

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

LAND INQUIRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT DANDARAGAN
WEDNESDAY, 2 OCTOBER 2002**

SESSION 6

Members

**Hon Barry House (Chairman
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

[1.33 pm]

POWELL, MR ROLAND
Partner, R.G. and P.K. Powell,
examined:

FERGUSON, MR JIM
Environmental Consultant,
Ferguson, Kenneison and Associates,
examined:

The CHAIRMAN: Welcome Mr Powell. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Powell: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to in the course of the hearing, and please be aware of the microphones in front of you. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that, until such time as the transcript of your public evidence is finalised, it should not be made public. Premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Powell, welcome once again. Would you like to start by making an opening statement to the committee?

Mr Powell: I thank you for your time today., coming up to hear once again all these tales of woe. Most of us have said them all before and it does not seem to get any better. I have written this out, and you all have a copy of what I am going to read. I have tried saying things before without writing it down and I forget a lot of things I should have said.

The CHAIRMAN: We all do that.

Mr Powell: After farming in the Dalwallinu shire for some 18 years prior to 1978 and experiencing some very dry seasons, our family decided to purchase block number 3544 in the Dandaragan shire, not only as an addition to our farming operation to accommodate our family, but also because the higher and more reliable rainfall area would act as a buffer against the drought conditions sometimes experienced in the Dalwallinu shire. We should be self-supporting now, in a drought such as we are currently experiencing in the Dalwallinu shire but we are not, as you realise.

Approximately 1 000 acres were cleared in 1979 and 1980 on block 3544, and the remainder was chained down two years later. It was planned in conjunction with the Department of Agriculture in Moora. They said we should be careful to leave shelter benefits running north and south, which we did. As we do not believe in going into a great deal of debt we could not proceed with the clearing as the price of fertiliser had sky-rocketed. We had to be content to just maintain the fire breaks, as required for clearing, until we could afford to proceed. By the time we were able to carry on we found that permits were required. As a matter of fact, with hindsight, we should have borrowed money, cleared the lot and then none of us would be here today wasting our time and our son would be still us instead of having to go off the farm to look for work. It does not feel good to have your

neighbours look over your fence and say “you should have cleared sooner and then you would not have this worry”.

After applying to clear with a notice of intent, and an inspection by Mr Keen from Geraldton and Mr Rickwood from Moora, both agreed that we had done an excellent job of clearing what we had done, but the property still should be inspected by a hydrologist. In due course the hydrologist, Mr Speed, inspected our property and stated that he was concerned about the valley floor. He did not seem to care that the valley floor could be flooded from the neighbouring property to the east. The valley floor has now flooded even though we have not cleared even one tree from that area. Still the water comes in from the east and in Mr Speed’s latest report he does not at all consider that we have planted 600 acres of pine trees. As we all know they will soak up a lot of water, as has been found at Gnangara.

I am concerned at the apparent closed minds of some of the public servants. At a public meeting in Jurien Bay in 1998 Mr Jenkins from the Department of Environmental Protection publicly stated that, if the present position of the goalposts did not prevent us from clearing then the goalposts would be shifted. How is that for a closed mind? Had we not been so anxious to comply with the law and cleared illegally as many others have done we would not be in the bad position we are in today. Only five kilometres away to the west of our block, a 1000-acre block of 100-year-old red gum trees was recently destroyed to plant olive trees. We could easily do the same, and plant tagasaste and run cattle - a very profitable enterprise. All we need is permission. On the ABC TV last Sunday on Landline some very interesting ideas were put forward, one being that, instead of forcing farmers off the land by not letting them clear, an annual wage or fee for the lost production would be appropriate to look after the bush for the public benefit. At the moment I feel that the only difference between us and the Zimbabwean farmers is that we not yet been shot at. The bottom line is the same - our land has been taken from us.

A very simple solution to all this problem would be to give us some land in lieu. That is all we want. We do not need bush, we just need land and that is what has been taken from us.

The CHAIRMAN: Thanks. Mr Ferguson has tabled some documents on your behalf. Is there anything you want to explain to the committee in relation to those documents?

Mr Powell: No not really. They are self explanatory.

The CHAIRMAN: We are open to questions from the committee.

Hon MURRAY CRIDDLE: How big was the original area? Thirteen hundred hectares - is that right?

Mr Powell: Yes.

