

40TH PARLIAMENT



Report 55

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Overview of Petitions 1 January 2019 to 30 June 2019

Presented by
Hon Matthew Swinbourn MLC (Chairman)
September 2020

Standing Committee on Environment and Public Affairs

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EXECUTIVE SUMMARY

- 1 The Standing Committee on Environment and Public Affairs (Committee) is pleased to present this overview of the petitions finalised between 1 January 2019 and 30 June 2019 (reporting period).
- 2 Petitions remain a popular method of informing Members of Parliament about issues that affect the community and the Committee's enquiries enhance transparency of government policy and decisions.
- 3 This Committee of the Legislative Council is unique in Australia in considering all petitions tabled. The nature and extent of enquiries relating to each petition will vary depending on the issues raised.
- 4 A petition will not always achieve the specific objectives desired by petitioners however the Committee's enquiries may provide petitioners with an explanation for government decisions or actions.
- 5 During the reporting period, 21 petitions were tabled in the Legislative Council and the Committee concluded its enquiries in relation to 31 petitions.
- 6 The Committee also commenced an inquiry stemming from Petition No 70 titled *Inquiry into children and young people on the Sex Offenders Register – is mandatory registration appropriate?*
- 7 The Committee's website at www.parliament.wa.gov.au/env contains copies of public documents including the terms of each petition, submissions, government responses and transcripts of evidence.

CHAPTER 1

Introduction

History and function of the Committee

- 1.1 The Standing Committee on Environment and Public Affairs (Committee) was appointed by the Legislative Council on 17 August 2005.
- 1.2 The functions of the Committee are outlined in the Committee's Terms of Reference in Schedule 1 of the Standing Orders of the Legislative Council:

The functions of the Committee are to inquire into and report on –

- (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
- (b) any Bill referred by the Council; and
- (c) petitions.

Petitions

- 1.3 A petition is a formal request for action from individuals or groups. The petitions process, through which the general public can bring issues of concern to the attention of the Parliament, provides a fundamental link between the community and the Parliament.
- 1.4 All conforming petitions tabled in the Legislative Council by a Member of the Legislative Council, except those raising a matter of privilege, are referred to the Committee. While a petition only needs one signature to be tabled, most petitions contain many signatures.
- 1.5 The Committee's consideration of petitions serves to enhance transparency and to inform the Parliament and public about current issues of concern to the community.
- 1.6 A petition will not always bring about a change of policy by the government or achieve the specific objectives desired by petitioners however the Committee's enquiries may provide petitioners with an explanation for government decisions or actions. The petitions process facilitates communication between Parliament and the community.

Petitions process

- 1.7 The nature and extent of enquiries relating to each petition will vary depending on the nature of the issues raised. In most cases, the Committee will request a submission from the principal petitioner and tabling Member. These submissions enable the Committee to better understand the issues involved and the action, if any, already undertaken by the petitioner to resolve the matter.
- 1.8 Once submissions are received, the Committee will usually request a response to the petition from the relevant government Minister. The Committee may also seek responses from other organisations (such as local governments) and carry out other investigations as required.
- 1.9 In many instances, the Minister's response to the petition will provide an explanation for the policy or action in question, although sometimes the Committee will need more information to clarify the issues to its satisfaction. These enquiries may take the form of further correspondence with the relevant parties or a hearing to obtain more detailed evidence. On occasion, the Committee will resolve to conduct a formal inquiry into the matter.

Overview of petitions

- 1.10 This report provides an overview of the petitions considered and finalised by the Committee from 1 January 2019 to 30 June 2019 (reporting period).
- 1.11 Twenty one new petitions were tabled in the Legislative Council during the reporting period and the Committee concluded its enquiries into 31 petitions, some of which were tabled prior to the current reporting period.
- 1.12 On 11 April 2019, the Committee commenced an inquiry stemming from Petition No 70 titled *Inquiry into children and young people on the Sex Offenders Register – is mandatory registration appropriate?*

Committee website

- 1.13 The Committee's website at www.parliament.wa.gov.au/env is a central source of information about petitions tabled in the Legislative Council. It contains copies of public documents including the terms of each petition, submissions, government responses and transcripts of evidence. Hard copies are made available on request. It also advises the status of the Committee's consideration of each petition.

CHAPTER 2

Finalised petitions: January – June 2019

Petition No 70—Sex Offenders Register of WA

Number of signatures:	2
Date tabled and Tabled Paper (TP) number:	26 June 2018 (TP 1472)
Date finalised:	10 April 2019
Principal petitioner:	Lee Lane
Tabling Member:	Hon Martin Pritchard MLC
Inquiry initiated:	11 April 2019

- 2.1 This petition calls for changes to the criteria for mandatory registration on the Western Australian Sex Offenders Register as it applies to young people.
- 2.2 Following consideration of responses to the petition from the Minister for Police, the Attorney General and the Commissioner for Children and Young People, the Committee resolved to close the petition and commence a public inquiry.
- 2.3 The Committee's subsequent Report 52, *Punitive not protective: when the mandatory registration of young people is not based on risk*, was tabled on 21 May 2020 and is available on the Committee's website.

