

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 17 JUNE 1998**

**Hon Mark Nevill (Chairman)
Hon E.R.J. Dermer
Hon Muriel Patterson
Hon Simon O'Brien
Hon Bob Thomas**

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CLARKE, MR BARRY,
Acting Executive Director, Urban Roads,
Main Roads Western Australia,
residing at 15 Rossmoyne Drive,
Rossmoyne, examined:

Hon MURIEL PATTERSON: Welcome to this committee hearing. I have an apology from the chairman, Hon Mark Nevill. He is not able to be with us today. I am the Deputy Chairman. You have signed a document entitled "Information for witnesses". Have you read and understood the document?

Mr CLARKE: Yes, I have.

Hon MURIEL PATTERSON: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you and we ask you to peruse it and ensure that there are no errors and to return it to the office. Do you care to make a statement?

Mr CLARKE: No.

Hon MURIEL PATTERSON: In that case I will open the committee for questions. The transport plans provide for passing lanes between Kojonup and Albany. How many passing lanes are expected? When it is expected those will be completed?

Mr CLARKE: Four were planned. When the plans were developed in 1997-98 we did not have enough money for the four so we are building three. An extra million dollars has been included in this year's program to finish them. The fourth will be built in 1999-2000.

Hon MURIEL PATTERSON: Main Roads is expecting to build four of these lanes between Kojonup and Albany?

Mr CLARKE: In this pass, yes. I do not have the details of how many and what and where they will be. However, \$24 million has been promised under Transform WA with \$1m this coming year to finish off what we are doing and \$5 million in 1999-2000. Obviously that is too much for one passing lane; it involves widening and other improvements. From the present to 2005 a total of \$24m will be provided to improve the section of road from Kojonup to Albany.

Hon MURIEL PATTERSON: Roughly where will those passing lanes be?

Mr CLARKE: I am afraid I have no idea.

Hon MURIEL PATTERSON: Do you know if there are any between Mt Barker and Albany?

Mr CLARKE: No, I do not know. I can furnish that information.

Hon BOB THOMAS: You said the \$24m was for Kojonup to Albany?

Mr CLARKE: Yes, \$24m for Kojonup to Albany.

Hon BOB THOMAS: There have to be a couple.

Hon MURIEL PATTERSON: I know but I want to make sure.

Hon E.R.J. DERMER: It has been suggested that the information be furnished. We will formally request that you provide that information as soon as you can.

Hon BOB THOMAS: Can you repeat your acting title?

Mr CLARKE: Acting executive director, urban roads. That is only two weeks old. It is acting because the commissioner has announced there is only one permanent position in Main Roads at this time. We have been through a reshuffle. I know when the Shell service station issue came to fruition as I was then executive director road and traffic programs and Derek Lee, the regional manager, reported to me.

Hon BOB THOMAS: What is the new position in the organisational structure? Is it senior to the executive director road and traffic programs?

Mr CLARKE: It is equivalent. Before the change, Main Roads had a functional breakup. I decided what happened and when and controlled the money. My colleague, Mike Wallwork, controlled who did what and how it was done. I decided what happened and when he did it. The new structure has a geographic breakup. I decide all that happens in the metropolitan area and Bunbury which we now consider urban. He is handling the rural areas.

Hon BOB THOMAS: You said you decide what happens. Do you approve the projects? Do you have the final say on whether a project proceeds?

Mr CLARKE: Theoretically yes, on behalf of the commissioner.

Hon BOB THOMAS: As the executive director roads and traffic program did you have the final say on this median strip opening?

Mr CLARKE: Yes. If all goes according to oil, yes.

Hon BOB THOMAS: I ask you to look at this document. It is a memo from the regional manager Derek Lee and it is dated 17 February.

Mr CLARKE: 20 January.

Hon BOB THOMAS: 20 January, that is right.

Mr CLARKE: The memo was written on 20 January. It looks like it was faxed on 16 February.

Hon BOB THOMAS: That document was written on 20 January this year. On the final page there is an annotation -

Appeal to HMT upheld. RM instructed to implement

Is that your signature dated 4/2/98?

Mr CLARKE: That is correct.

Hon BOB THOMAS: What does "appeal to HMT" stand for?

