's proposal is that the land will be given to the Town of Bassendean. A nice gesture, but why is it being done? The purpose is to overcome the Western Australian Planning Commission's requirement for a plan for the entire site. The Government's proposal was that there will be a prison on one part and the rest will be public open space vested in the Town of Bassendean. The ceding of the land was not an act of generosity on the part of the Government but, rather, a device to overcome the WAPC's criticism. With this action, the Government has turned on its head the whole philosophy for wanting the Pyrton land. The Government's argument for establishing a prison at Pyrton has been the lower cost of establishing a prison using the existing buildings. The Ministry of Justice's figures show that the cost of establishing an entirely new prison is between $9m and $12m. When the $6m that has been paid for the land is added to the $2m to $2.5m cost of refurbishments, it comes very close to the amount said to be needed by the Ministry of Justice for a new prison. This is belligerence gone mad. Did the Government, having done those two things, go back and tell the WAPC that a consultants' report had been obtained on the Aboriginal significance of the site and that the land had been ceded to the Town of Bassendean and seek approval? No, it did not wish to subject its plan to another test. Instead, the Government organised, through the Minister for Works, a taking order under the Land Administration Act, covering that part of the Pyrton land needed for a prison, subdivided it - for want of a better word - and allocated it to the Ministry of Justice. The Government made a decision to ignore the planning process, and to use its powers under the Land Administration Act to take the land. The WAPC made no determination on the appropriate use of this land.

No work has been carried out on the Pyrton site for some time. I intend to ask the Minister for Planning, either in this second reading stage or during consideration in detail, whether the reason that no work has been undertaken on the site is that, in the light of the Supreme Court decision, no authority exists. No approval has been given under the metropolitan region scheme for that work, and the Government would be acting in contravention of the Metropolitan Region Town Planning Scheme Act if it undertook that work. The minister may wish to deal with that issue in his response. Since the community has not been able to get any satisfactory response through the State Government, members of the Swan Valley Nyungah Community have taken the matter to the federal minister, under the federal Aboriginal and Torres Strait Islander Heritage Protection Act 1984, with a view to obtaining an order stopping development. A decision is awaited.

This matter has been with the federal minister for probably five months, and there have been some discussions between the Minister for Justice and the federal minister. I do not know whether the Minister for Works was involved in those discussions about the Pyrton site, given it was his order that sought to do the dirty deed by taking the land away. I am glad that the Minister for Works is smiling about that; it shows that he understands what he has done. This issue has been strongly opposed, and will continue to be opposed, by the residents of Bassendean, Eden Hill, Lockridge and Success Hill. The Government is starting to waver on this issue. This debate is an opportunity for the Minister for Works, or the minister representing the Minister for Justice in this place, to say that the community has won and the Government has lost, and the Government will not go ahead with its proposal. This is an opportunity for the Government to make people happy, to accept it has been defeated on this issue and that it has done the wrong thing and to give the matter away. I invite the Government to do that at some time during this debate.

Debate interrupted, pursuant to standing orders.

[Continued on page 3190.]