Hon MURRAY CRIDDLE: You have 1 000 acres, or 400 hectares, cleared at the present time and that is all. You have put an application to clear how much?

Mr Powell: Five hundred and eighty-four hectares, I think.

Hon MURRAY CRIDDLE: Where is that application at the present time? At what stage?

Mr Ferguson: With the Environmental Protection Authority, still to make a decision on it.

Hon MURRAY CRIDDLE: So it is very early days?

Mr Ferguson: They have had a few months.

Hon MURRAY CRIDDLE: Very early days.

Hon DEE MARGETTS: A lot of work has been done in this shire on land care. What has been your interaction with the land care groups and what kind of response have land care groups made to proposals to clear? In your case, what kind of response did you get from people in land care groups?

Mr Powell: I have not had any response; no response at all really.

Hon DEE MARGETTS: Are you a member of your local land care group?

Mr Powell: I am not an active member.

Hon DEE MARGETTS: Is waterlogging or any other issues associated with clearing of land around your property?

Mr Powell: I will try to describe the situation a little bit. A valley circles right around round and off our property. It comes down from the east and our property is not quite at the end of the road, so the water from the whole district is settling in our place. What really should happen is a drain to take it away out to sea because we cannot handle all the water. It is not our doing that is the water is there. It has just come from somewhere else.

Hon DEE MARGETTS: Have you got too much water there at the moment?

Mr Powell: There is not a lot we can do about it. It is fresh water, but the longer it is left lying around the more evaporation takes place, and the more problems you face with salinity in the years to come. We are crying out for help. We are on trial here, but it is not our doing. We need help to solve this problem.

Hon DEE MARGETTS: What has happened in recent years to create that build-up of water around your property? Has it always been there?

Mr Powell: It is gradual seepage. There was no water there 25 years ago.

Hon DEE MARGETTS: This build-up of water has occurred over the past 25 years.

Mr Powell: Yes. There is a natural watercourse.

The CHAIRMAN: You mentioned that your son has gone off farm for work. Can you explain the impact on your family? Do you have other sons on the property? What is the situation?

Mr Powell: I have a son and a daughter. My daughter has stayed home on the farm. My son said there was not much point in his staying because we tried to get the land cleared, but it will obviously not happen.

The CHAIRMAN: Would he have liked to stay on the farm?

Mr Powell: Definitely, yes.

The CHAIRMAN: Can you estimate how much this has cost you over the years in monetary terms in lost income perhaps?

Mr Powell: That is very difficult question. I have not worked it out. It is probably \$1 million in lost production.

Hon DEE MARGETTS: What would you have used the land for? Would it be for grazing?

Mr Powell: The main thought was to plant tagasaste or any deep-rooted plants, even pine trees. We felt that would not contribute to the water run off in any way, yet we would still be able to make a living from it.

Hon DEE MARGETTS: Is tagasaste for grazing?

Mr Powell: Yes.

Hon DEE MARGETTS: Is the proposal to remove native perennials and replace them with pine perhaps?

Mr Powell: Yes, pine or tagasaste.

Hon DEE MARGETTS: What is the nature of the vegetation at the moment?

Mr Powell: It is mainly blackbutt, banksia trees and prickly bushes of all sorts.

Hon DEE MARGETTS: What sort of studies have been done of what is on the land?

Mr Powell: I could not tell you that. The Rural Adjustment and Finance Corporation did a study, but I have not seen a report.

The CHAIRMAN: Have you offered to sell the land to the Government in one form or another?

Mr Powell: RAFCOR tried to help us. Its first offer was \$5 an acre.

Hon DEE MARGETTS: How long ago was that?

Mr Powell: It was around seven years ago; that is a guess. Somehow it juggled the books and came back with \$50 an acre. Either way it was a useless offer as we cannot find land for anything like that. I would be happy if someone gave us some land in lieu and the Government could have the bush. We would then have some land that we could farm.

Hon MURRAY CRIDDLE: When was the first application made to clear beyond the first 1 000 acres?

Mr Powell: It was about 1995.

Hon MURRAY CRIDDLE: You have been in this situation since 1995?

Mr Powell: Yes.

Hon SUE ELLERY: One of the things the committee might do is to make recommendations about how we could make the system better - the bureaucracy. I understand your issue relates to how you should be treated if you cannot use the land. I would like to put that to one side for a minute. Could you recommend how the system could better deal with someone in your position; that is, someone who is trying to work their way through a notice of intent process?