Mr CLARKE: This is the second time this document has been moved around. When the design came up about six weeks earlier it was not acceptable. The regional manager said the design was not safe and I agreed with him and rejected it. After a series of events I had to rationalise what had transpired previously which had generated a lot of animosity. There were issues about the carrying capacity of the highway and safety. The animosity which had been generated had caused the council and Main Roads to dig a bunker and pull the lid over. The other parties, the Shell service station and Shell itself, had done the same on the other side of the fence. What caused that had to be put aside because it was none of my business.

At that point the issue about the crossover was one of the carrying capacity of the highway itself. As you would understand, additional movements and crosses reduce the carrying capacity and in the long term Main Roads has to spend public money to rectify the situation. The example that springs to mind is the Mandurah bypass. Fifteen years ago that was a free flowing brand new bypass with no problems. Now it is being consumed by the developments alongside it and Main Roads has to build another bypass. This bypass has just been finished. A third lane will be put along there some time down the track and whatever crossover the company puts in will interfere with that and Main Roads will not be able to maintain a public facility. The company smartly responded saying that as soon as that was on the cards and it would pull the crossover out, no more would be said and the crossover would be gone. I could not debate the whole issue based on that.

Hon BOB THOMAS: Did the company put that in writing?

Mr CLARKE: Yes, it did. It is on file. The animosity and the carrying capacity problems disappeared and Main Roads was simply left with the safety issue. One proposed design was unacceptable. I wrote the comment in the memo when I was angry following a phone call to the regional manager. The comment virtually says go and design one that is safe. He did that through a consultant. I do not know whether it was the same consultant but this design came forward. I considered it to be reasonable and Main Roads can live with it.

Hon BOB THOMAS: What does "appeal to HMT upheld" mean?

Mr CLARKE: That is how it all came about. A booklet was submitted by the company. The front of it said "appeal to HMT".

Hon BOB THOMAS: For the benefit of Hansard, what do the letters "HMT" stand for?

Mr CLARKE: Honourable Minister for Transport.

Hon BOB THOMAS: Therefore, it is the appeal to the honourable Minister for Transport upheld. What does "RM" mean?

Mr CLARKE: Regional manager. "Instructed to implement" means go away and design a decent intersection.

Hon BOB THOMAS: Who gave the regional manager that instruction?

Mr CLARKE: I rang him on a Monday afternoon and said we have to do something about this otherwise something will happen. That memo was the result; it was sent the next day.

Hon BOB THOMAS: Who gave the regional manager the instruction to design?

Mr CLARKE: Me.

Hon BOB THOMAS: You. You said Main Roads needed to do that otherwise "something will happen". What is that "something" that might happen?

Mr CLARKE: We had an impasse. My job is to break the impasse. The regional manager and council were on one side and the company was on the other. That is my job. I have to break that impasse.

Hon BOB THOMAS: Was anybody else involved in the decision to instruct the regional manager to implement your decision?

Mr CLARKE: No. Out of courtesy I spoke to the commissioner. If I recall correctly, I told him the situation in Bunbury was untenable and I had decided to proceed down this track. It was for his information, it still has to meet safety requirements. I remember he said "will it work?" My reply was that I was sure it would.

Hon BOB THOMAS: Did you, in your mind, give a clear instruction to the regional manager to implement that plan?

Mr CLARKE: To develop the plan

Hon BOB THOMAS: A clear instruction to develop the plan. Did you give that instruction verbally over the telephone?

Mr CLARKE: Yes.

Hon BOB THOMAS: What exactly did you tell him?

Mr CLARKE: I cannot be exact.

Hon BOB THOMAS: As best you can, what did you tell him?

Mr CLARKE: I told him to proceed. It still had to meet council's concurrence and our safety requirements. I asked him to put together a plan that will work. I cannot recall much more than that.

Hon BOB THOMAS: Did you then fax him this document?

Mr CLARKE: Yes, then I faxed him this document.

Hon BOB THOMAS: Is that a formal instruction or a directive to him?

Mr CLARKE: It is a formal instruction to carry on.

Hon BOB THOMAS: Before we discuss the appeal you received from this company, what administrative mechanism is available to a citizen who feels aggrieved or is not happy with a decision of Main Roads? What administrative procedure is available to them to challenge that decision?