Petition No 75—Development of the Greenpatch, Dalyellup

Number of signatures:	546 (total)
Dates tabled and Tabled Paper (TP) number:	14 August 2018 (TP 1593) 30 October 2010 (TP 2109)
Date finalised:	20 February 2019
Principal petitioners:	Kerry Bemrose and Phil Habour
Tabling Member:	Hon Diane Evers MLC

- 2.4 This petition opposes development of the Greenpatch, Dalyellup, on the basis that it will, among other effects, destroy the natural buffer the area provides to the former titanium waste residue disposal facility. The petitioners are concerned about toxic waste and leachate from the waste facility, loss of tuart bushland and the effect clearing will have on threatened species. The petition calls for the area to be ceded into the Shearwater Tuart Forest to form part of the Preston River to Ocean Regional Park.
- 2.5 The submission from Kerry Bemrose (on behalf of the Save Dalyellup Tuart Bushland group) provided the Committee with a detailed history of the area, including the operation and closure of the waste facility. The petitioner explained that the soil and groundwater at the former waste facility is contaminated with toxic heavy metals and requires ongoing management and usage restrictions. The Greenpatch provided a buffer to the contaminated site:

the millions of tonnes of toxic waste disposed of between the dunes over 24 years are leaching and will continue leaching into the groundwater for the many years to come. The leachate is affecting the groundwater down gradient towards the ocean

but also adjacent and up gradient of the site, including the Greenpatch where high-density development has been proposed.¹

- 2.6 The principal petitioner expressed concern that the proposed environmental offset (land provided to offset that cleared for the development) is in Margaret River—approximately 97 kilometres away—and it does not comprise the same type of vegetation that will be lost (tuart woodland).²
- 2.7 Submissions from Phil Habour of the South West Environment Centre and the tabling Member voiced support for the petition.³
- 2.8 The Committee's enquiries included a request for responses to the petition from the Ministers for Health, Planning and Environment.

Response from the Minister for Health

- 2.9 The Minister for Health advised that the Department of Health (DOH) had provided public health advice to the Shire of Capel and the Department of Water and Environmental Regulation (DWER) regarding the proposed development and he hoped these recommendations would be considered as part of the final decision.⁴ He reported that the Radiological Council were of the view that a buffer beyond the boundary of the former waste site was not necessary but the site did require ongoing management:

From a contaminated site perspective, health risks related to the former waste residue area are effectively managed through the *Contaminated Sites Act 2003* and associated Assessment and management of contaminated sites guidelines (DWER, 2014). The DOH supports the implementation of an approved ongoing site management plan to effectively monitor and control any potential offsite emissions from the former tailings facility and has recommended additional stakeholder engagement.⁵

Response from the Minister for Planning

- 2.10 The Minister for Planning informed the Committee that she had requested the Department of Planning, Lands and Heritage (DPLH) include consideration of the issues raised in the petition in any recommendation to the Western Australian Planning Commission (WAPC) on the proposed Greenpatch development.⁶
- 2.11 The Minister explained that the site is zoned 'Urban' and 'Urban Development' which enables the WAPC to consider a structure plan for residential development. The Minister does not play a role in the approval of a structure plan, the assessment and determination of which is the responsibility of the WAPC. Relevantly, updated advice and additional information regarding the status of the site in relation to the *Contaminated Sites Act 2003* had prompted the Chairman of the WAPC to defer progressing a decision on the proposed structure plan.⁷

¹ Submission from Kerry Bemrose, Save Dalyellup Tuart Bushland, 20 September 2018, p 1.

² *ibid.*, p 2.

³ Submission from Phil Habour, South West Environment Centre, 15 November 2018; Submission from Hon Diane Evers MLC, 12 September 2018.

⁴ Hon Roger Cook MLA, Minister for Health, letter, 21 November 2018, pp 1-2.

⁵ *ibid.*, p 2.

⁶ Hon Rita Saffioti MLA, Minister for Planning, letter, 5 November 2018, p 1.

⁷ *ibid.*, pp 1-2.

- 2.12 In regard to environmental approvals, the Minister advised that an offset for clearing at the site had been approved by the Commonwealth Department of the Environment and Energy. Further consideration regarding clearing will occur as part of the WAPC's deliberations.⁸
- 2.13 The Minister advised that the site could not be incorporated into a regional park because it does not meet the necessary planning requirement of being reserved as Regional Open Space under the Greater Bunbury Region Scheme. In addition, the landowner (the Housing Authority – Department of Communities) had already entered a commercial agreement with a developer.⁹

Response from the Minister for Environment

- 2.14 The Minister for Environment explained that since the rezoning of the Dalyellup development zone was considered by the Environmental Protection Authority (EPA) in 1998, structure planning for the area had involved input from various State Government agencies.¹⁰
- 2.15 DWER classified the Greenpatch site in accordance with the *Contaminated Sites Act 2003* as 'report not substantiated' in March 2018, a decision that took into account the proposed development being connected to scheme water. As in the case of the existing Dalyellup development, future residents at Greenpatch would only come into contact with groundwater if they used garden bores. Appeals against the classification are being considered by the independent Contaminated Sites Committee.¹¹
- 2.16 Since the 2018 site classification, DWER had received new information and conducted further investigations regarding soil contamination on the site and a full report would be made available for consideration by the Contaminated Sites Committee.¹²

Status of planning approval processes

- 2.17 Throughout the course of its enquiries, the Committee liaised with the Contaminated Sites Committee regarding the progress of the appeals. Advice received in early February 2019 indicated that the appeal process was likely to continue for several more months.
- 2.18 The Committee was cognizant that parallel to its enquiries, a comprehensive assessment of the proposed structure plan for the Greenpatch development was being undertaken by the WAPC to determine if planning approval would be provided. The WAPC determination, which will include an assessment of evidence in relation to environmental, health and other issues raised by the petitioners, had been indefinitely delayed until resolution of appeals regarding contaminated site status. The Committee was satisfied that the petitioners' concerns and other up-to-date information had been made available to the appropriate decision making body.

⁸ *ibid.*, p 2.

⁹ *ibid.*

¹⁰ Hon Stephen Dawson MLC, Minister for Environment, letter, 6 November 2018, p 1.

¹¹ *ibid.*, p 2.

