NSW Legislative Council Hansard

Sydney University Settlement Corporation Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 26 May 2005.

Second Reading

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.39 p.m.]: I move:

That this bill be now read a second time.

I have introduced the Sydney University Settlement Incorporation Amendment Bill for two reasons: first, to ensure that proper process is followed in the management of the Sydney University Settlement Neighbourhood Centre; and, secondly, to gain publicity for the current problems of the settlement in the hope that they will be resolved sensibly. The original Sydney University Settlement Incorporation Act 1959 was merely enabling legislation that allowed the creation of an entity that could own land so that titles for the properties owned by the settlement did not have to be transferred from trustee to trustee. The Act preceded the Associations Incorporation Act and similar Acts that regulate the behaviour of trusts, corporations, charities and non-government organisations [NGOs].

The settlement wrote its constitution in 2001 in which it stated its aims and objectives and the rules of its meetings. As a non-lawyer, I am unsure how binding these are in law. This bill incorporates verbatim the aims and objectives of the 2001 constitution and sets rules that are consistent with normal practice in regulating incorporated associations. It is not for me to tell people how to run their organisations, but it is reasonable to set rules for proper process—and that is what this bill attempts to do. It does not favour any faction but favours proper process consistent with the agreed and stated aims of the settlement's constitution. The fact that I have brought this bill to Parliament urgently has achieved some publicity, and I think that is important. It is not a bad thing for decisions to be public and to be publicly accountable. That is true for NGOs, and I try to make it so for this and other governments also.

The Sydney University Settlement Neighbourhood Centre was established in 1895 by female Sydney University staff and students. The centre moved to its current location at 17 Edward Street, Chippendale—a couple of streets away from The Block—80 years ago. Since then, it has provided community programs for those in the Redfern, Chippendale and Darlington areas who are disadvantaged and need assistance. In addition to the Settlement Neighbourhood Centre Hall, the Sydney University settlement owns six houses and a block of six flats on Edward Street. All but two of these residences provide low-income housing for indigenous people. This desperately needed housing is occupied by about 20 tenants and their families.

For many decades the most disadvantaged people in the Redfern-Chippendale neighbourhood have been the indigenous people. The settlement as an organisation is based on anti-discrimination principles and has enshrined in its constitution the recognition of prior occupation by Aboriginal peoples, who were displaced and dispossessed. The settlement acknowledges the harsh legacy of colonisation and its effects on indigenous people today, and is proud to support indigenous rights. Indigenous people across the country identify the settlement as a friendly place, where they are welcome and where they can find friends and family when in Sydney. The settlement runs after-school and holiday programs for local kids that help children and young adults in the area just to survive. It instils in them a sense of pride in their Aboriginality and raises their self-esteem when they might otherwise have none. The non-Aboriginal kids at the settlement develop a respect for, and an understanding of, the importance of Aboriginal culture in our shared country. The settlement provides a place for children to be children in an environment that can sometimes make that hard.

The legislation that established the settlement as the organisation it is today was enacted in 1959. It is old and offers no accountability mechanisms for the governing body: the management committee. It does not include a "purpose clause" to ensure that the management committee acts according to the settlement's principles and objectives. While the members of the organisation should technically be able to hold the committee to account, this is a fallible process and subject to personalities, membership stacking and bending the rules. The real estate assets are worth about $3 million—quite a prize. Initially, the situation was not urgent but an unfortunate turn of events could see the Settlement Hall and all the low-cost housing sold any day now, against the wishes of the long-term members—both indigenous and non-indigenous—and certainly against the wishes of the community, which relies on the Settlement Neighbourhood Centre.

How has this happened? To this day, the settlement and many of its long-term members maintain one of the organisation's original aims, which is to provide an opportunity for the well-off and the not-so-well-off to get to know one another and live together and provide assistance to those who need it. This fundamental principle has been tested in recent years with the gentrification of Redfern. Despite knowing that the Redfern-Chippendale area is home to Aboriginal people from Sydney and a place where Aboriginal people from far and

wide congregate, and that Aboriginals are disadvantaged and likely to remain so in the medium term at least, there are those who purchase property in the area who do not like living with Aboriginal people. They hope that the Aboriginal people will go and that house prices will rise as a consequence. Some of the settlement's management committee members own property on the same street as the settlement: Edward Street. In fact, 8 of the 12 elected management committee members own property on Edward Street. It is alleged that some of these members have been planning over the past few years to stack the organisation's membership and essentially launch a coup, taking over the management committee with the intention of selling the settlement and moving it from Edward Street.