Mr CLARKE: They simply make a telephone call. It happens almost daily. A person telephones the Minister's office and asks one of his offsidiers to question a decision. That offsider will come down to the commissioner or me. If he receives a satisfactory answer - a few days may be involved - he will tell that person that it has been resolved. If I say, "No, it will not happen", he will seek an audience with the Minister, I will be summoned or we may go on site, which has happened many times, and we discuss the matter. We both put a case and I must prove that it is unsafe or not in the public interest and the Minister will make a decision.

Hon BOB THOMAS: Is a formal appeal mechanism available?

Mr CLARKE: I do not think a formal one is available.

Hon MURIEL PATTERSON: Does the member mean a board or a tribunal?

Hon BOB THOMAS: An administrative body that has some sort of statutory authority?

Mr CLARKE: Not to my knowledge.

Hon BOB THOMAS: If someone is aggrieved about a decision made by Main Roads, they write to or telephone the Minister; is that what you call an appeal?

Mr CLARKE: That is what I call an appeal.

Hon BOB THOMAS: What does the Minister's office call that process?

Mr CLARKE: I do not know what it calls that process. It is so natural to me that I do not need to call it anything; it happens daily.

Hon MURIEL PATTERSON: It is just an formality.

Mr CLARKE: Yes. We interface with the public all the time. Obviously, we cannot keep everyone happy and appeals, concerns or issues must be raised. If the public feels it is not receiving a fair hearing from public servants, it can only go one way - to the Minister.

Hon BOB THOMAS: A person appeals to the Minister. I will show you a document. Is that part of the document that is about the appeal in this case?

Mr CLARKE: I do not know. I knew there was a document, that is all.

Hon BOB THOMAS: Did you not read the document?

Mr CLARKE: No.

Hon BOB THOMAS: Do you know to whom the document was sent?

Mr CLARKE: No, I do not.

Hon BOB THOMAS: Was it sent to the Minister's office, Mr Drabble, or the commissioner's office?

Mr CLARKE: I did not follow the process of the document. I came in at the end when the document was not an issue; the issue was safety.

Hon BOB THOMAS: Earlier, you referred to the fact that there was an appeal.

Mr CLARKE: I know there was an appeal, that is all.

Hon BOB THOMAS: I show you a memo dated 6 January 1998 which is from Mr Peter Bromley, the network assets manager, to you.

Mr CLARKE: Yes, I recognise that document. I referred to it earlier.

Hon BOB THOMAS: Will you read out the annotation on the last page?

Mr CLARKE: "On the basis of the above the appeal should be declined". I took that to the commissioner, we looked at it, read it through and agreed it should be declined. That was the one to which I referred that was received six weeks earlier.

Hon BOB THOMAS: On what basis did you decide it should be declined?

Mr CLARKE: On the basis that the design we had in our hands was not safe.

Hon BOB THOMAS: Is there another design?

Mr CLARKE: There is now.

Hon BOB THOMAS: I have another document from Mr Bromley to you dated 19 December 1997. What prompted Mr Bromley to send that memo to you?

Mr CLARKE: Off the cuff, I cannot tell you. Perhaps there is documentation on which I could fall back.

Hon BOB THOMAS: If you agree to take this on notice, the committee will provide you with the details required. We need to know what triggered that particular memo. I have the information from a freedom of information application and I cannot find anything on the file between 1 July and 22 December. What prompted Peter Bromley, the network asset manager, to write that memo to you. Does the document relate to safety issues?

Mr CLARKE: Yes.

Hon BOB THOMAS: Why did he write that memo given that there was no correspondence from 1 July until then. On the second page of that document is a note to yourself which says, "EDRPT Barry, these arguments look sound . . .". What is the next word?

Mr CLARKE: Sorry, it is the commissioner's writing. ". . .look sound . . . when compared with the GHD . . . I do not know what that word is.

Hon BOB THOMAS: Is it "particularly"?

Mr CLARKE: Yes, it could be. ". . . when compared with the GHD arguments."

Hon BOB THOMAS: That is the Gutteridge, Haskins and Davey arguments. It goes on to say, "I believe MRWA should reject the application based on Peter's assessment above." That is signed by the Commissioner for Main Roads.

Mr CLARKE: Ross Drabble.

Hon BOB THOMAS: The Commissioner for Main Roads has indicated that he agrees with the decision that it should be rejected. You indicated that you had to resolve a number of conflicts; one of which was the animosity. What did you mean by the "animosity"?

