

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

LAND INQUIRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 19 AUGUST 2002**

SESSION 1

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**

Committee met at 9.40 am.

MALLOY, MR ADRIAN

**Chairperson, The Ellenbrook Road Residents Group,
examined:**

HAWKE, MR HOWARD,

**The Ellenbrook Road Residents Group,
examined:**

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. You will have signed a document entitled "Information for Witnesses" Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard reporters. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document that you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noises near them. I remind you that the 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. In other words, these hearings are open to the public unless a request is made and the committee deems it to be otherwise. In that regard, I welcome everybody from the media and the public.

Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of any evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee? Although it is a formal proceeding, please feel relaxed.

Mr Hawke: I will outline to the committee what we are about. This issue started in 1992 when the Environmental Protection Authority wanted to make a buffer zone to protect the western swamp tortoise. The EPA released a draft policy in about 1994. The policy had a lot of stringent controls around the tortoise, all of which the public in the area agreed with except for the provision for minimum lot sizes to be 10 hectares. At the time, we believed that provision would sterilise our land and make it worthless. If that were to happen, we would not be able to sell it. Nobody would want to buy the land if it could not be subdivided for other purposes or be operated as rural land because of the controls imposed on it; for example, the stocking limits. The only way to make a small block of land viable is to develop it with intensive agriculture. Most of the people who had bought the land as a form of superannuation were ex-farmers. Many of them had planned to keep the land for 10 or 20 years before subdividing it and selling all but one of the subdivisions and using the proceeds for their retirement

fund. Some heated public meetings were held when people realised that that might not happen.

[9.50 am]

Because of the heated meetings we ended up having several meetings, including one with the chairman of the Environmental Protection Authority, Ray Steadman. That was in 1994. At the meeting with Mr Steadman was Mr Kevin Smith, representing the local shire; Adrian, another gentleman representing the owners; and myself. It was decided that we would proceed with supporting the area but, in doing so, we would put forward a subdivision proposal to reduce the size of land to five acres, which would make them manageable urban blocks. That would allow all the stringent controls that the EPA wanted to be put in place and it would not be detrimental to the residents because they could subdivide their blocks and sell off what they did not want and keep a block for themselves. The proposal was generally agreed. At the meeting, Ray Steadman tore up the EPA report and told his own people to work with the people they were dealing with, not against them. That is what the chairman of the EPA said to his own staff. We believed we were on the right track. We conducted a study with Mr Gerry Parleviet of the Department of Agriculture, who was, at the time, seconded to the Water and Rivers Commission. Adrian and I had 18 meetings with Mr Parleviet and several other people over a 12-month period in which we addressed all the problems that the EPA put forward to protect the tortoise. Having completed that process, we spoke to the shire and it said that it was prepared to support us but it did not have money available. If we were prepared to put up money for environmental studies, the shire would support the subdivision proposal; that is, the rezoning. Believing that everybody was onside and that we had a compromise, we collected money from local residents and put up \$35 000 to have the rezoning prepared by a town planner. That was in 1996. In 1997, the proposal was put to the EPA. We then spent another two or three years, until 1999, getting nowhere. The EPA did not even bother to look at it; I do not know what it did with it but it was put aside. The only way we could get anything done was through our local member, June van de Klashorst, who supported us right from the start. She was aware of the process as she had attended earlier meetings. Every time we needed something done we had to go to June and force the issue before the minister to get a decision or to progress anything. Eventually, the matter came before the shire in mid-1999. After consideration, the shire referred the matter to the EPA as part of the normal rezoning process. The EPA wrote to the shire stating that no formal assessment was required by the EPA and that it saw no insurmountable problems. It stated that it only wanted to be involved in the drafting of the rezoning so that it fitted in with the needs of the tortoise. As such, we believed that the EPA had no problems at the time with the tortoise reserve.