¹² *ibid.*

Petition No 84—Integrity Oversight Bodies

Number of signatures:	67 (total)
Dates tabled and Tabled Paper (TP) number:	9 October 2018 (TP 2008) 12 March 2019 (TP 2454)
Date finalised:	13 February 2019
Principal petitioners:	Gary Crawford and Mark McLerie
Tabling Members:	Hon Robin Chapple MLC Hon Pierre Yang MLC

- 2.19 This petition expresses concern about the performance of the Office of the Information Commissioner, the Public Sector Commissioner and the Ombudsman in handling complaints and applications concerning local government.
- 2.20 The Committee obtained responses to the petition from the Acting Information Commissioner, the Premier and the Ombudsman Western Australia (Ombudsman).¹³
- 2.21 The Ombudsman advised that the performance of his office is subject to both internal review and external oversight. If a complainant is dissatisfied with the handling of their complaint, for example, they may request a review by a senior officer not involved in the original investigation. The Ombudsman emphasized that his office is 'committed to providing complainants with a service that reflects best practice administration'.¹⁴
- 2.22 External oversight of the Ombudsman is provided through Parliament and its committees, the Office of the Auditor General, the Public Sector Commission and the Corruption and Crime Commission.¹⁵
- 2.23 In regard to principal petitioner's complaints about the City of Melville (City), the Ombudsman provided the following information:
- It may be of further assistance to the Committee's consideration of this matter that, for three complaints, following correspondence from the complainant requesting a review, the handling of the complaints was the subject of a thorough internal review by a senior officer not involved in the original investigation. All three of these reviews found that the process in dealing with the complaints was appropriate. In particular, I note that one review was undertaken by the Deputy Ombudsman, Ms Mary White, personally. Ms White's review found that the complaint was undertaken in an appropriate manner and in accordance with the Act which governs the process by which the Ombudsman handles complaints.¹⁶
- 2.24 The response from the Acting Information Commissioner (Acting Commissioner) explained that the main function of her office was to deal with complaints about decisions made by agencies in respect to applications under the *Freedom of Information Act 1992* (FOI Act). Efforts are made to resolve most complaints informally and by conciliation but if that is not

¹³ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, letter, 12 December 2018; Hon Mark McGowan MLA, Premier; Minister for Public Sector Management, letter, 10 January 2019; Chris Field, Ombudsman, Ombudsman Western Australia, letter, 5 December 2018.

¹⁴ Chris Field, Ombudsman, Ombudsman Western Australia, letter, 5 December 2018, p 1.

¹⁵ *ibid.*, p 2.

¹⁶ *ibid.*, p 3.

possible, the Commissioner will make a formal decision that 'confirms, varies or sets aside the agency's decision'.¹⁷

2.25 Although the principal petitioner makes reference to his complaints to the Office of the Information Commissioner in his submissions, the Acting Commissioner advised that due to the confidentiality requirements of the FOI Act, it was not appropriate for her to comment on the particulars of those complaints. The Acting Commissioner did however refer the Committee to her published decision in respect to a complaint by Mr Crawford about the City's refusal to provide access to certain documents.¹⁸

2.26 In that decision, the Acting Commissioner provides a preliminary view that the City was justified in refusing access to the documents:

The A/Commissioner observed that, by his access application in this matter, the complainant sought access to specific kinds of documents relating to a particular named individual and that the application was, in effect, a request for access to documents containing personal information about that named individual. The A/Commissioner was satisfied that, from the nature of the requested documents as described in the access application, any such documents would be prima facie exempt under clause 3(1) of Schedule 1 to the FOI Act because disclosure would reveal personal information about individuals other than the complainant.¹⁹

2.27 The complainant was invited to accept the Acting Commissioner's preliminary view or to provide further submissions. He chose the latter and:

Having considered the complainant's further submissions and reviewed all of the material before her, the A/Commissioner was not dissuaded from her preliminary view.²⁰

2.28 Finally, the response from the Premier in relation to complaints handling by the Public Service Commission (Commission), advised that:

the independent review of the commission tabled in Parliament in October 2018 did not find that the Commission has failed to meet its obligations on minor misconduct matters. In addition, the Commission has been the subject of a Public Accounts Committee report as recently as 2014.²¹

Petition No 85 – Local Government Standards Panel

Number of signatures:	79 (total)
Dates tabled and Tabled Paper (TP) number:	10 October 2018 (TP 2029) 1 November 2018 (TP 2136)
Date finalised:	13 February 2019
Principal petitioner:	Gary Crawford
Tabling Member:	Hon Robin Chapple MLC

¹⁷ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, letter, 12 December 2018, p 2.

¹⁸ *ibid.*, pp 3-4.

¹⁹ *Re Crawford and City of Melville* [2018] WAIC, ref: F2018098, p 1. See: https://www.oic.wa.gov.au/PDF_Decs/D0112018.pdf. Viewed 28 July 2020.

²⁰ *ibid.*, p 2.

²¹ Hon Mark McGowan MLA, Premier; Minister for Public Sector Management, letter, 10 January 2019.