Mr CLARKE: I was not in charge of that area and the issue when it came about in 1994. When the application to build a service station was put to council in the first instance, council rejected the whole establishment. I feel that, as the planning authority, it can do as it wishes. They rejected it and after a lot of debate it finally accepted it, by somewhat of a narrow margin, on the condition that no crossover access to the service station would be available from the north bound lane; that is, no hole in the median. That was accepted by the company, Shell, and the proprietor. They went away, built the roadhouse and then immediately appealed for a hole in the median. That is the surest way of attracting a fair amount of animosity and it is fairly deep seated. People in the region, and my regional manager is in the region, became very embroiled in that argument.

Hon BOB THOMAS: The animosity was between whom?

Mr CLARKE: Between the parties of the developer and his support and Main Roads and council. That is my understanding of the situation.

Hon BOB THOMAS: You said it came to a head in 1994. A meeting of interested players from Bunbury was held in two parts with the Minister. The first part was held with the

people from Bunbury who met with the Minister, and in the second part the regional manager was invited to the meeting. Who were the people who were at each of those meetings?

Mr CLARKE: I cannot answer that because I had nothing to do with the 1994 issue. I came in in 1996.

Hon BOB THOMAS: I place that question on notice.

Hon MURIEL PATTERSON: You will receive notice of that, Mr Clarke.

Hon BOB THOMAS: Will you advise this committee who were the people who were present at both of those meetings, on what day the meeting was held, where it was held and who initiated the meeting? The committee would like the names of the people and the organisation they were representing at that meeting. You referred to another document. I will come back to that other document because I would like you to table it?

Mr CLARKE: If you are referring to the appeals document, I do not have it.

Hon BOB THOMAS: I have a copy of the appeal document. There was another document, but I will come to that. Turning to the safety aspects of this crossover, what is the gap between the two breaks in the median north and south of the Shell garage?

Mr CLARKE: Vittoria Road south. That is between 300 and 400 metres away.

Hon BOB THOMAS: Is that from the next break in the median?

Mr CLARKE: No. If you take the Shell service station in the middle you have about 300 metres south to Bunbury to Vittoria or Johnson. Vittoria is on one side and Johnson is on the other. I am not sure of the distance from the service station north to the next intersection.

Hon BOB THOMAS: I am trying to think of the name of the road to the north.

Mr CLARKE: I do not know it. Vittoria Road is important because it is the port access.

Hon BOB THOMAS: What is the speed limit on that road?

Mr CLARKE: 80 kilometres an hour.

Hon BOB THOMAS: I think it is 90. I use it every morning.

Mr CLARKE: Then it is 90.

Hon BOB THOMAS: We are talking about the number of vehicles using that road increasing to 23 000 vehicle movements per day by 2010. Main Roads has a plan to build a third lane on both carriageways.

Mr CLARKE: That is correct.

Hon BOB THOMAS: Vittoria Road is 200 or 300 metres south of the proposed median crossover. Heavy traffic will come from the port, turn left and travel north, probably in the third lane. In the space of 200 metres that traffic will be weaving into the right hand slipway to get into the median crossover to the garage.

Mr CLARKE: No. The company has given an undertaking that when we require the third lane the crossover will come out.

Hon BOB THOMAS: That was the other document I referred to earlier. Can you table that please?

Mr CLARKE: Yes.

Hon BOB THOMAS: We will take a copy and give that back to you. As a tabled document, it will be a public document. Do you have any objection to it being a public document?

Mr CLARKE: No.

Hon BOB THOMAS: I wonder why I did not receive a copy of it under the freedom of information application.

Mr CLARKE: I do not know.

Hon BOB THOMAS: It is a tabled document.

Hon MURIEL PATTERSON: Let us know if we ask for any documents which you wish to remain private.

Mr CLARKE: Thank you.

Hon BOB THOMAS: Why would it be less dangerous to have heavy trucks weaving into the right hand lane and then into the slipway for the service station? Why would it be less dangerous with two northbound lanes instead of three?

Mr CLARKE: It is one additional movement. If you are coming out of Vittoria Road and heading north to Perth you only have to change one lane in 300 metres. Coming out of Vittoria and making a left turn, only one vehicle can make a left turn through the lights. The traffic coming from Bunbury heading north is not interfering. The truck coming out has no competition; it can move straight into the median lane.

