

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION  
AND FINANCE**

**LAND INQUIRY**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
ON WEDNESDAY, 27 NOVEMBER 2002**

**SESSION THREE**

**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**

[2.01 pm]

**KENNEISON, MR CHARLES**  
**Adviser,**  
**Ferguson Kenneison and Associates,**  
**examined:**

**FERGUSON, MR JAMES**  
**Environmental Consultant,**  
**Ferguson Kenneison and Associates,**  
**examined:**

**FERGUSON, MR VERNON**  
**Director, Mistpal Pty Ltd,**  
**examined:**

**FERGUSON, MRS JANICE**  
**Secretary, Mistpal Pty Ltd,**  
**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 it?

**The Witnesses:** 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 documents to which you refer during the hearing for the record and please be aware of the microphones. There are only two between the three of you so please make sure you move the microphone in front of you so that Hansard can record it. 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. Please note that until the transcript of your public evidence is finalised it should not be made public.

Premature publication or disclosure of public evidence may constitute 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?

**Mr Kenneison:** At the last hearing we undertook to supply some additional documents on behalf of Mr Beermullah. They have been left with Mrs Kearney.

**The CHAIRMAN:** The committee has them and they have been circulated to all the members.

**Mr Kenneison:** Because of the comments I overheard from earlier witnesses, and the questions from Mr Travers, section 13A and 13C, sections 14A, 14B and 14G and

section 32(1)(a), (b), (c) and (f) and subsection (2)(a)(vi) of the Soil and Land Conservation Act, of which you have a copy, give complete powers to the Commissioner of Soil and Land Conservation. If a farmer acts in a delinquent manner and causes problems to his neighbour such as salinity, erosion etc the commissioner has all the powers in the world to order him to undertake corrective work. That has never been invoked by any Commissioner of Soil and Land Conservation in the history of this Act. If a farmer does not play the game by his neighbours, the commissioner can step in. I thought it might help the committee - not that I expected to hear the evidence earlier today.

**The CHAIRMAN:** The hearing was public.

**Mr Kenneison:** In document No 16, which we tabled last fortnight, there is reference to a letter of 25 May to Hon Kim Chance headed "Methods to examine and clear the backlog of present and future cases to be submitted to you for determination in relation to land use matters". We put to him a certain proposition whereby I would set aside one day a week at no cost to the Government, to the minister or the public purse and sit down with his chief of staff to work through these land clearing problems and come up with a suggestion that we would submit to the minister for his comment and approval if he were so inclined. Regarding the letters of 25 May and October 22, none of our offers have been taken up by the minister and nor have we received any acknowledgment or rejection. We still do not know the minister's attitude to our offer to clear this bottleneck.

The other document is the letter from the Department of Agriculture to Rob Warren of Tottle Christensen and from Tottle Christensen to Mr Tana. I submit that under section 34 of the Soil and Land Conservation Act, the commissioner cannot impose conditions on the removal of a soil conservation notice. He can either remove it or keep it, but he cannot impose conditions. The minister can impose conditions only under section 33. We wanted the minister to use section 33 but, in his wisdom, he elected to refer the matter, under section 34, to the commissioner, against our vehement protests. So be it.

There is also a memorandum dated 9 July 2002 from Rob Warren, after discussions with Mark Jeffries of the Environmental Protection Authority concerning the EPA's attitude toward this matter. We have already filed a letter from the Environmental Protection Authority. That is the document from the chairman of 6 September 2002 saying that there were no environmental problems whatsoever for him to address in this matter. He was almost asking why I sent it to him in the first place. We also filed today an extract of the letters to Mr David Hartley of 10 March 2002, which set out the application to discharge the soil conservation notice for Beermullah. We have gone into great detail in that letter; it comprises 10 pages. We reiterated everything in summary form for him. He is very concerned about wind erosion, but *The Countryman* of 31 October contains a photograph of the President of the Pastoralists and Graziers Association, Mr Barry Court, and Mr Peter Corish of the National Farmers Federation, showing the results of last weekend's winds throughout the wheatbelt. I wonder how many of those properties have had soil conservation notices imposed due to the terrible wind erosion problem, which is holding up Beermullah's clearing.