The normal rezoning process went through the shire, and as a result the shire passing the amendment in February 2000. We mistakenly believed that it would be signed off within 30 to 60 days by the minister and that we could then get on with our lives after almost eight years of drama. However, we were wrong. We waited for another six months and nothing happened. We again went to June van de Klashorst to get a meeting with Graham Kierath. At that meeting Mr Kierath told us he believed there were problems and he would get his adviser, Karl White, to look into the matter and report back to him to see whether they could be resolved. Several months passed and nothing happened. Adrian and I had a meeting in early December with Karl White. He told us he was very busy and had not had enough time to look into the matter. He guaranteed it would be done before Christmas. Before Christmas became after

Christmas, and then an election was called for February. Four days before the election Karl told June van de Klashorst, myself and a representative from Sam Rizzo's office that the amendment would be passed and signed off by the minister before the election to make everybody happy. One day before the election he said that something had occurred and that there was a problem, and that he would meet with us after the election.

[10.00 am]

The committee will be fully aware of what happened in that election. We then had to start all over again. It took another 12 months of negotiating to get anywhere at all. We were virtually stonewalled - again, mainly by the public servants involved. We could never get anything done without forcing the issue. Finally, the minister wrote a letter to the shire stating that she would sign off the rezoning, but for eight-hectare blocks, not two-hectare blocks. We believe that an eight-hectare block is a totally unsustainable rural block and a totally unmanageable urban block. The main objection of the local residents is that eight-hectare blocks are useless to us. It imposes stringent controls without providing any way of using the land, selling it off or doing anything with it. We then objected to that. The shire wrote to the Department for Planning and Infrastructure stating that it had to accept that decision because, under the Act, it had no ability to oppose it. In the same letter, the shire said that it had changed the planning requirements to suit eight-hectare blocks, but it still believed that the rezoning should go through as the shire had passed it - that is, as two-hectare blocks. All through this process the residents group has written many letters to the planning department, the Environmental Protection Authority and all concerned - which we have available - requesting any scientific reason or backing for eight-hectares blocks. We have had other independent environmental people look at it. They are in disbelief. This is a disastrous planning decision, and there is no justification for it whatsoever.

The one issue that has been mentioned throughout the whole process is that having a larger population in the area will create a greater fire risk. When we asked them about that, they quoted a gentleman from Victoria, Mr Dennis O'Brien, as stating that the increase in population would be detrimental to the tortoise because it created a greater fire risk. This came from a Victorian Fire Department report on the Ash Wednesday bushfires. Those bushfires occurred in steep, heavily timbered, hilly country, whereas our land is open agricultural land. I have spoken to Mr O'Brien, who is quite angry because he believes he was quoted out of context. He said that he made seven points in that report, six of which were the opposite to the department's decision. The department used one out of the seven parts of Mr O'Brien's report to justify its belief that we should not be able to subdivide into smaller blocks. He is quite prepared to make a statement that he believes not only what they said is not true, but the opposite is true. That is the only piece of scientific or expert evidence we have been able to drag out of these people in seven years. Yet, for some reason, they still want this eight-hectare minimum block size. I reiterate that our people are more than happy to go along with the other very stringent controls to support the tortoise. We can stop any type of nutrification. We believe we can easily deal with that. At the time, we had meetings with Gerry Parlevliet from the Department of Agriculture, who had been seconded to the Water and Rivers Commission. At those meetings, we dealt with the draft policy one piece at a time, and we suggested means of controlling these things. We are more than happy to go along with the stringent controls. However, I reiterate that we believe an eight-hectare block is a totally unsustainable rural block and a totally unmanageable urban block.

Our two points are, firstly, that we believe that the decision for eight-hectare blocks is totally wrong, and independent expert evidence is that there is absolutely no justification for eight-hectare blocks. We have reiterated this point with the EPA and the Department for Planning and Infrastructure. We have received either no comment or some vague reply to our correspondence. The second point, which is the other thing we have complained to the committee about, or have asked the committee to look at, is the time this process has taken. We believe that even if for some reason the decision on eight-hectares blocks were to go through it should have been done seven years ago when the process started, rather than people having had their lives and finances put on hold for nearly 10 years. We would like the committee to investigate why it has taken so long and why the decision for eight-hectare blocks has been forced through without providing any justification whatsoever, when most experts believe there is absolutely no possible reason for it. That is why we are here. I thank committee members for their time.

The CHAIRMAN: Is there anything you would like to add?

Mr Malloy: I bring the committee's attention to a map showing the western swamp tortoise policy area.

