

16 October 2017

By email: env@parliament.wa.gov.au.

Hon. Matthew Swinbourn MLC
Committee Chair
Standing Committee on Environment and Public Affairs
Legislative Council Parliament of Western Australia

Dear Chair,

**Petition No 021 - Shenton Park Rehabilitation Hospital Redevelopment –
Improvement Scheme. Bushland linkage “Lemnos Street Bush”. Improvement
Scheme 1 – approved December 2016**

Please find attached my submission as one of the Principal Petitioners, regarding the
Petition.

Thank you in anticipation of your and the Committee’s consideration of the Petition requests
and my submission.

Sincerely

(Ms) Lynette Jennings

Submission. Lynette Jennings. Re: Petition No 021 – Shenton Park Hospital Redevelopment – bushland linkage “Lemnos Street Bush”. Improvement Scheme 1 – approved December 2016

I am concerned and perturbed that the Improvement Scheme’s treatment of the bush was acceptable to the WAPC and former Minister Faragher (*Decision Makers*) and now to Premier McGowan and Planning Minister Saffioti, given applicable planning policies and environmental Agency advice to the contrary, the science regarding ecological linkage design, that the bush is an acknowledged ecological linkage/corridor with local and regional significance, the community’s and local governments’ wishes to retain it (per public consultation outcomes, this petition and the over 1600 signature online change.org petition) and that it is feasible to retain the bushland and still meet the Scheme’s various objectives.

There appears to have been a failure of process given the unnecessary and deplorable outcome for the bush. An inquiry will hopefully reveal the source and reasons for that failure.

The failure manifests in the Scheme’s plan to clear over 50% of the bush by cutting it up into disconnected vegetation cells separated by 20m wide clearings, with high density apartment development and a new road within it. That treatment is contrary to linkage design principles involving remnant native vegetation.

The plan if implemented will fragment the near continuous connectivity of the existing vegetation, create via the cleared areas multiple barriers to fauna movement and provide enhanced predation opportunities, cause significant edge and disturbance effects and will likely result in a significant reduction in linkage functionality connecting the 2 nearby Bush Forever sites with adverse effects for those other sites. I am sceptical that existing vegetation intended for inclusion in the “cells”, will survive intact the extensive clearing and site works. The plan is also contrary to former Minister for Lands Redman’s representation that “*There is also recognition of the key biodiversity corridor, the bushland vegetation in the western boundary of the site, which will be largely retained as part of the development.*” (Media release 23 May 2014).

The Scheme is contrary to the Capital City Planning Framework 2013, that identifies this bush for retention and enhancement as part of a regional ecological linkage between Kings and Bold Parks. And is non-compliant with cl 5.2(v) of State Planning Policy 2.8 (Perth’s Bushland Policy).

SPP 2.8, cl 5.2 provides: “**Local Bushland, (v)** “*Proposals or decision-making should — Proactively seek to safeguard, enhance and establish ecological linkages between Bush Forever areas ...*”; and

In cl 6 **Implementation** “*The onus is on the proponent to provide sufficient evidence and to demonstrate to the decision-making body that a proposal or decision is consistent with this policy or that a deviation is justified. Early consultation with the decision-making body is recommended. Any proposal that deviates from this policy will not be supported without overriding justification. Statements of fact, conclusions or theories used to justify arguments should be substantiated or supported by technical work. Where this is not provided, the decision-making body may request further scientific information or refuse the proposal on the basis that it is not supported by sufficient technical arguments.*”

It takes considerable contorting of the ordinary meaning of the wording in clause 5.2(v), given the extent of clearing, for the Scheme and drafts to be construed as having proactively sought to safeguard and enhance the existing vegetation comprising the linkage. In the draft Improvement Scheme Report (p.13), LandCorp asserts that the draft Scheme is consistent with SPP 2.8, without providing any information, evidence or data to substantiate that claim, such as an expert scientific report about the plans possible impacts on the linkage function and the suitability and long term sustainability of the design as a linkage etc. That lack of information is also contrary to the cl 6 requirement to demonstrate compliance.

Allowing that a policy deviation is within policy if overriding justification exists, there was in this case no evidence provided, any substantiation or discussion within any of the draft Scheme documents submitted by LandCorp to the DOP and the WAPC, that indicated or supported that a deviation was justified.

The final draft Scheme’s design for the bush, was developed on the basis of SPP 3.4 and 2010 Guidelines, the predecessor bushfire policy to the current SPP 3.7 (Bushfire Planning Policy) and Guidelines. The Bushfire Consultant’s Report dated July 2015, one of the draft Scheme documents, confirms this (p2): “*This report has been prepared to demonstrate that appropriate regard has been given to Planning for Bush Fire Protection Guidelines (2010) in the design and development of the subdivision.*” The old policy contains few and unspecific measures about dealing with environmentally significant bush, such as the bush in question. In contrast, the new policy contains detailed and specific measures (discussed below) that if correctly interpreted and applied should have resulted in retention of the bush, in light of the weight of the environmental advice about the linkage values.