We have also filed today an extract of the evidence taken on 12 October for Mr Watson, to which I alluded last fortnight, that wind erosion and erosion generally was not a problem; it was manageable and does not seem to be a matter that concerns us.

That was the evidence he gave on 15 November at about two or three o'clock in the afternoon. At nine o'clock the next morning he put a soil conservation notice on Beermullah's property on the basis of wind erosion.

[2.15 pm]

In an extract of evidence dated 22 November the chairman of the Environmental Protection Authority, referring to bulletin 966, admits that there is no statutory authority for bulletin 966 and that it is purely an advice to the minister. That bulletin was interpreted by the Commissioner of Soil and Land Conservation as though it came down with Moses from Mt Sinai. Notwithstanding the fact that on 24 December 1999 *The West Australian* published a statement by the former Premier rejecting in total bulletin 966 as government policy, it did not affect the commissioner's attitude; he still relies on bulletin 966. I seek leave to table those additional documents.

**The CHAIRMAN:** You do not need leave to table them. You need only indicate that you have tabled them. The committee has those documents but it has not had time to digest them properly yet.

**Mr Kenneison:** I would ask the committee to note those sections of the Soil and Land Conservation Act. Land clearing is insignificant. The Act is designed to assist the farming community in preventing and rectifying problems and in getting the cooperation of farmers. This should be a win-win situation for the State, the economy, the farmers, the commissioner and the Government. It is not adversarial legislation. There is nothing wrong with the Soil and Land Conservation Act if it is used correctly, but it is not being used correctly; that is our biggest argument all the way through. We ask the committee to look at those sections of the Act and address some of the questions raised by Mr Travers with an earlier witness.

**Hon JOHN FISCHER:** Would you repeat those sections?

**Mr Kenneison:** Sections 13(a) and (c), 14(a), (b) and (g), 32(1)(a), (b), (c), (f) and (2)(a)(iv).

**The CHAIRMAN:** Thank you, Mr Kenneison. I take it that we will hear another case study from Mr Ferguson.

**Mr Vernon Ferguson:** I am Vernon Ferguson and I am from Lancelin. I run a family earthmoving business with my wife and three sons in conjunction with Vernice Pty Ltd. We bought this property in Sappers Road in 1999 mainly as an investment, as we thought it was a reasonable buy at the time for clearing. Being in the earthmoving business, we thought it would be relatively cheap to clear and to be used for agriculture. When we estimated the cost of clearing we thought it would be better to subdivide the land. We therefore applied to the town planning office of the Shire of Gingin without putting in a full submission, which both the shire and town planning agreed with. Mr Kenneison and my brother Jim Ferguson suggested we submit an application to clear, for which we had approval. However, because of the cost of clearing, we intended to plant tagasaste and pines because a big swamp runs through one end of the property. The pines were to be planted as a buffer zone at the end of the clearing and tagasaste mainly for grazing because the majority of the property comprises fairly light sand. A lot of tagasaste is grown in neighbouring areas there which, when properly managed, provides good production for stock. Mr Kenneison and Jim suggested that we reapply to subdivide the land, putting more emphasis on environmental reasons, such as the safeguarding of the area, because we

could clear only a small portion of the land without subdivision approval. I would like Jim to elaborate on the submission if the committee does not have any questions for me.

**The CHAIRMAN:** Give us an overview and we will ask some questions. Have you anything to add, Jim?

**Hon DEE MARGETTS:** I should indicate that a real estate agent showed me the property. I have been around it and I am familiar with what the property looks like.

**The CHAIRMAN:** You were going to pay too much for it?

**Hon DEE MARGETTS:** No, I did not buy anything because it was a large property. Were you considering the possibility of a planning bulletin 48 subdivision?