- 2.29 This petition voices concern that the Local Government Standards Panel (Panel) is unable to refer a complaint of perjury to the Western Australia Police Force (WA Police) from any court or tribunal proceedings of which the Panel is a party.
- 2.30 Given the nature of the information and allegations contained in the principal petitioner's submission, it was given a private status by the Committee.²²
- 2.31 A response to the petition from the Minister for Local Government explained that the *Local Government Act 1995* (Act) enables a Panel to deal with complaints of a minor breach of the *Local Government (Rules of Conduct) Regulations 2007* (Regulations).²³
- 2.32 Importantly, the Panel is 'a decision-making body that does not have any investigative powers and does not have the power to compel a person to give evidence, or to produce any document'.²⁴
- 2.33 The principal petitioner's complaint to the Panel resulted in a finding that a breach had occurred and the Panel sought a submission from the respondent (as required by the Act) regarding the sanction to be imposed. A determination was made that a public apology be ordered, however the respondent applied to the State Administrative Tribunal (SAT) for a review of the Panel's decision. Although the SAT upheld the Panel's finding, it set aside the sanction of a public apology and ordered a public censure instead.²⁵
- 2.34 Following the SAT decision, Mr Crawford (the principal petitioner) contacted the Department of Local Government, Sport and Cultural Industries (Department) alleging that the respondent to his complaint had perjured himself when providing evidence to the SAT. The allegation 'was based on Mr Crawford's transcript of the hearing, and his assessment of the accuracy of the applicant's statements'.²⁶
- 2.35 The Department referred the allegation to the Panel whose presiding member advised Mr Crawford that the Panel did not have the authority to refer matters to an external body.²⁷
- 2.36 The Minister further explained that:
- Neither the Department nor the Standards Panel have a role in assessing the validity of Mr Crawford's allegation. Further ... the Standards Panel does not have the legislative authority to investigate the accuracy of the applicant's statements, or the validity of Mr Crawford's allegation, nor make any referrals should it believe that such an allegation were true.
- It is the Standards Panel's understanding that Mr Crawford can make a complaint directly to the Western Australia Police, which has the powers and jurisdiction to investigate and deal with allegations of breaches of the *Criminal Code*.²⁸
- 2.37 Subsequent correspondence from the principal petitioner to the Committee (given a private status since it contained allegations against named individuals) expressed dissatisfaction with the Committee's decision to conclude its enquiries and reiterated his concerns about the operation of the Panel and the adequacy of its enabling legislation.²⁹

²² Submission from Gary Crawford, 29 October 2018.

²³ Hon David Templeman MLA, Minister for Local Government, letter, 5 December 2018, p 1.

²⁴ *ibid.*

²⁵ *ibid.*, p 2.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*, p 3.

²⁹ Gary Crawford, email, 26 March 2019.

Petition No 86 – Ban on Fracking

Number of signatures:	13 927
Date tabled and Tabled Paper (TP) number:	16 October 2018 (TP 2058)
Date finalised:	13 March 2019
Principal petitioner:	Jane Hammond
Tabling Member:	Hon Robin Chapple MLC

2.38 This petition supports a permanent ban on fracking in Western Australia and expresses concern that the terms of reference for the government's Independent Scientific Panel Inquiry (Inquiry) into fracking does not include whether or not fracking should be banned in Western Australia.

2.39 The principal petitioner is critical of the composition of the Inquiry's scientific panel which she submits does not include a climate scientist or a medical scientist:

The omission of these crucial experts is reason alone to call for an examination by this committee of the issues raised in the petition.³⁰

2.40 The petitioner argues that the impact of fracking on climate stability has been largely ignored by previous inquiries and needs to be investigated further. She notes the opinion of eminent scientists regarding this issue:

In September, a few days after the WA Fracking Inquiry handed its final report to government, 50 of the nation's leading scientists including Professor Fiona Stanley, WA Scientist of the Year Professor Peter Newman and former head of Atmospheric research at CSIRO Graeme Pearman called in an open letter to the Premier for fracking to be banned in WA. The scientists said that it would be "grossly irresponsible" to allow fracking in WA given the climate emergency we currently face.³¹

2.41 The significant number of signatures on the petition is highlighted as evidence of widespread community concern about fracking:

The scientific evidence against fracking is becoming irrefutable. This is not an industry we need or want in WA. The petition was collected in a few months by volunteers in communities across the length and breadth of WA. The fact that we could collect 14,000 signatures in this short space of time shows the strength of concern in the community and the threat that many individuals and communities feel from this industry.³²

Response from the Minister for Mines and Petroleum

2.42 In his response to the petition, the Minister for Mines and Petroleum disagreed that the composition of the scientific panel or the Inquiry's terms of reference were lacking:

The State Government is committed to a scientific approach to fracking. The Government went to great care to establish an Independent Scientific Panel Inquiry that was capable of providing the best advice to the Government, in an

³⁰ Submission from Jane Hammond, 14 November 2018, p 1.

³¹ *ibid.*

³² *ibid.*

impartial and scientifically robust manner. The Government imposed a moratorium on fracking while the Inquiry was undertaken.³³

- 2.43 The Minister advised that the Inquiry Report (Report) reached a 'broad conclusion' that fracking, when properly executed and located in accordance with international standards, 'generally limit[s] risks to the environment and people to a low level'.³⁴ The government accepted the Report's recommendations and had, in addition, adopted further strict controls on fracking in Western Australia.³⁵
- 2.44 The Minister confirmed that the Report had investigated the issue of climate stability as well as possible impacts on human health, the environment and water and air quality.³⁶ He advised that:

In addition to limiting areas in the State available for fracking, introducing mitigation measures to reduce fugitive emissions from fracking and carbon offsets, the potential emissions from this activity are unlikely to approach the magnitude of those emissions stated in the petition.³⁷

Response from the Minister for Environment

- 2.45 In relation to the membership of the Independent Scientific Panel (Panel), the Minister for Environment disputes the principal petitioner's concerns that relevant fields of climate and medicine were excluded.³⁸
- 2.46 The Minister documents the experience and expertise of Panel members in detail and points out that members 'reflected a range of scientific expertise including hydrology, hydrogeology, geology, petrology, ecology, natural resource management, toxicology, sociology and risk assessment'.³⁹
- 2.47 While the terms of reference cover a range of impacts, the Minister explained that the Report did not address whether fracking should be banned in Western Australia because that is a decision for the government.⁴⁰
- 2.48 The Panel reviewed 'many hundreds of published scientific and technical papers and reports, as well as environmental plans and compliance reports' and tested their applicability to the 'Western Australian context of industry, geography and environment':
- A priority was to identify and access the most recent technical information and findings, particularly any emerging since the conclusion of the [Environment and Public Affairs Committee's 2015 inquiry into hydraulic fracturing].⁴¹
- 2.49 The Panel conducted seven public meetings and considered more than 9500 public submissions, including submissions requested from community, environmental and Aboriginal groups, State and Federal agencies and industry. In addition, the Report was peer reviewed by a range of technical experts.⁴²

³³ Hon Bill Johnston MLA, Minister for Mines and Petroleum, letter, 11 December 2018, p 1.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid.*, p 2.