Mr Powell: It is a fairly difficult question.

Hon SUE ELLERY: That is the task before us.

Mr Powell: Yes, I realise that you have a problem. The way I see it is that the Government needs the bush for the public benefit and we need the land because it is our life's work. If you could provide us with some land, you can keep the bush.

Hon SUE ELLERY: I would like you to be more specific than that. From your dealings with the public servants, could their systems have kept you better informed, more able to meet deadlines or made the paperwork process better?

Mr Powell: I do not think so. However, it appears that they have closed minds. As I have said, it is very difficult for us to combat this closed-mind attitude. After the first couple of times I gave up on the paperwork and all that, which is where Jim Ferguson came in. We could not understand it; it was a load of garbage. Instead of farming, we were running around after paperwork. I have one example. I have the hydrology report, Mr Speed's report. I said that the water was coming from the east and giving us all this hassle. He took a photograph of one side of the road; in fact, if he had taken photographs of both sides of the road, they would have showed damaged vegetation on both sides of the road. He has coloured it so that it looks bad and that we doing that.

Hon KEN TRAVERS: Can we see those?

The CHAIRMAN: Is there anything you want to say, Mr Ferguson?

Mr Ferguson: Yes, quite a bit. I will come back to the question that was asked about improving the system. The first thing is to get the public servants to act within the law. There are no two ways about it; they are acting outside the law and have been doing so for around seven years. I have mentioned this before and I feel strongly about this. They are acting outside the Soil and Land Conservation Act. That Act was imposed on the Powells, but that was invalid. However, they had no opportunity for rebuttal. They sent the notice of intent to clear back to me and said I had to conform to the procedures that they wanted. There was no need, because the Act is quite specific in

what to do to notify intent. The changes came out through the MOU - the cabinet directive, bulletin 966, which I showed you before. They did not change the regulation or the Act. It would be a good starting point if the public servants conformed to the law, but they do not.

Hon KEN TRAVERS: I have a question on that point, which is not to say that the Government does not have an obligation to make them do that. If you feel so strongly about that and it is so clear cut, why has nobody taken a Supreme Court action - a writ of mandamus - to require that?

Mr Ferguson: It is the cost for starters. To be quite honest with you, most farmers cannot afford to because it can go on and on. The cost could reach \$100 000 or \$200 000 before they knew where they were. It is clear, if bulletin 966 is a verbatim report of a cabinet directive, that to implement the Government's decision it is necessary to pass a law.

The CHAIRMAN: Will you explain bulletin 966?

Mr Ferguson: Bulletin 966 outlined three positions - A, B and C - out of a cabinet directive resulting from a meeting on 3 March 1999. The Chairman of the EPA turned around and said that one of the eight recommendations was to not pay compensation. The Chairman of the EPA stated that some of these had been implemented but the changes to the Act had not been. I saw that as the chairman's way - remember this is advice to the Minister for the Environment and Heritage - of saying that if something happened and he was challenged that, at the end of the day, he had advised the minister that the procedures undertaken were still outside the law that was intended to be put in. I turned around and again asked why they had signed the MOU - they must have been privy to that cabinet directive - knowing full well that nothing had been done and that the Act had not been changed. I know why the Act had not been changed; it was too damn difficult to change! It would be the same with the regulations because it is quite a big change to switch an Act that is concentrating on the productive use of agricultural land to take in conservation and biodiversity. It would be quite a big step. It cannot be done as easily as putting in a regulation. Why have they been allowed to get away with it? Public servants have been able to proceed down this path. Five agencies have been assigned to that - the Office of the Commissioner of Soil and Land Conservation, the Department of Agriculture, plus the present Minister for the Environment and Heritage's chief executive officer, Mr Roger Payne, and CALM and the others who have signed it. Anybody who challenges it is up against their whole might. We were assured by Mr Hartley on 5 March that Crown Law had vetted the changes. I wrote the proceedings up within an hour of finishing our discussions. When it was put to him later, he denied that he had made a statement. When he was challenged on the legality of what he had just done, he said that he had both in-house and Crown Law advice. I am sure that he did not because there is no way the MOU is a lawful document or a document without illegalities as I have been assured it is by the present Minister for the Environment and Heritage. I am not having a go at the present minister because it goes across all ministers; previous ministers embraced bulletin 966 and the MOU. The crux of the whole matter as to why we have helluva mess is that public servants signed this document. One has only to look at that short response of Dr Graham Robertson. When they are pressured on it, they do not want to know. We got the same from Dr Bryan Jenkins. However, no-one has taken into account that we have tried our best to help the situation caused by the higher watertable.