There was a changing of the guard in October 2004, at the most recent annual general meeting. At the management committee meeting on 1 March 2005—when the only indigenous member of the committee was overseas, the obligatory Sydney University appointee was on sabbatical, and six of the eight members present owned properties on Edward Street—a decision was made to sell the settlement hall and the other residential properties, including all the low-cost housing. This involves paying the State Government the significant sum of about $500,000 to release the settlement from obligations to provide low-cost housing in order to sell the block of six units. At the same meeting a decision was made to purchase the old Masonic Hall in Cope Street on the other side of Redfern, across Botany Road, at a cost of $2.8 million. No feasibility study was conducted into the appropriateness of the premises as a location for the settlement hall and there is no provision for low-cost housing. Many members have serious concerns that, with such a relocation, the area serviced will be totally different and funding from various government departments will be put in jeopardy.

On Saturday 14 May 2005 the settlement hall and the adjoining residential premises were advertised for sale for $895,000—or for just over $900,000, depending on where one saw the advertisement. The advertisement described it as "Priced to sell". That is an understatement! If The Block is worth $22 million to $23 million, as a recent valuation has stated, then, on a land area basis, the settlement hall and adjoining premises are worth at least $1.5 million. There has been an offer of just under $800,000, which the committee is allegedly taking seriously. Those in favour of the sale and the relocation say that the physical state of the buildings is such that they will cost a fortune to repair, that insurance cannot be obtained and that, in essence, there is no alternative to the sale. Further, they state that those who now criticise the management committee have allowed the situation to decay, both financially and in infrastructure terms, to a very bad level. I cannot comment on the financial situation as the books are not available, but in what is, in essence, a charitable organisation one can only reflect that the best hope for good governance lies in transparency.

I will comment on the buildings later, but I am reminded of an elderly lady who said to me as I waited in a queue to vote at Gladesville Public School, "This does not look like it has changed much since 1937." Dilapidated buildings are not desirable, but they can still have important and relevant functions. There is a desire to keep the settlement in Edward Street. The historical and heritage value of the Edward Street settlement hall makes this location important. The artwork on the building is of significant heritage value. The management committee has allegedly breached one stop-work order from South Sydney Council by painting over the Aboriginal mural on the front of the building. The mural was painted in the late 1980s by internationally renowned artists Tracy Moffat, Jeffrey Samuels, Fiona Foley and Avril Quaill. It is not something to be painted over because it looks a bit old!

The existing premises require renovation, which is the committee's justification for selling. But the management committee has allegedly rejected and blocked offers of pro bono help from finance, architectural and building-related firms to have the renovations done. Macquarie Bank offered funds and financial services to renovate the existing hall. The previous executive officer had organised an architectural firm, Cracknell Lonergan, to provide pro bono assistance in restoring and conserving the heritage mural and the rest of the façade, as well as carrying out some internal building work. Cracknell Lonergan had builders and a team of scenic artists ready to start work on the building in February at no cost to the settlement.

After refusing permission for this work to start, the management committee allegedly paid more than $6,000 to a painter to paint over the Aboriginal artwork on the front of the building in an off-white colour. It is alleged that when told by the council it was illegal, one member of the management committee specifically instructed the painter to continue. It is alleged that the management committee did not maintain insurance over the property and used the lack of insurance to disallow the volunteer restorations. The previous executive officer secured volunteer insurance at very low cost, but it seems that the management committee was not interested in these options. It has been alleged that influential members of the management committee have been set on getting rid of the settlement and its clients, regardless of any other, possibly more appropriate and cheaper, options.

Honourable members may be aware of the Redfern-Waterloo Partnership Project, which was part of the Government's planning process for the area. This project was examined recently when the Standing Committee on Social Issues inquired into the recent Redfern disturbances. Part of the examination of the area was a human services review conducted by consultants Morgan Disney. The Morgan Disney report was in two parts: a general overview of the situation of human services in Redfern with comments on needs, availability and co-ordination; and a confidential report on individual services to provide the Government with a basis for changing the funding and delivery of services. It is rumoured that the settlement did not feature well in the Morgan Disney

report. On one view this is regarded as some justification for the committee's behaviour. Another view is that it is just a further example of mismanagement of the settlement.

Moving the settlement to a new location may not improve the service provided. The Cope Street site is across Botany Road, which forms a significant barrier. The Cope Street building also lacks a grassed area, which is very popular with children. A move to Cope Street may hasten the demise of the settlement. That cannot be said with any certainty at this stage because the studies have not been done. In relation to issues of process, the management committee's right to decide is in question. The issues raised so far are of substance, and demonstrate that some members of the management committee do not support the ethos of the settlement. There may be some people in the management committee who believe that the financial situation is so dire that this is necessary. It is hard to believe that they are all so motivated.