³⁸ Hon Stephen Dawson MLC, Minister for Environment, letter, 18 February 2019.

³⁹ *ibid.*, pp 1-2.

⁴⁰ *ibid.*, p 2.

⁴¹ *ibid.*

⁴² *ibid.*, pp 2-3.

2.50 The detailed response from the Minister cites references in the Report to demonstrate that scientific publications relied upon by the principal petitioner in her submission were also considered by the Panel.⁴³

2.51 The Minister makes the following conclusion:

I believe that there is nothing in the petition or in the submission from the principal petitioner that is new or was not considered during the Inquiry and that:

- The banning of hydraulic fracture stimulation in Western Australia was a decision of the State Government. The Report, which informed the decision of the State Government, included an examination of scientific and historical evidence associated with the impacts of fracking on health, agricultural, heritage, community and the environment, as defined in the EP Act (which covers, climate stability, water quality and air quality).
- The Panel included expertise in the field of human health and climate science;
- Recent literature published in the Compendium of Science, Medical and Media Findings Demonstrating Risks and Harms of Fracking's Fifth edition has been reviewed by the Panel and is discussed in the Inquiry Report (Page 4/5); and
- Literature by Climate Analytics has been reviewed by the Panel and is discussed in the Inquiry Report (Page 383).⁴⁴

2.52 In light of the detailed government responses to the petition, and given that the Committee had itself conducted an extensive inquiry into fracking in 2015, the Committee decided not to conduct further enquiries into this matter.

Petition No 87 – Crown Land Lot 9789

Number of signatures:	13
Date tabled and Tabled Paper (TP) number:	16 October 2018 (TP 2059)
Date finalised:	13 February 2019
Principal petitioner:	Catherine O'Neill
Tabling Member:	Hon Alison Xamon MLC

2.53 This petition opposes the sale of Crown Land Lot 9789 (Lot 9789) to the City of Melville (City) and asks that the government legislate to incorporate the land into the conservation estate as part of the Alfred Cove A-Class Nature Reserve (Reserve).

2.54 The submission from the principal petitioner explained that the City sought to purchase Lot 9789 (which borders the Swan Estuary Marine Park at Alfred Cove) to facilitate a commercial lease for a wave park. The land in question comprises reclaimed wetland, is part of Bush Forever Site 331, and is situated within the Swan River Trust Development Control Area (DCA) which prioritises the protection of land adjacent to the river.⁴⁵

2.55 The submission states that the Alfred Cove area contains important feeding habitats for migratory birds and relatively undisturbed native vegetation and seagrass beds. The

⁴³ *ibid.*, pp 5-6.

⁴⁴ *ibid.*, p 7.

⁴⁵ Submission from Catherine O'Neill, 1 November 2018, p 1.

petitioner argues that these environmental values support bringing Lot 9789 into the conservation estate in order to:

- Provide a vital protective buffer for the high conservation values of the Swan Estuary Marine Park at Alfred Cove.
- Provide a wildlife corridor and vegetation linkage along the River.
- Enable a natural fall-back of the Marine Park foreshore as it adjusts to the pressures of climate change, including sea-level rises and the increased severity of storm surges.⁴⁶

2.56 The tabling Member submitted that the historic strategic intent of the land does not support its sale to the City for the development of a wave park. The proposed wave park runs across two lots (Lot 39 and Lot 9789) and, in the Member's view, joining these lots together as part of one development application will have significant consequences:

Lot 39 contains a sliver of road reserve (between approximately one and five metres wide). If Lot 9789 and Lot 39 are joined together for the one development proposal, this tiny amount of road reserve will effectively render the [Development Control Area] over Lot 9789 ineffective. The future of that lot will be decided under regular planning decision making, instead of by a body that prioritises the river and the riverpark.

It is a loophole that the community is justifiably dissatisfied with. The community strongly believes that land so close to the river should first and foremost be understood as part of the riverpark and should be considered under the controls of the [Development Control Area].

One way to ensure that the land use at Lot 9789 continues to prioritise the river and the riverpark as the only issue of real consequence is to not allow this loophole to come into operation.⁴⁷

2.57 The Committee requested responses to the petition from the City and the Ministers for Environment and Lands.

Response from the City

2.58 In its response, the City asserted that the parcel of land it sought to acquire 'lies well outside the "A" Class Nature Reserve No. 35066 and sits within the Recreational Reserve No. 35486'.⁴⁸ As such, it was the City's view that the purpose of the proposed wave park was in keeping with the 'Recreational Purpose' for which the land is designated.⁴⁹

2.59 Nevertheless, the City had been advised by the Department of Planning, Lands and Heritage (Department) that a decision regarding the purchase part of Lot 9789 would be deferred until a Development Application by the proponent (URBNSURF) had been assessed by the Western Australian Planning Commission (WAPC).⁵⁰

Response from the Minister for Environment

2.60 According to the Minister for Environment, since all of the development site was not situated on land within the Development Control Area, it would not be assessed by the Department

⁴⁶ *ibid.*

⁴⁷ Submission from Hon Alison Xamon MLC, 30 October 2018, p 2.