**Mr James Ferguson:** It is more than that because it would not fit in. That planning bulletin related only to the subdivision of one lot.

**Hon DEE MARGETTS:** That is an interesting point. It does not say that specifically. That issue should be clarified and at some stage I will talk to the bureaucrats about it. However, theoretically, planning bulletin 48 enables you to subdivide as long as your subdivisions are more than 30 hectares; but it does not say whether those 30 hectares are in one lot.

**Mr James Ferguson:** Now that you have brought up the matter I might as well supply the answer to it. You asked me before to do some work on that issue and I am still doing some work on it. I will get a report to the committee on it because it is extremely important. It does not matter whether the committee's report is presented in three months, six months or a year, this issue must be dealt with. Policy document DC3.4 indicates that a subdivision for conservation can be for only one lot.

**Hon DEE MARGETTS:** What is DC3.4?

**Mr James Ferguson:** Policy DC3.4. I can give the committee a copy of it.

**The CHAIRMAN:** Just clearly identify it for our records.

**Mr James Ferguson:** I can leave DC3.4 and the statement of planning policy No 11 with the secretary. I will talk about the change that is taking place in the Western Australian Planning Commission. At a presentation of SPP11 a Mr Stephen Goldie indicated both during the meeting and after that the planning commission would consider subdivisions for conservation in areas from four to 40 hectares. That is a little different from what Hon Dee Margetts talked about. The commission can see the pressure coming on it as a way of allowing some subdivisions for conservation. I spoke to Mr Eugene Ferraro recently and he indicated the same as Mr Goldie indicated. There are definitely differences in the WAPC. Those two representatives of the WAPC stated that the difficulty was getting the shires to rezone to allow a subdivision which may be 15 kilometres or 20 kilometres away from the shire centre. That is therefore a difficulty. Both of them said that there was every chance that the WAPC would support an application by any shire that approached it for a rezoning for conservation purposes. That is quite a breakthrough.

Another matter I should stress is that we are not here at this committee to grizzle - as we have been in the past - about the way the process is being done. This time I must commend the officers at the Commission of Soil and Land Conservation for the way in which they have handled this matter. They have done things according to the book and have conformed with the law to date; I hope it stays that way. They gave approval for the clearing. As my brother said, the first application was preliminary.

The Department of Environmental Protection, the Environmental Protection Authority and the Water and Rivers Commission indicated support for a five-lot subdivision. The Shire of Gingin surprised me by telling us by unanimous vote to clear it.

**Hon DEE MARGETTS:** That does not surprise me.

**Mr James Ferguson:** That is what it said. Notwithstanding that, we have submitted an application for a subdivision of four lots. Three of those four lots have water - two are adjacent to a lot of water and the other is adjacent to a swamp where there is certainly water close to the road. We are endeavouring to take the opportunity to clear but giving the agencies a chance to turn around and run with us. It is only an application for the subdivision of four lots; that is not asking a lot. It is not as though we are asking for 15 or 20 lots. In fact, my and my brother's belief is that you would only ever want to subdivide about four to seven lots in that area. I believe the land is cut up in approximately the right way now. We are prepared to turn around and go through that subdivision application, although the planning side might take a bit longer. Differences must be sorted out and if some matters cannot be dealt with, that is fine, we will still take the matter to the appeal tribunal when the time comes.

**The CHAIRMAN:** This is very much a live proposal. It was only lodged on 11 November.

**Mr James Ferguson:** The document you have there will be lodged in two hours.

**Hon DEE MARGETTS:** Which part of the land have you been given approval for clearing?

**Mr James Ferguson:** It is for 260 hectares.

**Hon DEE MARGETTS:** Is that lot one?

**Mr James Ferguson:** All the bush in lot one, lot two and probably most of all of lot three, except for 10 to 20 hectares.