Hon KEN TRAVERS: Your preferred use would still be cropping or stocking, but the pine is at least to get some return, is it?

Mr Powell: Yes, it is a means to an end for a problem.

Hon DEE MARGETTS: Might it not be that you have helped create the waterlogging by the clearing that you have done?

Mr Powell: I do not think so, but to some minor degree it probably could be.

Mr Ferguson: Everybody has a little bit to contribute there. Mr Powell has planted 200 hectares of pines. I estimate that over their life it would be 125 up to around 130 per cent, depending on the

density that were planted. It would take six or seven years to get back the balance of native vegetation. You can see with him coming in with 580 hectares cleared and retaining the other part of probably a couple of hundred hectares, at least he would probably have achieved water balance on the whole property. Everybody has a contribution to make when they clear. Once you clear land, things change.

Hon DEE MARGETTS: Is that not indicating that if that further land were cleared, the waterlogging would get worse at least for another six or seven years before it balanced out to what it is now?

Mr Ferguson: In my view you are better off going down that path. You may not agree with it, but pines have a 30 to 40-year rotation. Moora is looking to put in a processing plant in the years to come. They would be better off with the whole property in it. The pines will bring them in about \$30 000 to \$35 000 a year

Hon DEE MARGETTS: Do you understand that the principle of pines for dealing with waterlogging management is about using pines on farmland, not about clearing remnant, creating a further problem and hoping that pines will soak up the problem you have created? Do you understand that the principle of pines is about using ridge planting etc for farmland and not about clearing further land? It is not about using it as an excuse for further clearing and then trying to extract yourself from the problem you have created?

Mr Ferguson: I do not agree with that totally. You must take the Powells as an entity. They must do the best they can without damaging other people to any great degree. Water comes in and it lays there. It may be seeping away, but it has laid there for a number of years. If you look in this little volume that I have given you, you will see Andrew Watson making a comment in 1995 that perhaps if Powell had applied for pines, they would have had to let him do it, but they did not inform Powell. That is the way they function.

The CHAIRMAN: Mr Powell, you were never told of that situation, were you?

Mr Powell: No, otherwise we would probably have gone down that path. We were not told at all that we could do that.

Hon KEN TRAVERS: On what date was a soil conservation notice issued on the property?

Mr Ferguson: 26 June of last year.

The CHAIRMAN: We have some very comprehensive notes on the situation. Mr Powell, is there anything you want to add by way of summing up?

Mr Powell: There is not much more I can say, except that you can see how we are hamstrung; we cannot borrow money against the property because it is not considered a valuable asset; we cannot sell it because who would want bush? We talk about subdivision and that there might be the sale of small blocks, but when property is subdivided, the rates skyrocket. If you cannot sell the blocks, you are stuck with very high rates. What would we do? We would go bankrupt trying to finance it all. You can see that we are in a very difficult position, because we have been prevented from doing what we intended to do when we bought the block 20 years ago.

Hon DEE MARGETTS: Why would the rates skyrocket? Is it because the shire considers that subdivided property is more valuable?

Mr Powell: That is what I am told.

Hon DEE MARGETTS: Surely that is based on the shire's perceptions of what the land would be worth, is it not?

Mr Powell: I cannot answer that. I am not full bottle on any of that sort of thing.

Hon DEE MARGETTS: There is a contradiction. You cannot argue that by retaining bush the property is less valuable, but if it is subdivided, the rates would be higher.

Hon KEN TRAVERS: You could get a minimum rate notice over 10 blocks instead of over one. It could occur in a range of ways.

The CHAIRMAN: I think Mr Powell is saying that another level of government - in this case local government - might apply a value to that land that the market would not apply, because nobody would buy it.

Mr Powell: Yes.

The CHAIRMAN: I think we have covered the situation very well, Mr Powell. Thank you very much for explaining it to us. Our committee has heard from quite a lot of people. Similar themes have come through their evidence. We appreciate the information you have provided to us. With that, thanks very much.