⁴⁸ Marten Tieleman, Chief Executive Officer, City of Melville, letter, 21 January 2019, p 3.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

of Biodiversity, Conservation and Attractions (DBCA) in accordance with the *Swan and Canning Rivers Management Act 2006*. However, assessment of a development application by the WAPC or a Joint Development Assessment Panel would include consultation with relevant organisations such as the Swan River Trust.⁵¹

- 2.61 The Minister pointed out that development applications that affect the Swan and Canning rivers are assessed in accordance with *State Planning Policy 2.70 – Swan-Canning River System* (SPP 2.10) which includes, as one of its key objectives:

to ensure that activities, land use and development maintain and enhance the health, amenity and landscape values of the river, including its recreational and scenic values.⁵²

Response from the Minister for Lands

- 2.62 The Minister for Lands advised that a determination was made in 2004 that areas of low conservation value on Lot 9789 would be transferred to the City and that high conservation areas would be transferred to the Conservation Commission of Western Australia. Although finalisation of this proposal had been delayed, a recent agreement by the Department of Planning, Lands and Heritage, the DBCA and the City was that areas of high conservation value within Lot 9789 would be included in the Alfred Cove Nature Reserve. This action is expected to be completed by mid-2019.⁵³

- 2.63 Crucially, the Minister explained that the proposed wave park had not yet received planning approval:

A decision on the City's application to purchase a portion of Lot 9789 has been placed on hold while all appropriate approval processes associated with the proposed Wave Park development, including planning processes, are completed.

All relevant information, including the facts and matters outlined in the petition, will be considered to ensure that a fully informed decision is made on the City's application to purchase portion of Lot 9789.⁵⁴

- 2.64 Subsequent to the Committee concluding its enquiries, the government rejected the City's application to purchase Crown Land Lot 9789.⁵⁵

⁵¹ Hon Stephen Dawson MLC, Minister for Environment, letter, 28 November 2018, p 1.

⁵² *ibid.*, p 2.

⁵³ Hon Ben Wyatt MLA, Minister for Lands, letter, 21 January 2019, p 2.

⁵⁴ *ibid.*

⁵⁵ Emma Young and Cameron Myles, 'State government blocks Crown land for proposed Alfred Cove wave park', *WA Today*, 28 March 2019. See:

<https://www.watoday.com.au/national/western-australia/state-government-blocks-crown-land-for-proposed-alfred-cove-wave-park-20190328-p518mx.html>. Viewed 16 March 2020.

Petition No 88 – Transport (Road Passenger Services) Bill 2018

Number of signatures:	3
Date tabled and Tabled Paper (TP) number:	16 October 2018 (TP 2060)
Date finalised:	10 April 2019
Principal petitioner:	Athan Tsirigotis
Tabling Member:	Hon Robin Scott MLC

- 2.65 This petition, signed by the directors of Taxi Operators Legal Defence Pty Ltd, opposes the Transport (Road Passenger Services) Bill 2018. The petitioners protest that the maximum buyback price of \$100 000 for taxi plates is unfair and unreasonable and that there has been insufficient scrutiny or consultation in relation to the Bill.
- 2.66 On 18th October 2018 (two days after the petition was tabled) the Bill was passed by the Legislative Council and given Royal Assent on 30th October 2018.
- 2.67 Whilst acknowledging that the Bill had received Royal Assent, the principal petitioner submitted that ‘the process and methodology behind the derivation of the buyback figures is flawed’.⁵⁶ He expressed a number of concerns regarding the Bill, including:
- The buyback has been termed "voluntary", however, it's our understanding that if the buyback offer is not accepted by the licence owner the licence will be revoked regardless.⁵⁷
- 2.68 And that:
- Taxi licence owners will be financially devastated if the present buyback offer remains unchanged and will exacerbate the mental and psychological distress they have had to endure during this protracted process.⁵⁸
- 2.69 The petitioner requested details of how the Legislative Council concluded that the buyback offer was reasonable and sought an inquiry into the matter.⁵⁹
- 2.70 In her response to the petition, the Minister for Transport made the following points:
- Subsequent to the petition being tabled, the *Transport (Road Passenger Services) Act 2018* (Act) had been proclaimed and regulations supporting the buyback scheme commenced on 28 February 2019.⁶⁰
 - The Act establishes the formulae that determines what each eligible owner of a taxi plate will be offered to buy back the plate and the Minister provides an outline of the considerations taken into account to calculate the buyback amount.⁶¹
 - The government (and the Parliament in passing the Transport (Road Passenger Services) Bill 2018), disagreed with the petitioners’ view that the formulae used to calculate the buyback is unreasonable:

⁵⁶ Submission from Athan Tsirigotis, 14 December 2018, p 1.

⁵⁷ *ibid.*, p 2.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ Hon Rita Saffioti MLA, Minister for Transport, letter, 8 April 2019, p 1.

⁶¹ *ibid.*, pp 1-2.