The CHAIRMAN: We have been provided with two documents. Will you present those to the committee and have them tabled?

Mr Malloy: I brought 10 copies as instructed.

The CHAIRMAN: We have pre-empted the process. The documents will remain private until the committee has looked at them. If you quote something, you will need to identify it. However, you can tell the committee that these documents are public documents and they are in the public arena, if that is the case.

Mr Malloy: This is a public document. It is part of the 2001 draft policy put out by the EPA on the swamp tortoise. We have brought the map along to show the committee the area that is part of the sterilised area. The green shaded areas show the two nature reserves, and the orange shaded areas - lots 12, 50, 23, 40, 41 and 10 - are clay pits. They are clay mining areas. They are digging alongside this reserve. The department will not allow anybody to live alongside this reserve, but they are allowing people to dig clay pits. On the other side of the railway line is the yellow shaded area that adjoins the sterilised area; it is 61 acres, or 28 hectares. Planning approval has gone through for 288 dwellings. Our subdivision proposal was for 853 acres, or 117 hectares. That was knocked back because the area was considered too sensitive as it was located next to the swamp tortoise area.

The CHAIRMAN: How many residents live in the quarantined area?

Mr Malloy: There are fifty-three residents, and 61 lots.

The CHAIRMAN: This has been going since 1992. What effect has it had on your lives over that 10-year period?

Mr Malloy: Effectively, our lives have been put on hold. Some people have taken the option and sold to get out from under this, two people have died and one has had a stroke. I do not know for sure whether that has been directly attributed to this, but people in the 65 to 70 age bracket should not have this sort of stress. They should not have to worry about what will happen to their superannuation plans of 20 and sometimes 30 years ago; that is, the normal urban sprawl would finally get to this area. I know it is not an expectation that people can have any more; I think they repealed

that in 1929. However, we still expected some progression of the urban sprawl with land being developed for housing.

Mr Hawke: You asked about the effect it has had on people's land. To summarise, the land is virtually sterilised. Even the Valuer General has recognised that the land values have depreciated specifically because of the swamp tortoise area. When residents try to sell this land at the moment, the buyer goes to the shire as part of the normal process of buying land and asks if there are any problems. They are immediately told not to touch the land, because it is in the policy area, the issue has not been resolved and they will never be able to do anything with it. Consequently, we have definitive proof from two people that their land was devalued, in that they were offered a certain amount of money to buy the land and when they were forced to sell they had to take a much lower offer. The people withdrew their offer and they had to accept a considerably smaller amount because of what was happening with the area and the fact that the shire told them it was within the policy area and it meant they could not do anything with the land until the matter was resolved.

As Adrian said, two people have died from this. I know the problems experienced by one man in particular. He wanted to sell his land and buy a retirement house. He was 71 years old and he wanted to buy a house in a retirement village for him and his wife because they were too old to live on the big block and they needed to be closer to town. They had wanted to do this for the past 10 years. This gentleman also had a farm on which he ran cattle. At 71 years of age he was out chasing cattle and trying to put them on his truck and make some sort of living until such time as he could resolve the matter, sell his property and buy some land in town.. This gentleman passed away just after Christmas as a result of chasing his cattle and trying to earn some income, which he should not have been doing at 71 years of age. He should have been sitting back happily in a retirement home and going on holidays. I believe - although it cannot be directly attributed to this - it was a strong contributing factor in his death.

Other people, myself included, have suffered severe financial losses because we cannot resolve this. I subdivided my land into two blocks 10 years ago. I could not sell it because of this happening. I am still waiting, and that money is tied up; I cannot do anything with it. That has created severe financial problems, plus the stress involved and the effect on my quality of life because I cannot get on with my life. Probably 17 other people are in the same situation in varying degrees. As Adrian said, some of them have given up and taken whatever they can get for their land and have gone somewhere else to try to get on with their lives. It has had a major effect from a lifestyle and financial point of view on all our lives. We believe it should have been resolved - even if it was resolved against us - seven years ago and not now. We have still not had a proper decision.

Hon MURRAY CRIDDLE: What was the reason for the reserve in the first place? Can the tortoises survive in the area that is allocated to it?