Hon BOB THOMAS: Why would that be different with three lanes?

Mr CLARKE: The third lane has to go on the median. The nine metre median will be reduced to about three metres. Therefore, there cannot be a turn left slip lane for these vehicles to slip into and get out of the way of the through bound vehicles.

Hon E.R.J. DERMER: You have used all the available space.

Mr CLARKE: Yes, we have used it all.

Hon BOB THOMAS: Where did the document that you have tabled come from?

Mr CLARKE: It came from the company via Mr Higgins at the Minister's office.

Hon BOB THOMAS: Was it part of their appeal?

Mr CLARKE: I do not know.

Hon BOB THOMAS: Do you have the rest of the document? You have tabled one page.

Mr CLARKE: No, I do not. I only have that.

Hon BOB THOMAS: I have that document. The company claims that there are sufficient gaps in the traffic travelling south because of the lights at the old Australind Road.

Mr CLARKE: The set of traffic signals at the new Australind access road, yes.

Hon BOB THOMAS: At the traffic signals there. In your experience, is that correct?

Mr CLARKE: I think the distance is 2 km. You cannot claim that you will have, over 2 km a gap big enough for people to get in every time. However, given the amount of traffic using the road and the fact that vehicles are pulled off the lane when trying to turn, they can sit there until such time as there is.

Hon BOB THOMAS: I want to come to that. Do the lights act in a manner which allows gaps in the traffic?

Mr CLARKE: Yes, that is part of traffic engineering.

Hon BOB THOMAS: In this particular instance, is that whole intersection governed by the traffic lights?

Mr CLARKE: Which whole intersection?

Hon BOB THOMAS: The intersection at the Australind Bypass. I am trying to think of the name of the road -

Mr CLARKE: I know the one, the T junction.

Hon BOB THOMAS: Yes.

Mr CLARKE: It is partially -

Hon BOB THOMAS: One southbound lane is not controlled by the lights.

Mr CLARKE: That is correct.

Hon BOB THOMAS: Will the effect of the lights and the southbound lane provide sufficient gaps to allow the safe crossing of a road train?

Mr CLARKE: That set of lights and the fact of the through lane and the distance between that and the service lane does not lend itself as the sole argument to allow traffic to cross that road.

Hon BOB THOMAS: Who approved the new plan?

Mr CLARKE: I did.

Hon BOB THOMAS: Can you describe how it will work?

Mr CLARKE: I have a copy here. It is only schematic.

Hon BOB THOMAS: Could you table that please?

Mr CLARKE: Yes, I will.

Hon BOB THOMAS: Does it allow trucks to leave the service station and travel north?

Mr CLARKE: Yes.

Hon BOB THOMAS: From the service station?

Mr CLARKE: Yes, from the service station.

Hon BOB THOMAS: Are they required to turn left and travel south to Vittoria Road and cross the median there?

Mr CLARKE: No.

Hon BOB THOMAS: Can you describe how that is configured?

Mr CLARKE: They have to wait within the service station until such time as they have a clear run across the southbound traffic. They then move across into the median and into the northbound traffic.

Hon BOB THOMAS: Is the median where they wait north of where the northbound trucks would turn in?

Mr CLARKE: No, south. They come out of the southern access. That was the fault of the first design. It had two bad features. One, the vehicles could not get out of the way. Two, the manoeuvres in and out of the service station were too close together. It would have been confusing. This design is not the full design but it allows the egress to come from the

Bunbury end, cross the median and accelerate into the northbound lane. The ingress moves to and waits in the slip lane. The lights at Australind Road are too far, there is no proper gap making device there. The ingress waits and then moves across the southbound lanes into a deceleration lane. Once again they are out of the way of the through traffic.

Hon BOB THOMAS: Would they enter the service station on the northern side?

Mr CLARKE: That is correct.

Hon BOB THOMAS: I understand that workers started removing the fence in the middle of the median in front of the service station yesterday.

Mr CLARKE: I saw a memo to that effect. I do not have the details.

Hon BOB THOMAS: Do you know who approved the start of that work?

Mr CLARKE: No, I am sorry. To elaborate, I saw a copy of a memo from the City of Bunbury saying that the work should stop because it had not been approved.