The scheme adopted is tailored to the individual ownership circumstances of each plate and the amounts offered reflect the potential return on investment that a plate owner could have received.⁶²

- The scheme provides a higher offer to plate owners who purchased their plates recently (at a much higher cost) than those who have held their taxi plates for many years:

It recognises that these owners have not had the time to recoup the cost of their investment in the short period of ownership. It is more equitable than a one-size fits all scheme.⁶³

- Consultation was undertaken with the industry and consideration was given to the petitioners' proposal for a flat buyback amount of the average sale price of plates in 2014 (around \$295 000) but rejected on the basis that:

a buyback amount that does not take into account individual circumstances of purchase and length of investment does not meet the fundamental principle of equity.⁶⁴

Petition No 89 – WA Police Officers

Number of signatures:	1
Date tabled and Tabled Paper (TP) number:	16 October 2018 (TP 2061)
Date finalised:	20 March 2019
Principal petitioner:	Jessica Booth
Tabling Member:	Hon Charles Smith MLC

2.71 This petition opposes the use of sections 8(1) and 33L of the *Police Act 1982* (Act) to remove police officers declared medically unfit as a result of physical or mental injuries. The petitioner, a former police officer, also condemns the failure of successive governments to finalise a Redress Scheme to compensate officers unfairly removed from their police career. The petition contains a number of recommendations including the suspension of medical retirements until sections 8 and 33L of the Act are amended, a redress scheme and workers' compensation for police officers injured in the line of duty.

2.72 Although expressing satisfaction that a Redress Committee had been appointed since the tabling of her petition, the principal petitioner asserts that Post Traumatic Stress Disorder (PTSD) is in 'epidemic proportions' throughout the police force with many officers reluctant to report their symptoms out of fear they will lose their job through section 8 of the Act.⁶⁵

2.73 The petitioner submitted that:

35% of total Police Officers are performing other 'Specialist and Support' duties outside those of General or Traffic Duties; and further, that on any given day one third of the Force is on Annual or Sick Leave and another one third is (supposed to be) on Rostered Days Off (RDO) we can see that WA actually has very few serving frontline Police Officers trying to stay on top of current Incident Reports or requests for Police Assistance as they occur. The fact is there are insufficient numbers of sworn frontline Police Officers to manage a 24 hour workload over 3 shifts ... These staff shortages, extra workload and workplace trauma are the root

⁶² *ibid.*, p 2.

⁶³ *ibid.*

⁶⁴ *ibid.*, p 3.

⁶⁵ Submission from Jessica Booth, 22 October 2018, p 1.

cause of the ever increasing mental health and PTSD medical issues occurring over the last 30 years.⁶⁶

2.74 There is concern that the \$16 million offered by the government for section 8 redress is insufficient and that it may not include payment to deceased officers' families. The petitioner considers that an ex-gratia payment of \$150 000 for each affected officer would be a more appropriate and just response.⁶⁷

2.75 The petitioner argues that section 8 should be amended to prevent it being used for medical retirements and that such retirements should be suspended until workers' compensation is established for future medical retirements. She points out that Western Australia is the only State that does not provide workers' compensation for police officers.⁶⁸

2.76 The tabling Member, a former police officer, acknowledges the principal petitioner's concerns:

The crux of all police mental health issues arises not only from what police witness, hear and work with but from the completely overwhelming workloads.⁶⁹

2.77 He argues that long delays in resolving these issues are exacerbating the harm to injured officers:

The obstinate refusal to provide any clear guidance or timescale for dealing with redress or compensation is also causing serious mental health harm and does in fact re-traumatise many medically retired officers.⁷⁰

2.78 In response to the petition, the Commissioner of Police (Commissioner) explained that although much effort was made to rehabilitate injured or ill police officers, due to the nature and requirements of police work it was sometimes necessary to retire officers on medical grounds. The only means of doing so is through the section 8 provisions of the Act:

Currently, the only option available to the Commissioner to retire an officer who is medically unfit, is through the Loss of Confidence or removal provisions, as set out under section 8 and Part 118 of the *Police Act 1892* (Police Act). These provisions expressly reference the member's integrity, honesty, competence, performance or conduct. As these provisions and associated processes are most closely identified with misconduct cases, there is a perception of impropriety when the same process is used to medically retire officers.⁷¹

2.79 The Commissioner advised that in line with the government's 2015 commitment to amend the Act in order to provide a more dignified process to medically retire police officers, amendments were currently being drafted.⁷²

2.80 The Minister for Police confirmed that the legislative amendments were well advanced:

Drafting to establish a new stand-alone process to medically retire police officers, separate from the existing loss of confidence/removal process, is advanced and the Bill will be introduced into Parliament as soon as possible this year.⁷³

⁶⁶ *ibid.*

⁶⁷ *ibid.*, p 2.

⁶⁸ *ibid.*

⁶⁹ Submission from Hon Charles Smith MLC, 9 November 2018.

⁷⁰ *ibid.*

⁷¹ Chris Dawson, Commissioner of Police, Western Australia Police Force, letter, 12 December 2018, p 1.

⁷² *ibid.*, p 2.

⁷³ Hon Michelle Roberts MLA, Minister for Police, letter, 12 February 2018.

- 2.81 The Minister also advised that the government's \$16 million Police Redress Scheme was open for applications from medically retired police officers.⁷⁴
- 2.82 Work was also continuing on developing appropriate compensation arrangements for police officers who suffer a work-related illness or injury. The Minister pointed out that Western Australian police officers are provided with medical leave and benefits particular to the police force and the WA Police Union does not support the inclusion of police in the workers' compensation scheme applicable to other Western Australian workers:
- Members of the Committee may be interested to know that the WA Police Union is not seeking to have serving police officers covered by the *Workers Compensation and Injury Management Act*. Importantly, if a police officer is injured or becomes ill on duty, they are entitled to paid leave, 168 days per year which can and is extended, and medical benefits. An officers who retires due to a work-related injury or illness also continues to have their medical benefits paid in accordance with the *Police (Medical & Other Expenses for Former Officers) Act*.⁷⁵
- 2.83 Subsequent to her initial response to the Committee, the Minister advised that the Commissioner of Police had suspended the exercise of discretion under the current law to remove officers on medical grounds until new medical retirement provisions were in force.⁷⁶

Petition No 90 – Local Government Insurance Services

Number of signatures:	17
Date tabled and Tabled Paper (TP) number:	6 November 2018 (TP 2154)
Date finalised:	13 February 2019
Principal petitioner:	Ian Rice
Tabling Member:	Hon Pierre Yang MLC

- 2.84 This petition expresses concern about the conduct and performance of the City of Melville and the Local Government Insurance Service in respect of a claim made by Ian Rice.
- 2.85 The Committee's enquiries revealed that the issues raised by the principal petitioner were the subject of legal proceedings before the Magistrates' Court and a settlement was reached in 2018. Given these circumstances, the Committee did not consider it appropriate to conduct further enquiries.