Mr Malloy: They should be able to. That is why they have put a fence around the area. They are trying to keep the predators out and the tortoises in. I would have thought that would be sufficient, but they still need to sterilise the area around the tortoises. In 1992 they initially believed that whatever we did - any effluent or drainage - would cause a problem to these swamps. However, after we asked them to conduct a hydrological study of the area, they found what we had already known, that both reserves are on high ground and whatever we do does not affect them.

Hon MURRAY CRIDDLE: When was that process completed?

Mr Malloy: 1994.

Hon MURRAY CRIDDLE: Is it the process that is the problem?

Mr Malloy: Yes.

Hon MURRAY CRIDDLE: What size do you intend to scale down the subdivision to? They were talking about 10 hectares and then eight. What is acceptable?

Mr Malloy: As a compromise, the idea was to limit the number of people in the area - as Simon Hothouse said, we should to protect the tortoise and our lifestyle. We went to two hectares. That would include a mosaic pattern of fire breaks, and effectively more people to keep an eye on the area for fire and also to keep an eye on the environment.

[10.15 am]

The environmental restrictions were on cats or dogs; that is, no beasts of burden. Having been passed as an eight-hectare option, or 20 acres, we cannot even raze that area to reduce the fire risk.

Hon MURRAY CRIDDLE: Is it fair to say that you are happy to meet the commitment that you gave as a result of any guidelines that have been put in place and, therefore, it is just the process that is the problem?

Mr Malloy: True, it is the process. However, we have seen eight to 10 people from each department over the 10 years because they keep changing portfolios. They jump on the bandwagon and say this process should be through in no time at all then, all of a sudden, they go cold on us and back away. I gave the Ministry for Planning a list of what I wanted and it said that I could not have that. I asked why not and asked it to tell me what I cannot have. It said that I could not make the requests because a certain amount of personal information was on the list. I then said to clear it. The second thing that interested me was a commercial in-confidence document that was in there that I was not allowed to see. It seemed that this document was what was stopping everybody from getting on with the job. David Paice, the freedom of information officer from the Department for Planning and Infrastructure, said that the only way I could get that document was to subpoena it in a court. Is that how far we have to go?

Hon MURRAY CRIDDLE: Thank you for putting your point.

Hon DEE MARGETTS: Was the land zoned for agricultural use when you bought it?

Mr Malloy: That is true.

Hon DEE MARGETTS: Is it still zoned for agricultural use?

Mr Malloy: On 9 August the Minister for Planning and Infrastructure made it eight-hectare subdivisions.

Hon DEE MARGETTS: What is its zoning now?

Mr Malloy: It was changed from general rural to special purpose zoning.

Hon DEE MARGETTS: You said there were a range of strict controls to protect the tortoise and you mentioned raising the restrictions. In a nutshell, will you summarise some of the other restrictions with which you would be happy?

Mr Malloy: No aquaculture and no horticulture. The area should be just a basic two-hectare hobby farm area with fruit trees, nice lawns and trees and that sort of thing.

Hon DEE MARGETTS: No lawns?

Mr Malloy: No, only grassed areas that could be controlled by mowing in a five-acre area. With eight hectares of land, cattle are needed to graze the area to keep the fire risk down.

Mr Hawke: We agreed to, and we even put it in a proposal for, biocycle septic tanks. That means that no effluent whatsoever would escape from that tank. It is processed -

Hon DEE MARGETTS: What sewerage or septic tanks are in use at the moment?

Mr Hawke: Normal septic tanks are in use. However, we are prepared to make it compulsory to have biocycle septic tanks in the area so there is no effluent. We are also prepared to go along with the stocking rates and very stringent controls on what can be done with the land. We are prepared to have all that put into the rezoning proposal. In fact, the rezoning was designed by us around the Environmental Protection Authority's draft policy. In the 18 meetings held with Gerry Parleviet we addressed every one of the issues that was raised in the draft policy, and put forward suggestions as to how they could be resolved, including fire risk management by using special fire retardant trees. We are prepared to make extra provisions for extra firebreaks if necessary and anything else that is required. This was all put into our original submission to the Shire of Swan that it passed, and is still supporting, for the two-hectare subdivision proposal. There is a slight possibility of more ignition from fire with the extra population. However, the blocks are smaller with a firebreak around each one and there are more roads and more people with hoses and green lawns. Even if there was ignition, those factors will stop the fire from going anywhere, as anybody in a fire department will tell you.