**The CHAIRMAN:** The committee will have to agree to this document being released, otherwise you will be unable to lodge that exact document with another authority in two hours. If you want to request that, I am sure the committee will consider it at the end of the evidence.

**Hon KEN TRAVERS:** If you do not submit it now, it could be sent to us later.

**The CHAIRMAN:** That is a better idea. You can take this document back now and not submit it to the committee at this stage, but submit it tomorrow after you have lodged it with the other authority; otherwise there will be the issue of privilege of which I am sure you are aware.

**Hon KEN TRAVERS:** Particularly if you want to submit the identical document. You do not want to make life harder than it is.

**Mr James Ferguson:** I will lodge it this afternoon and come back to the committee with it this afternoon.

**The CHAIRMAN:** You can do that as soon as it is lodged with another authority. We would not want you to be disadvantaged by the committee's rules on privilege.

[2.30 pm]

**Hon DEE MARGETTS:** I find the approval process interesting. That area has signs to show that it is a water conservation area. Did the Commissioner of Soil and Land Conservation mention the potential problems of carrying on in relation to the ground water or implications for the soil -

**Mr James Ferguson:** The Water and Rivers Commission supplied the map and set the clearances it wanted around that area. No vegetation was to be interfered with. If clearing had gone ahead, a further buffer of 100 or 200 metres would have been shown with the pines outside that area to stop the edification.

**Hon DEE MARGETTS:** I understand that initially an application was made for a licence for irrigation. Will that happen now?

**Mr Vernon Ferguson:** No, we never applied for a water licence.

**Hon DEE MARGETTS:** Perhaps it was the real estate agent who said that the area would be a really good place to grow olives. Has an application been made for a water licence?

**Mr James Ferguson:** No. With regard to salinity, the quality of the water of the two dams is better than water from scheme water pipes.

**Hon DEE MARGETTS:** Are they not soaks rather than dams ?

**Mr James Ferguson:** No, my brother laid them down; they are a lot more than soaks.

**Mr Vernon Ferguson:** They are spring fed. They are supplied by underground water.

**The CHAIRMAN:** Do you both consider this to be a test case for the process ?

**Mr James Ferguson:** It is an opportunity for government agencies to get some cohesion and offer more to farmers. Currently, farmers do not get compensation. It will not work in all areas, but there are many areas in which this sort of thing can work. This area is only 26 kilometres by road from Lancelin and 17 or 18 kilometres as the crow flies. It is an ideal situation. It could work in other places. The Western Australian Planning Commission is taking a minimum area of four to 40 hectares. I think the areas should be more than that. Hon Dee Margetts suggested it should be 30 hectares. It should probably be 30 hectares and above. Vegetation takes a bit of a hammering if it is under that regime.

**Hon DEE MARGETTS:** The Environmental Protection Authority planning bulletin No 48 was never intended to apply to the clearing of bushland in a conservation area.

**Mr James Ferguson:** No. I will come back to the chairman's question. I see an opportunity in this case. This is not a test case as such, but it has taken a long time to get up. It is the same as the Mistpal Pty Ltd case. We gave Mistpal a good run to try to get something there. We have tried a little bit harder in this case. In the submission I have commended the WAPC and the shire for the in-depth comments they made, which are contained at the back of the application. They explained why they would not allow it. However, the Department of Environmental Protection, the Water and Rivers Commission and Mark Jefferies from the Environmental Protection Authority have said they would support this sort of thing all the way.

**Hon DEE MARGETTS:** Are you saying that the DEP supports this clearing?

**Mr James Ferguson:** Yes, Mr Mark Jefferies and Mr Nicholas Woolfrey looked at the property with us. They are definitely interested in it.

**The CHAIRMAN:** Thank you for presenting that evidence to us. Would either of you like to say anything in conclusion?

**Mr James Ferguson:** I thank the committee for this opportunity, and reiterate that the government agency has worked well on this issue so far.

**The CHAIRMAN:** Good luck and thank you for your time.

**Committee adjourned at 2.35 pm**