

SWANCARE GROUP — MEMORIAL ON TITLE

Grievance

MR B.S. WYATT (Victoria Park) [9.36 am]: My grievance is to the Minister for Lands. It is an issue that I know he is familiar with, concerning the partial removal of a memorial on the title of a property owned by SwanCare Group. I refer to a letter that was written to the minister on 8 August 2013 by Graham Francis, the chief executive officer of SwanCare, and the minister's reply on 27 August. I will also refer to some general correspondence between Landgate and SwanCare. I start with a short history. SwanCare was formerly known as Swan Cottage Homes and is very famous in my electorate and the south east metropolitan area. It had a number of properties and the one that I am concerned about was a retirement village in Carlisle.

The DEPUTY SPEAKER: Order members! There are too many conversations in the house. Can members please go outside if they need to discuss matters.

Mr B.S. WYATT: The issue revolves around the fact that SwanCare Group is seeking what would seem to be a simple request from Landgate to have the memorial on the Carlisle site moved. It is a very old site that has been redeveloped. The old village was knocked down and the land was subdivided into 32 lots. Ultimately, there was no interest from the market in purchasing these properties for retirement village-style accommodation, so SwanCare sought approval from the Town of Victoria Park for general purpose use, which was granted. The properties were put on the general market and the majority of the lots were purchased by first home buyers because of the nature and size of the lots. All 32 lots were sold very quickly—within three months.

The titles for the properties were issued in July this year; however, the retirement village memorial remained on those titles. SwanCare sought clarification from Landgate about the removal of the memorials because it had previously been given advice by the Department of Commerce about what would be required to have them removed. That advice was to have the consent of all retirement village residents residing at that Carlisle site—in fact only one couple. That couple consented and were happy to move. There have not been any vexatious claims or elements in this situation; it is not the hostile removal of people from one village to another.

However, Landgate advised SwanCare that in a recent court decision, handed down in May 2013 concerning a request to have a partial removal of a memorial, the request was denied. The Registrar and Commissioner of Titles altered the practice manual to remove the ability to allow the partial removal of a memorial. I accept that guidance is taken from court decisions by the registrar, but it is my view, and that outlined to the minister by Mr Francis, that the position taken by the registrar is misconstrued, especially in how it applies to the SwanCare scenario. The court case was specifically about the partial removal of a memorial from a single block of land. What we are seeking is the entire removal of the memorial, which can be distinguished from that case. That will then allow the titles to be issued and let all the purchasers who have borrowed money, sold properties and are now having to rent, to move into those properties.

It is my understanding that some transactions have fallen over because of this delay. Interestingly, as a result of that court decision, Landgate changed its practice manual, and that is causing the problems we now have. As Mr Francis pointed out, it seems to be an overreaction to this court case not to consider individual circumstances and scenarios—in particular, the scenario in which SwanCare finds itself. Mr Francis fairly calls this a kneejerk reaction, because despite the two cases being distinguishable, Landgate now requires SwanCare to get a court order before that memorial will be removed. The question that has been put to the minister is: why was the practice manual amended in such a way that each case is not assessed on its individual merit? I know that in the past the Treasurer has made these points about red tape, and this seems to be a wonderful example of red tape getting in the way of a transaction in which there are no losers. I made the point to the minister a second ago that there is no vexatious component in this particular transaction. In a letter to the minister, Mr Francis made the point at page 5 —

Having said that, we still did not expect the partial lifting of the memorial to be an issue, because in 2004, we successfully applied to the Department of Consumer Protection and had the memorial lifted off our Midland Retirement Village property. So you can therefore, I hope, empathise with our situation and the illogicalness of it, when today, in pursuing the exact same request as we did in 2004 we are flatly denied, all because your department has chosen to change its Practice Manual.

Previously the same request was granted without any delay or consequence. However, as a result of this court decision this delay is now taking place. A lot more people than the 32 people who have purchased those properties are impacted upon. I understand that some of those transactions have fallen over. The occupants of unit 6 in Carlisle, Mr and Mrs Garrity, are the only people who are moving as a result of this, and they are happy to move; they have consented and signed that consent form. In fact, they did very well as they moved into a new facility at Bentley. The key point that causes me and Mr Francis frustration is that SwanCare Group has to apply, and has applied, to the Supreme Court to have Landgate amend its own practice manual. This is an absurd

outcome. It is something the Registrar of Titles could deal with if she took a much more flexible and credible view of the court decision upon which her decision is based. I have spoken to Mr Francis and it could cost SwanCare up to \$200 000 to ultimately get an order, which everybody accepts should not need to be made. There will be a dramatic impact on all the residents of Bentley Park Retirement Village because the money SwanCare will raise will go into renovating or building properties. I note the minister's letter in response, dated 27 August, but I hope the registrar will get to a much more flexible interpretation of that case.