Hon DEE MARGETTS: Given that you would like the area divided into two-hectare lots, how many extra residents would that amount to if you got your wish and if, as you say, they have green lawns and gardens?

Mr Malloy: There will be 117 residents in total with 17 dwellings already in existence.

Mr Hawke: That is 100 extra residents.

Hon DEE MARGETTS: The shire's issue is with grazing and how it would police that. We can talk about ecomax waste water treatment systems or closed system toilets, but I imagine that the shire would be worried about how it would police 117 individual gardens. It would be more difficult to police that than whether someone has animals on the property.

Mr Malloy: We realise that, as does the shire. It states that in the initial development of a house on a two-hectare block we would increase the amount of fertiliser going into the soil. However, that would only be part of the initial process and it would dwindle off afterwards with proper mulching and the like. Every one of these blocks must have a vegetation plan, which will be a guideline stipulated by the Outline Development Plan. Under this people will not be allowed to cut trees down. We have determined, through our environmental study, where the houses are to be built and the drains should go.

Mr Hawke: The environmental study has addressed all these matters to the point of specifying the type of fertiliser that can be used that will not leach into the river. We have addressed the use of a product called Zeolite that ties up the nutrients on the land. We are quite happy to have all these conditions imposed on the area. Having the land subdivided into eight-hectare lots is the only bone of contention. It is a totally

unmanageable urban block and, as any farmer will tell you, it cannot be a viable farm in any possible way. It is neither one thing nor the other.

Hon DEE MARGETTS: What sort of vegetation exists on this farm land that you would like to subdivide? Is it cleared or largely cleared?

Mr Hawke: It has been cleared and there is some regrowth and selected timber belts, as with normal farm clearing that was done in the 1960s. It is not completely cleared like some of the wheatbelt farms. There are small timber belts on the property, house gardens and some regrowth of original vegetation.

Hon DEE MARGETTS: Are there paperbark trees around the -

Mr Hawke: The area along the brook itself has paperbark trees. However, that only adjoins our properties.

Hon DEE MARGETTS: Is there a weed problem around the area?

Mr Hawke: There will be on the bigger blocks because nobody will manage the land. If the blocks cannot be used, who will spend money trying to -

Hon DEE MARGETTS: Sorry, I meant around the wetlands.

Mr Malloy: The worst weed infestation is found in the wetlands in the fenced-off areas. We have photographed the area and asked the Shire of Swan to respond so that the risk of fires can be curtailed. We have asked the shire to get the owners to comply with fire regulations and put in proper firebreaks.

Hon DEE MARGETTS: What sort of the weeds are we talking about?

Mr Malloy: Paterson's curse, Cape tulip and the worse one is watsonia. Who knows what else is in there? We have carried out outside controlling. The real problem is in the sanctuaries.

Hon ED DERMER: In your description of the course of events this morning you referred to various periods of extended delay, particularly in getting a response from the Environmental Protection Authority on your submissions.

Mr Hawke: Yes, there has been a delay at every stage.

Hon ED DERMER: What explanations have been offered for those delays?

Mr Hawke: Quite simply - none.

Hon ED DERMER: At no point during that process were you offered -

Mr Hawke: No attempt was made. We usually wait three or four months for a reply on correspondence; if we got one at all.

Mr Malloy: With the EPA we are waiting for six to 10 weeks.

The CHAIRMAN: I will take that point one-step further. If, as you say, you were given certain assurances by the EPA and other public servants at certain stages and they then seemed to evaporate into thin air, would you describe that as people renegeing on a commitment or misleading you?

Mr Hawke: The people that we spoke to at the time were definitely not misleading us. The process has taken so long that every time we nearly get there, there is a change of people, including, to the greatest extent, a change of government, which happened two and a half years ago. There has been no deliberate misleading. However, there may have been, shall we say, the deliberate dragging of feet I suppose.

Mr Malloy: However, at the time it appeared to be going so smoothly and people would say that they could not see why we had been waiting for so long. Then there would be a lapse of one or two weeks and these people would just cool to the matter.