An analysis of the decisions also indicates that there are serious issues of proper process to consider. There are questions regarding the right of the management committee to make the decision to sell Edward Street and purchase Cope Street. First, it has been suggested that the annual general meeting that elected the committee was plagued by irregularities—many members have said they have never seen such a shambles of a meeting. Second, there is clear potential for a conflict of interest, given that most management committee members own property that may be affected by other property transactions on the street. Clause 21 of the settlement's constitution states:

Any member of the Management Committee shall not take part in decisions or vote on questions where they, their family or close associates might gain a financial or other personal benefit from the decisions made by the Sydney University Settlement.

There has been no prudent investigation into the appropriateness of the new Cope Street premises. The members believe that a decision as big as the one that was made should have been taken to the membership. The sale of premises that the settlement had occupied for 80 years, the relocation to another neighbourhood, and the disposal of all low-cost housing are huge decisions, especially considering that it is an objective of the settlement to provide such housing. Taking big decisions to the membership is an accepted business practice. If the price of the new Cope Street building is $2.8 million, in relation to which a deposit has been paid, and the hall is for sale at $900,000 or less, it is difficult to see—even if all the low-cost housing is sold—that the settlement could meet its contractual obligations. It would be insolvent. That is hardly good governance.

There has been much friction and a lack of communication between a group of long-term members calling themselves "the Friends of the Settlement" and the management committee. The management committee has refused to provide relevant records to its members, which the "Friends" claim it must do according to clause 41 of the settlement's constitution. When the "Friends" have suggested that the committee is acting improperly or inappropriately they have been yelled down and/or threatened with legal action. The same threats have been made to politicians, journalists, and individual members of the settlement who have spoken out. Individual members have told me that they feel personally intimidated by certain management committee members. And during this time the management committee has been hastily making arrangements to sell significant properties.

A significant allegation of the "Friends" is that for key members of the management committee a conflict of interest arose in that the settlement is located in the street in which they live, which will become gentrified and land values will rise if, as is generally believed, no Aboriginal people live in the street. It has been suggested that those members should have disqualified themselves from these decisions, which are clearly critical to the future of the settlement. So how will these amendments help? This amending bill is simple. It is not designed to do anything more than update the 1959 legislation to ensure that any decisions made by any management committee, now or in the future, will be in accordance with the aims and objectives of the Sydney University Settlement and will be approved by the members.

The aims and objectives have been lifted from the constitution. They are nothing new; they will just be more enforceable. There is nothing contentious about the amendments—they require that any real property transactions are approved by 75 per cent of membership, and that all actions taken be in accordance with the aims and objectives of the settlement. These simple and overdue amendments have become urgent because of the current situation. The amendments will not physically prevent the management committee from selling the properties. They merely give the existing aims and objectives the force of law, so that correct process is followed. Hopefully, the publicity will also help those who want to help the objectives of the settlement.

Everyone acknowledges that currently Aboriginal people are disadvantaged and that the aims and objectives of a well-functioning settlement will be a significant force for long-term good. The amending bill will provide a clear avenue for the management committee to be held accountable if it ignores its obligations to act in the interests of the settlement. The purpose of these amendments is not to stop the sale of the Edward Street properties, or even the low-cost housing. It is not to prevent the purchase of the Cope Street property. Neither option will necessarily be the result of the amendments. However, it is possible, after research and investigation, that these options are, in fact, the most suitable.

It is possible that after presenting the findings of those studies and investigations to the membership of the settlement that more than 75 per cent of the members will vote in favour of those options and agree to the huge step of selling the Edward Street properties. However, that research and investigation had not been done. The members have not had a say in this monumental decision. The purpose of this amending bill is to ensure that all decisions are made properly, with all due consideration, supported by feasibility studies. Decisions made by the management committee should be guided by the objectives and principles of the settlement—anti-discrimination, community capacity building, assistance for the disadvantaged, and recognition of and respect for indigenous culture and history.

Committee members should be able to justify their decisions according to those objectives, otherwise their decisions cannot be said to be legitimate. This has always been the case; it just has not been necessary until now to enshrine such a requirement in legislation. What could possibly be the argument against including the objectives of the settlement in the settlement's incorporation Act? And what could be the argument against members having the final say on such a big decision as relocation? There are no legitimate arguments. If members do not agree with the objectives, they should not be on the management committee. And if they do not like the people who go to the settlement, they should not buy a house in the same street or try to move the people who are at the settlement. I understand that the Government has not yet taken a position on the bill. I hope that it decides to support the bill in order that it passes through the House as soon as possible. I commend the bill to the House.