MR B.J. GRYLLS (Pilbara — Minister for Lands) [9.43 am]: I thank the member for Victoria Park for this grievance and for his advocacy of this issue in his electorate. This is an unfortunate situation. As the member for Victoria Park stated, the history of the redevelopment of land that has a retirement village memorial is normally based on developers wanting to move on people in aged-care facilities so they can get a higher value for the land. Memorials are in place as an important protective measure for people buying into aged-care villages. The two or three examples I have dealt with as Minister for Lands have had a vexatious element attached to them. When I first saw this case, I thought it would be another example of that. On further consideration it seems to be the exact opposite, and SwanCare, essentially, is trying to cash out an asset that was not working to reinvest the proceeds back into more aged-care facilities under its umbrella. That would be a good outcome. Unfortunately, SwanCare is now caught up in a process that is in place to try to protect people.

Land that is to be used, or proposed to be used, for a retirement village under the Retirement Villages Act can have a memorial registered against the title. The memorial is lodged by the retirement village operator with the Registrar of Titles at Landgate. The land owned by SwanCare at 106 Star Street, Carlisle, is encumbered with a retirement village memorial. SwanCare has applied to the Registrar of Titles to remove the memorial from its land in Carlisle as the memorial is registered over numerous sites across numerous locations. As the member stated, SwanCare has multiple aged-care facilities. The technical element is that the removal of this memorial is a partial removal. The purpose of a memorial is to protect residents' interest in the land.

Mr B.S. Wyatt: Is the minister saying it is a partial removal because the memorial applies to other sites?

Mr B.J. GRYLLS: Yes. That is the element that has probably caused the challenge off the back of the court case.

Mr B.S. Wyatt: Yes, because Mr Francis of SwanCare is of the view that it is the entire removal because it is applied to the entire village at Carlisle.

Mr B.J. GRYLLS: He would then be applying to take the memorial off other areas that it applied to. If it is on another site that will remain as a retirement village, that memorial would need to stay. It is a removal of the memorial on the land that is to be sold; however, other parts of the retirement village chain still require to be under it. The memorial also highlights that there could be a statutory charge against the land for the repayment of money owed to the residents under the terms of their agreement with the retirement village operators. This is a really important statutory protection for residents of retirement village homes.

The Registrar of Titles is an independent statutory position and it is not up to me whether the Registrar of Titles decides that SwanCare's application can be registered. I have no power or ability to direct the Registrar of Titles how to determine the application by SwanCare. The Registrar of Titles has advised me that in May 2013 a decision of the Supreme Court of Western Australia in the case of Retirement Care Australia (Hollywood) Pty Ltd v the Commissioner for Consumer Protection found there is no provision within the Retirement Villages Act 1992 to partially remove a retirement village's memorial. Due to this decision the Registrar of Titles cannot approve SwanCare's application.

This Hollywood case is the one that I spoke to the member about in the corridor yesterday. Off the back of that case law, the Registrar of Titles believes she has no other option. As the member said, prior to this, if everyone gave permission, statutory declarations were signed and the registrar took that as consent; now, off the back of this case law, which the member knows more about than I do, the registrar does not feel she has that flexibility. SwanCare was advised of this Supreme Court decision by Landgate on 12 July, and by a second letter on 19 July Landgate that informed SwanCare that in order to have the memorial removed a court order would need to be obtained by SwanCare and served on the Registrar of Titles. As the member stated, through a customer information bulletin LandCorp has made it clear to all retirement villages that partial removal of a retirement village memorial will need to go to the Supreme Court.

Mr B.S. Wyatt: As a result of this is it the minister's view that the act will require some amendments to deal with this case law? If we have to get a declaration from the Supreme Court every time this happens, it will become an expensive process.

Mr B.J. GRYLLS: This discussion has ranged from querying whether this was another vexatious outcome to realising that SwanCare is doing the right thing and has been caught up in the process. My discussions with both

Landgate and the Registrar of Titles off the back of the member's grievance today will be on whether we need to look at some changes to the act that give us a bit more flexibility in cases like this in which, essentially, the right thing is attempting to be achieved. The original process was to sell them as retirement homes, and I assume at that point the memorial could have stayed. It was disappointing, but when SwanCare went to the market it was not able to sell them as retirement homes and because they are smaller two-bedroom, one-bathroom homes, I assume, SwanCare wanted to take them out to the wider market and first home buyers have bought them. All of that sounds like a positive outcome, with the money reinvested by SwanCare back into aged-care facilities. SwanCare is tied up now. My advice is that SwanCare has applied to the Supreme Court, so that process will get underway now. Obviously we will monitor that, and I think that off the back of the member's grievance today we could look at the act and see whether there is some way in which we could come back to providing that flexibility.

As I have said, prior to the Hollywood case there would have been the same outcome that SwanCare had in 2004, I think. Therefore, I can understand why SwanCare would think it was just a matter of doing what it had done before. I can also understand why SwanCare would have every right to feel aggrieved by the fact that it had done this before and it had worked but now it is being told to go to the Supreme Court and incur costs and delays.

The member for Victoria Park has raised a good issue, and I will go back to the Registrar of Titles and Landgate, off the back of today's grievance, and see whether we can sort it out.

Mr B.S. Wyatt: Thank you, minister.