Mr Hawke: There seems to be something going on behind the scenes -

Mr Malloy: Something sinister.

Mr Hawke: Whether or not it is sinister, there seems to be a hidden agenda that they will not disclose to us. We have been offered several suggestions as to what the agenda might be by Ms Dee Margetts' colleague, Mr Jim Scott, who has been supporting us. It is interesting to note that this is an environmental issue in which we are supposed to be concerned with the protection of the western swamp tortoise. Mr Jim Scott told us to stand before this committee because he was very concerned at the way in which we have been treated. Mr Jim Scott, as a member of the Greens (WA), is very concerned about the environment and still strongly supports our position as it is. He is the chairman of the Greens and -

Hon DEE MARGETTS: Excuse me.

Mr Hawke: What is Mr Jim Scott's position?

Hon DEE MARGETTS: He is an member of the Legislative Council, like me.

Mr Hawke: Sorry, I was led to believe that he was chairman of the Greens. I will retract that statement then. However, as he is a member of the Greens, I would have thought that his concern as an environmentalist would have been taken into consideration when he supported us and believed that we had been badly treated.

Hon JOHN FISCHER: There is a scale on the map that you have submitted. What size is the Twin Swamp Nature Reserve?

Mr Malloy: It is 457 acres and the other reserve at the bottom of the map is about 190 to 200 acres. I do not have the figures with me.

Hon KEN TRAVERS: What is the size of the existing lots at the moment?

Mr Malloy: They range from about four and a half hectares to about 250 hectares, which is the size of lot 15.

Mr Hawke: No, about 50 hectares.

Hon KEN TRAVERS: Is lot 15 about 50 hectares?

Mr Hawke: The smallest block is about five acres, or two hectares, and the block sizes range up to 50 hectares, or 125 acres. The average size is eight to 16 hectares

Hon ED DERMER: Looking at the map, it would appear that lot 15 is quite exceptional, being much larger than the others.

The CHAIRMAN: The comparison you drew was with lot 4, shaded orange on the plan, which, from my recollection, was 61 hectares -

Mr Malloy: It is 61 acres, which is about 28 hectares.

The CHAIRMAN: That lot has been zoned for 288 residences.

Mr Malloy: The interesting thing is that, when that was considered, there was no mention of the tortoise reserve. The lot was only 600 or 700 metres from the tortoise reserve. When that rezoning went through, the Environmental Protection Authority did not even comment on the tortoise reserve. The tortoises were never mentioned. This rezoning went through in 16 days in 2000, after we had been waiting for 10

years. This was not the whole process, but it went through the shire and the planning department - 10 days in one and six in the other. The Environmental Protection Authority stated to us that it was worried about increased population in the area. The increase would have been only 100 residences, while that one small block will have 288 residences, and it is only 600 or 700 metres from the reserve. In that rezoning proposal, there was no consideration whatsoever by the Environmental Protection Authority of whether there would be any effect at all, and there was not even an environmental study, whereas we are being asked to do a very expensive environmental study, which was actually done five years before. It is interesting that the other developers were not required to do anything, and that the Environmental Protection Authority was not concerned about that increase in population, though that was the only argument against the reduction in our areas.

Hon DEE MARGETTS: Is 457 acres the total size of this reserve?

Mr Hawke: That is the total size of reserve No 7897, the Twin Swamps Nature Reserve.

Hon DEE MARGETTS: That does not make sense. If you are saying that lot 15 is 50 hectares, unless my scale is totally wrong, that does not make sense.

Mr Hawke: I think lot 15 is 300 acres, which is 120 hectares.

Hon DEE MARGETTS: The figure of 457 acres does not make sense on this map, if the two sections of lot 15 add up to 50 hectares.

Mr Hawke: According to the map, the size of lot 15, by comparison, would make the swamps about 450 acres. That can be verified. We can check that.

Hon DEE MARGETTS: Twin Swamps looks to be less than the total size of lot 15 on the scale, and it could not possibly be 10 times as large.

The CHAIRMAN: We should not argue about that; it can be verified.

Hon DEE MARGETTS: It is either 45.7 hectares, or 457 acres. There is quite a difference.

