Standing Committee on Environment and Public Affairs
Hon Matthew Swinbourn MLC
Chairman

Dear Sir & Committee Members

Re: Petition No. 148 – WA Planning System

I, Clive Ross am the petitioner representing the 2,036 petitioners who have signed this petition requesting an inquiry into the WA Planning system. A complaint in relation to this matter has not been taken to the Ombudsman. Although changes have occurred because of the COVID-19 pandemic and the introduction of emergency measures, we respectfully suggest that these temporary changes do not alter our primary concerns, for the reasons that follow, and should not deter the Committee's decision to conduct an inquiry as requested.

The planning framework has been manipulated and exploited so that even experienced planners, architects and legal advisors cannot have any certainty in the interpretation or application of the rules. The rules contain numerous sub rules which introduce concepts such as "deemed to comply," "due regard" and "seriously entertained" provisions. Well established principles such as plot ratios, density ratios and R Codes which provided a measure of consistency across the State are now optional or excluded in Local Planning Schemes (LPS). LPS are often themselves "due regard" documents that the Local Government Authority (LGA) or the Development Assessment Panel (DAP) or the State Administrative Tribunal (SAT) do not have to follow. The result is chaos in planning approvals and processes at all levels and areas, as the Addendums to this submission show.

Development at any cost is the new norm. The Minister's focus on development as the only way of saving the economy has led to the abandonment of long established and proper planning principles. These principles include minimum setbacks, prevention of encroachments and undermining of adjacent property, stranded assets, overshadowing, privacy, compliance with Australian Standards, safety, driveway sightlines, over densification and the imposition of significant losses of value on adjacent property, as well as an over-supply of dwellings which if the WAPC projections are correct will only be required in 25 to 30 years-time.

The disregarded standards listed above, are the qualities that make investment in Australian property valuable to overseas investors. There is no reason why the proper balance between requisite standards and increased development cannot be maintained, but that requires good governance and a change in the planning structure, culture and administration at all stages of the process. As well as being short sighted the new approach does not take into account that non-complying developments which breach Australian Standards and inflicts loss and damage on adjoining property is creating long term problems for the Australian community and future economy.

Even the Planning Minister, has shown that as Minister, there is no confidence that the current provisions deliver what the Minister considers to be the appropriate result. In relation to the City of Nedlands, the Minister exercised authority to overrule the LGA's proposed LPS and in relation to the City of South Perth, the Minister exercised Ministerial authority to "call in" a matter that was before the SAT on appeal from a DAP decision and the Minister then overruled the DAP decision because the Minister was not confident that the SAT would do so.

The Western Australian Planning Commission (WAPC) have instructed all LGAs to immediately increase densities in their areas, to meet a projected increase in dwellings that will be required by 2050. The WAPC have also seemingly identified specific areas of increased density called "activity centres" depicted in an orbital pattern around the Central Business District (CBD). This plan fails to take into account that the CBD provides the primary areas of employment therefore requiring substantial transport networks between the CBD and the satellites. Activity centres such as the Canning Bridge Activity Centre Plan only allows the construction of a small area of commercial space with an estimated 98% or more of the space used for residential purposes. This ratio of commercial to residential will not result in these activity centres providing employment for the residents of the building alone and certainly not for the remaining population in the relevant LGA. For these reasons, it is

reasonable to contend that the objectives of the WAPC's document, Perth and Peel @ 3.5 million March 2018, to reduce transport pollution will not be achieved and may actually be increased.

The WAPC's focus on establishing "activity centres" in suburbs outside the City of Perth, ignores the opportunity for increased density in suburbs such as West Perth and Highgate. In West Perth there is a high concentration of business activity but residential space is limited. The area is within walking distance of the CBD, Kings Park and Elizabeth Quay and is already serviced by the CAT bus service. The land in West Perth is limited to nine storeys apparently because it is either within or borders the Parliamentary Precinct, which was established to prevent developments overlooking Parliament House or reducing Parliament House's predominance of the West Perth skyline. This seems a very poor reason for WAPC and the City of Perth to not increase the density, by allowing increased height limits, in this most suitable area and must call into question their priorities and whether their planning decisions are influenced by non-planning considerations.

The Members of the DAPs consists of three members who are Planning Consultants or Architects and two Elected Members from the relevant LGA. The Elected Members are outnumbered and have to rely on convincing one of the other "professional" members to be able to ensure that a decision is made in accordance with views of the community of the LGA. Up to December 2019, the DAPS had improperly maintained that the Planning Officers from the LGA had the sole authority to make a recommendation to the DAP as to whether a development application should be approved or rejected. This written directive from the DAPs was a means of removing the community's views being expressed through their Elected Members and placing the power into the hands of the City Officers who are effectively controlled by the WAPC. The directive was ultra vires and in breach of the Local Government Act which provides that only the Elected Mayor is authorised to speak on behalf of the LGA. It was only because the Community raised objections that the DAP directive was amended.

All of the Planning Consultants and Architects including the Government Architect, who adjudicate on the DAPs, conduct their own private practices. These private practices provide services to and rely on developers for their business income. While these planning consultants and architects properly declare conflicts of interests when their private practices or their partner's practices are involved in providing services to a developer, it is not difficult to see that all of these individuals are known to each other and have social and business connections. It is also apparent that in a small environment such as Perth, that one planning consultant's or architect's development will come before another planning consultant or architect for development approval and vice versa. It is only human nature that those who seek to enforce the rules strictly will have the rules strictly enforced against themselves. In this environment of human relations which is excessively close and resistant to outside influence, the community, who have been making representations to DAPs, have totally lost confidence that the DAPs are conducted on an impartial basis and with proper regard to the true intent of the planning rules.

The current planning provisions do not contain any third-party appeal rights. In the present environment where the Minister and LGAs are introducing LPSs for high density development, it is a common occurrence for the border of a high-density activity centre area to be located either on a fence line or across the road from a R20 zoned residential area. Within the activity centre privacy, height limits and overshadowing rules do not apply. However, outside that area the residents still have the right to privacy and to not be overshadowed. This overshadowing and loss of privacy is especially onerous when the new development is 20-30 storey highs. Without any third party right of appeal, these residents must either undertake an expensive Supreme Court action or live in the shadow and in full view of the occupants of the new development and also accept that their property has now been devalued by several thousands of dollars and will be almost impossible to sell. We implore the Committee to take into account that the lack of proper planning, self interest and greed in the planning and approval process is causing great detriment to the community as well as personal loss to individual residents who are entitled to expect protection of their amenity and improvements but not degradation and loss.

We respectfully ask the Committee to accept and consider the Addendums to this submission as they demonstrate the spread and frequency of these planning problems.