Hon BOB THOMAS: Could you provide the committee with a copy of that. Do you have it on file?

Mr CLARKE: No, I do not.

Hon BOB THOMAS: You can take that on notice and provide the committee with a copy. I was not aware that the Bunbury City Council had approved this work.

Hon E.R.J. DERMER: Was it your understanding when the service station was first approved in 1994, that the council approved it on the condition that the slip lane and bypass would not be built?

Mr CLARKE: On the basis that no access across the median would be allowed from the northbound lines.

Hon E.R.J. DERMER: Was that condition specifically included in the resolution of the council at the time?

Mr CLARKE: I looked that up and it is not. I know it was the item of debate.

Hon BOB THOMAS: The commissioner at the time, Dr Ken Michael, wrote to the proponents indicating that the Minister had decided that a condition of the approval of the service station would be there being no median crossover there.

Mr CLARKE: I am not aware of that.

Hon E.R.J. DERMER: If that was the understanding at the time and there is correspondence specifying that understanding, would that understanding have been with the overall Shell

Petroleum Company? Did it make the original application in 1994?

Mr CLARKE: I do not know.

Hon E.R.J. DERMER: Are you telling us that Shell Petroleum appealed the decision rejecting the access way and that is now the successful appellant?

Mr CLARKE: I cannot say that if it is specifically the petroleum company or the proprietor.

Hon E.R.J. DERMER: It is one or the other but you do not know which. Is that what you are saying?

Mr CLARKE: I did not see that document.

Hon E.R.J. DERMER: I am concerned about the solidity of the undertaking the company has given to accept the disappearance of the access way when the third lane is built. I am looking at its track record on the 1994 decision. What are the terms of the company's undertaking to accept the disappearance of the access lane when the third lane is put through? Is that out of its control because Main Roads will put the lane through and the access lane will disappear automatically?

Mr CLARKE: The access way will disappear and the issue will be consumed in the construction of the third lane in each carriageway. The document that I tabled addresses the fact that they will accept that without compensation.

Hon E.R.J. DERMER: The first application for the access way went in jointly by Shell and the proprietor, or are you not sure which?

Mr CLARKE: I am not sure.

Hon E.R.J. DERMER: It went in by either Shell or the proprietor or jointly. The first application was rejected and the reason it was rejected is because your assessment was that the first application compromised safety?

Mr CLARKE: Correct, and the issue of the third lane was also in my mind at that time because that document had not been made available.

Hon E.R.J. DERMER: At that stage, you had not received the undertaking that it would not seek compensation for the abolition of the access lane when the third lane went through.

Mr CLARKE: That is correct.

Hon E.R.J. DERMER: There is no appeal structure, but the way appeals work in effect is that any citizen who has a grievance against a decision by Main Roads goes to the Minister. The Minister hears the appeal in the presence of Main Roads officers that he chooses to invite to that meeting when he considers that appeal and then he makes a decision in consultation with those officers. Is that the normal process?

Mr CLARKE: That is the procedure I go through quite frequently and it is very successful.

Hon E.R.J. DERMER: In this instance, an application for the access way was made and rejected because you were concerned about the third lane which had not been addressed by the undertaking that it would not seek compensation and that the original plan might compromise safety. Did either Shell or the proprietor, or both, go through that process you described earlier to make an effective appeal to the Minister to allow for an access way?

Mr CLARKE: No. I do not think it made a second appeal. It put the one appeal in and that was rejected locally at regional manager level for safety reasons, which the regional manager had some difficulty in explaining. He referred it to me and I said, "Yes, you are right, that design compromises safety." The process then goes through a number of loops and the company says, "We do not like that decision" and some negotiation occurs. That is how that second document about the removal of the facility when the third lane goes in came about. The point is reached where, as I said before, both sides have dug themselves into a bunker. I had to wipe the animosity arguments, look at the evidence regarding the third lane and, from my experience of what occurs in the metropolitan area with roads that are bigger than this, say, "Well, it should be possible to design this. Go away and design it."

Hon E.R.J. DERMER: I understand your intention in that course of action. I seek clarification on these series of loops to which you referred as the process by which either Shell and the proprietor or Shell or the proprietor sought to appeal the original decision to reject the application. You have told us that the normal process is for an agreed party to appeal to the Minister. You have told us that the first application was rejected until you had the undertaking that it would not seek compensation on the consequences of the third lane and the concern of safety. Did the company go to the Minister in the normal way that you have described to effectively put in an appeal, or did it go through some other process when you say a series of loops?