Mr Hawke: The area of lot 15 is about 300 acres, and Twin Swamps is about 457 acres. It is just a little larger than lot 15.

Hon DEE MARGETTS: Two areas are shown as lot 15 - one each side of the railway line.

Mr Malloy: The smaller section belongs to a gentleman by the name of Grey, and the section on the eastern side belongs to Tampalini.

Mr Hawke: If the committee wants, we can ascertain every lot size on this plan. We have that information somewhere, and we can submit it to the committee.

Hon JOHN FISCHER: I would like you to clarify something you mentioned before. Is there an electric fence around that reserve? Who maintains it - the shire?

Mr Malloy: The fence is maintained by the Department of Conservation and Land Management.

The CHAIRMAN: Is that fence designed to keep predators out, rather than tortoises in?

Mr Malloy: That is right.

Hon KEN TRAVERS: I think I understand what your issues are. You have concerns about the process, and underlying that, you are questioning the grounds on which the

decision was made. If there are legitimate grounds for denying the development on the basis of fire, environmental concerns or impacts on the tortoises, do you accept that the Government has a right to do that?

Mr Hawke: Yes, but we would be requesting that evidence. We have a pile of correspondence with the department, in which we have requested reasons for the decisions, and we have either been given no reasons, or received no response at all.

Hon KEN TRAVERS: So it is about the process of questioning the grounds on which it was done, but you do not have a problem with the right of the Government to make a decision based on that evidence?

Mr Malloy: It is not the Government, but the public servants who have been the problem all along. I refer the committee to page 8 of our submission. This is the document that made us think that we were in like Flynn. On 8 October 1999, this document was signed off by the Environmental Protection Authority, and it was addressed to the Shire of Swan, stating that the amendment could go through. It states

LEVEL OF ASSESSMENT: Scheme Not Assessed - Advice Given

...

After consideration of the likely environmental factors related to the above scheme amendment and based on the information provided by you -

That was actually our information. We did the study on their behalf.

the EPA decided that the overall environmental impact of its implementation would not be severe enough to warrant assessment under Part IV of the Environmental Protection Act, . . . Please note that there are no appeal rights on the level of assessment set for scheme amendment.

...

The information provided is advice only and is not legally binding.

As far as the lawyers were concerned, that meant that they could not change the goalpost, and neither could we. The fact was that it was not assessed and did not need to be, because the environmental assessment that we paid for was good quality material.

Hon KEN TRAVERS: Is there another page to that letter?

Mr Malloy: Yes, there is. It goes on from there to reiterate the 19 different things that we suggested should be in it. The official paperwork received by the committee from me has the whole letter in it.

Mr Hawke: We can get that for you and submit it, if you require.

Hon DEE MARGETTS: How long has the clay pit been there?

Mr Malloy: When this process started in 1991 and when they were talking about putting the draft policy in motion, the clay pits actually accelerated.

Hon DEE MARGETTS: There was a small one, and it got bigger?

Mr Malloy: That is correct. Lot 10 was the original one, and then they got stuck into digging it up as soon as they could, so they could keep it out of the amendment.

The CHAIRMAN: Is there anything else that you would like to say in conclusion, to sum up your situation?

Mr Malloy: We would like to see an end to this. If the committee needs any other supportive evidence, I have 3 220 pages of additional documentation pertaining to this matter.

Mr Hawke: Can the committee subpoena the three main people involved in this matter in the Western Australian Planning Commission and the Environmental Protection Authority, to bring their documentation and show reasons for this matter taking so long, and any possible reason to justify the eight-hectare minimum? We have been requesting this for several years, and we have come up with nothing. We have either had no reply to our letters, or no explanation when we did get replies. Is it possible for the committee to subpoena these three people, whose names we can provide if required, to ask for their explanation? Why has it taken so long, and what is the possible justification for the eight-hectare minimum? Is there any scientific evidence to support it?

The CHAIRMAN: We will consider that, but in an overall sense, we are not here to consider particular issues; we are here to address the process of public administration right across the board. The committee has heard your request, and will consider it at some stage. Thank you; the committee appreciates the frank way in which you have described the situation, and as it is an ongoing issue, I am sure you will keep the committee informed of any developments.

Mr Hawke: We thank you for your time.