SPP 3.7 became operative on 15 December 2015, meaning when the final draft Scheme documents were submitted in late 2015/early 2016 to the DOP for assessment etc, the Scheme had not taken into account the new Bushfire Planning Policy implications regarding conservation and biodiversity protection provisions on the Scheme.

Whether and how the Department took the new policy into account in assessing the draft Scheme is not known. My FOI application to the DOP, seeking the DOP Officer's Report to the WAPC advising on the draft Scheme, which will show how the DOP viewed and advised about the new policy implications, was due for decision on 12 October 2017 but remains outstanding.

The Bushfire Planning Policy does not provide justification overriding or otherwise, to deviate from SPP 2.8 cl 5.2(v). The Guidelines, cl 2.5 makes this clear: *"Achieving the objectives and measures set out in SPP 3.7 should not be at the expense of achieving consistency with other policies and publications, particularly in relation to environmental and biodiversity management and landscape amenity. Where, in order to preserve life, property or infrastructure, the objectives of other relevant planning policies or publications would be compromised, it may be the case that the proposal may not be suitable on planning grounds."* The policy indicates it should not be used as an excuse to override SPP 2.8 and that the latter should be observed.

The proposed clearing causes a conflict with SPP 2.8. Guidelines cl 2.5 (above) suggests a method for resolving such conflicts, as does cl 2.3: *"Where loss of vegetation is not acceptable or causes conflict with landscape or environmental objectives then it may be necessary to reduce lot yield, cluster development, comply with the applicable bushfire construction requirements of the Building Code of Australia relevant to the BAL of the site (as set out in AS 3959), or modify the development location in order to minimise the removal or modification of remnant vegetation (Figure 3)."*

and

"In instances where biodiversity management conflicts with bushfire risk management measures and significant clearing of native vegetation is the only means of managing bushfire risk the proposal should generally not be supported.." Cl 2.3 also allows a refusal of approval: *"... if the value of the vegetation is high and the landowner/proponent proposes achieving an acceptable bushfire risk through vegetation clearing without consideration and inclusion of other management measures."* This is the case here – clearing is the chosen method rather than other management measures mentioned above.

SPP 3.7 Policy Objective 3.4 requires an appropriate balance between bushfire risk management measures and biodiversity conservation values. This does not mean where native vegetation with environmental values is involved, that each proposal must allow the removal or modification of at least some of it in the name of balance. It means in some cases, and this is one of them, it will be inappropriate to remove or extensively clear such bush. Instead other bushfire risk management measures should be used and if not the proposal may be refused, as per the specific policy provisions in the Guidelines (discussed above). The outcome would be appropriately balanced if new development was located outside the bush and the bush retained and enhanced.

FOI documents and recent Government correspondence to the Petitioners endorsing the Scheme, show LandCorp and the Government place significant reliance on the EPA's 30/11/2015 advice, because it states it supports the plan for the bush. That advice is patently irrelevant to the linkage value impacts, as it does not advise on them. Only impacts on Carnaby's habitat values are discussed and so the EPA's Scheme endorsement relates only to those impacts. The EPA's silence on the linkage values is curious, because it gave previous advice on 25/5/15 to the DOP about the linkage values. The 25/5/15 advice stands uncontradicted and authoritative that due to linkage values the bush should be entirely retained. (Then) DPAW also advised the DOP about the draft Scheme by letter dated 1/4/2016 and recommended the bush's retention ie: *".....To maximise the viability and value of the linked bushland remnants in this local area, planning consideration should be given to how remnant vegetation can be retained and enhanced. The vegetation at Shenton Bushland, Shenton Park Hospital and Underwood Avenue Bushland is likely to form a valuable stepping stone between Kings Park and Bold Park, which may potentially facilitate movement of birdlife, seed dispersal and genetic exchange between populations at these sites. The Department recommends that for any future redevelopment of the subject lots, consideration be given to protection of existing remnant vegetation in public open space at the subsequent Outline Development Plan stage."* Guidelines cl 6.1 requires consultation with Local Government about locally significant native vegetation. City of Nedlands made two submissions during the consultation processes to the effect that all and then as much as possible of the bush be retained. These advices are not reflected in the Scheme.

100% of the bush can be retained while still meeting the financial, density, heritage, open space and other objectives for the site, for a win win outcome. Development/density should be removed from the bush and can be made up by height increases to apartment lots planned for the other 12.4h of the site and/or by upzoning some of the low/medium density lots in the north east to higher density apartments. Alternatively non-residential development could be permitted on the existing carpark within the bushland and bushfire risk managed by removing weeds, construction standards and innovative bushfire control measures such as a reticulated fire suppressing sprinkler system throughout the bush. I note there has been no fire in the bush in living memory.