Mr CLARKE: It contacted the regional manager I do not know how many times and it must have contacted Brent Higgins at the Minister's office because Brent Higgins obtained that document dealing with the compensation and removal of the facility from it. Brent Higgins was keeping me on the ginger through continuous phone calls - five or six fairly heated debates over the telephone - about the whole issue and getting it resolved. My summation of that is that he was involved with that appeal process. I do not think it went to the Minister, but it certainly went to his office.

Hon E.R.J. DERMER: Is Mr Higgins an adviser to the Minister?

Mr CLARKE: Yes, he is an adviser.

Hon E.R.J. DERMER: To the best of your knowledge, the line of appeal it sought was to go to the Minister's office by way of Mr Higgins, who is a ministerial staff member?

Mr CLARKE: Correct.

Hon E.R.J. DERMER: You said you had a number of heated debates with Mr Higgins on the

issue of whether the access way should be approved. What were the points of issue between you and Mr Higgins?

Mr CLARKE: The initial point of disagreement with Mr Higgins was that the language he uses to describe my work staff is not very gracious at all. That in turn tells me that when he speaks to a third party, he uses the same language about me. That is a very good starting point when talking to Mr Higgins. The other points are the timeliness of making these decisions and it has been bubbling along - planning-wise. It took a long time from 1994. This issue started again in mid-1997 or earlier. He expects the road design and research to be completed in a couple of weeks; that is not on. A problem with timeliness exists if he thinks I can make a decision based on nothing. That does not happen when one is working with people's lives. One must have a design on a piece of paper that will work. He was arguing along those lines and the company was very upset.

Hon E.R.J. DERMER: Did you sense that you had pressure applied by Mr Higgins?

Mr CLARKE: Pressure in time?

Hon E.R.J. DERMER: Pressure in terms of the actual decision?

Mr CLARKE: No.

Hon E.R.J. DERMER: This process of appeal was either Shell, the proprietor or both going to Mr Higgins, Mr Higgins telephoning you and, from what you said a series of debates on the telephone ensued based on his critical or ungracious attitude towards your staff, and the time taken to make a decision. Your concern was to take the required time to make sure whatever decision you made did not compromise safety to the public?

Mr CLARKE: That is correct.

Hon E.R.J. DERMER: Two factors are the essence of this issue: The first is that the company will not seek compensation. The second is the essence of whether it was a good decision or not that the access was safe.

Mr CLARKE: That is correct.

Hon E.R.J. DERMER: You are the officer who makes the judgment of whether any plan is safe or otherwise.

Mr CLARKE: Yes, I do. I have access to people who advise me on issues.

Hon E.R.J. DERMER: You told us earlier that when a Minister considers an appeal he will bring in for that discussion process with the appellant the officers from Main Roads on whose judgment the decision is based which is relevant to the appeal.

Mr CLARKE: Correct.

Hon E.R.J. DERMER: Why, in this instance, were you not invited into the Minister's office during the process in which the Minister's office considered the appeal from Shell, the proprietor or a combination of both?

Mr CLARKE: The member has me slightly wrong. I believe, as I was not party to this issue, that it was not appealed in front of the Minister.

Hon E.R.J. DERMER: Was it appealed in front of Mr Higgins?

Mr CLARKE: I think so. I do not think the Minister spoke to the company or the proprietor. If he did, we are not aware of it. Normally he would invite me to the discussion and have it out there and then, but I do not think it got that far. It was handled at telephone level with Mr Higgins.

Hon E.R.J. DERMER: The normal process was not followed. Mr Higgins telephoned you until you were satisfied that an access proposal was there that did not compromise public safety?

Mr CLARKE: That is correct.

Hon BOB THOMAS: The regional manager in Bunbury has recommended against this median crossover. Were you required to instruct him to go ahead and do it?

Mr CLARKE: He recommended against the original design; so did I. He still maintains that there should not be a crossover.

Hon BOB THOMAS: Has he ever recommended to you that there be a crossover at that service station?

Mr CLARKE: He has never recommended it to me; that is correct.

Hon BOB THOMAS: I asked the Minister for Transport a question about the instruction to Derek Lee, the regional manager, and the approval. Hon Eric Charlton replied -

No-one instructed Main Roads to approve that opening in the median strip. It was recommended to Main Roads' head office in Perth following the application from Bunbury, and the person in charge of Main Roads' Perth office approved it. He did not direct or tell anyone to do anything; he simply approved it, because he is the person who has the responsibility to make those decisions.

Is it correct that this median strip opening was recommended to you from the Bunbury office?

Mr CLARKE: Reading the words literally, let us go through it again: No-one outside - and I use "outside" because that is the way I read what you have said - Main Roads instructed Main Roads to put that median in. That is correct. What was recommended to Main Roads' office - that is the design that I was referring to. No-one instructed Main Roads to approve the median. I told Derek Lee to proceed with the design but we still must ensure that it is a safe

opening. Then I approved the design.

Hon BOB THOMAS: Did you write that answer?

Mr CLARKE: No. It is the first time I have seen it

Hon BOB THOMAS: The first line of that answer says it was recommended from Bunbury. Have you ever received a recommendation from Bunbury that the median be approved?

Mr CLARKE: No.

Hon BOB THOMAS: We are talking about an approval; have you ever received a recommendation from Bunbury that that median be approved?

Mr CLARKE: No. All I have received from Bunbury is a design which I approved.

Hon BOB THOMAS: The regional manager has always recommended against the opening of the median. He is opposed to the crossover and his arguments are safety.

Mr CLARKE: He has a number of arguments; safety is one.

Hon BOB THOMAS: Is that answer incorrect?

Mr CLARKE: If you read it that way, yes. I am reading it slightly differently. To me, the recommendation to Main Roads head office is the design.

Hon BOB THOMAS: That question was about the approval.

Mr CLARKE: Did the Minister or senior officers of Main Roads direct or instruct Main Roads' staff in Bunbury to agree to the proposal for a crossover. I see what the member means; agreed to the proposal in principle, not the design.

Hon BOB THOMAS: You said that you did that.

Mr CLARKE: I said that I wanted a design that would work safely and I approved that.

Hon E.R.J. DERMER: Earlier we discussed the normal appeal process through the Minister. Did the special appeal process which occurred on this occasion involve Mr Higgins phoning you and putting the proposition of the appellants that the access path should go through?

Mr CLARKE: That is basically right.

Hon E.R.J. DERMER: In the time you have undertaken these duties, have you had any other experiences in which the appeal process was handled by the Minister's adviser putting the case to you on the phone as opposed to your accompanying the Minister in the presence of the appellant?

Mr CLARKE: That is the more likely way. There are a number of iterations. The company will approach the regional manager and, if it gets no satisfaction, it will approach me. If I find it difficult to satisfy the company, it will go to Higgins and Higgins will deal with me. Ultimately the matter will go to the Premier I suppose. I do not know. It will go to the Minister and that formal process will begin. The company can keep going up.

Hon E.R.J. DERMER: Was there a precedent for Higgins to relay the appellant's concerns to you?

Mr CLARKE: Absolutely yes, two or three times a week.

Hon MURIEL PATTERSON: Is Main Roads responsible for the clearing of the verges along the southern roads? Over the years I have noticed that the roads have become safer because of this clearing so people do not hit the kangaroos. Is that a duty of Main Roads?

Mr CLARKE: That is correct. It is a standard that is upgraded from time to time.

Hon MURIEL PATTERSON: People appreciate that. I travel a lot in the south west. This clearing is extremely beneficial. I am curious about the white crosses on the roads. Who is responsible for the white crosses which depict a death or a fatal accident?

Mr CLARKE: The grieved people. The people who are grieving for their lost ones.

Hon MURIEL PATTERSON: Is it an organisation or it is done privately? They are a uniform size.

Mr CLARKE: I believe it is a private thing. People put the cross up and from time to time put some flowers there. It is marvellous.

Hon MURIEL PATTERSON: I thought someone must oversee it and say they must be a certain size.

Mr CLARKE: I am not aware of any organisation that does that.

Hon E.R.J. DERMER: It is certainly a reminder for people to slow down.

Hon MURIEL PATTERSON: Thank you. You have been very helpful and your answers have been very forthcoming. I close this part of the session, thank you.

[The witness retired]

THE COMMITTEE ADJOURNED