Petition No 91 – Eviction of Picabar

Number of signatures:	1470 (total)
Dates tabled and Tabled Paper (TP) number:	6 November 2018 (TP 2155) 28 November 2018 (TP 2247)
Date finalised:	13 February 2019
Principal petitioner:	Brian Buckley
Tabling Member:	Hon Tjorn Sibma MLC

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ Hon Michelle Roberts MLA, Minister for Police, letter, 14 March 2019.

- 2.86 This petition opposes the eviction of Picabar (an entertainment venue) from the Perth Cultural Centre and asks for the eviction to be reversed and long-term tenure granted.
- 2.87 A submission was not received from the principal petitioner within the requested time frame, consequently the Committee did not conduct further enquiries into the petition.

Petition No 92 – Woodbridge Primary School

Number of signatures:	508 (total)
Dates tabled and Tabled Paper (TP) number:	8 November 2018 (TP 2167) 5 December 2018 (TP 2302)
Date finalised:	3 April 2019
Principal petitioner:	Danielle McAuliffe
Tabling Member:	Hon Donna Faragher MLC

- 2.88 This petition blames a lack of long-term planning by the Department of Education (Department) for a failure to address increasing student numbers within the Woodbridge and Guildford Primary School local intake areas. The petitioners oppose the use of demountable classrooms at the Woodbridge school site and support:
- realignment of the local intake area for Woodbridge Primary School to remove the optional intake area;
 - re-opening Midland Primary School with an early childhood centre on site; and
 - a plan of action to manage increasing student numbers in the area.
- 2.89 The principal petitioner submitted that population growth had resulted in a lack of primary school facilities in the Woodbridge and Guildford area. The local intake area for Woodbridge Primary School includes an optional intake area and as a result, nine percent of students come from Viveash. The petitioner is of the view that Midland has better capacity to accommodate those students.⁷⁷
- 2.90 According to the principal petitioner, Woodbridge and Guildford Primary Schools are at capacity, and in relation to the latter:
- The school's ability to expand and accommodate future enrolment growth is limited due to the size of the school grounds and identified heritage requirements. The current arrangement between Woodbridge PS and Guildford PS to accommodate overflow students has been a short-term solution, however, is not sustainable.⁷⁸
- 2.91 The petitioner advised that one transportable classroom has been installed on the Woodbridge site, with the possibility of eight more to follow. Concerns about the placement of additional classrooms include:
- the amount of open space for student recreation on the smaller than average school site will be significantly reduced;
 - the school will lose its kitchen garden, greenhouse and a number of mature trees;
 - the proposed site for three transportable classrooms is on an Aboriginal sacred site;

⁷⁷ Submission from Danielle McAuliffe, 19 December 2018, p 1.

⁷⁸ *ibid.*

- the Department has not committed to providing corresponding additional toilet facilities or other infrastructure (which would require additional transportable units);
- there is no room to expand the already insufficient staff carpark resulting in a reduction of the limited parking set aside for parents; and
- there may be a greater cost benefit to adopting the long term solution of equipping the Midland Primary School site.⁷⁹

2.92 The tabling Member provided a submission in support of the petition in which she expressed the view that:

I believe it is important for the Department to develop a long-term strategy to account for the increasing growth whilst identifying possible solutions other than the use of demountable classrooms.⁸⁰

2.93 In response, the Minister for Education advised that the Department was monitoring population growth in the Midland-Guildford area. A range of options were being developed to address student numbers, including limiting intake to local intake areas, adjusting existing local intake areas and providing transportable classrooms. The Minister pointed out that the use of transportable classrooms is a longstanding method of alleviating enrolment pressure.⁸¹

2.94 Current projections indicate that the addition of the transportable classroom will provide Woodbridge Primary School with sufficient accommodation for at least the next five years. Noting that Woodbridge currently enrolls overflow students from the Guildford Primary School local intake area as well as enrolling students from outside its local intake area (around 24 per cent),⁸² the Minister commented that:

Woodbridge Primary School can delay the future need for transportable buildings and, therefore, maximise the available play space at the school by managing enrolments from outside the local-intake area, other than overflow students enrolled from Guildford Primary School.⁸³

2.95 The Minister confirmed that the Department is investigating a possible realignment of local intake areas within the Midland-Guildford area but maintained that student numbers do not warrant the reopening of Midland Primary School at the present time.⁸⁴

2.96 Further enquiries with the Minister revealed that the review of local intake areas will take into account a number of considerations including:

Geographical features, the location of other schools and public transport services are also considered. When local-intake areas are modified, it is standard practice for the Department to include a grandfather clause to preserve the current enrolment entitlements of existing students and their siblings.⁸⁵

⁷⁹ *ibid*, p 2.

⁸⁰ Submission from Hon Donna Faragher MLC, 18 December 2018, p 2.

⁸¹ Hon Sue Ellery MLC, Minister for Education, letter, undated, received 6 March 2019, p 1.

⁸² *ibid*.

⁸³ *ibid.*, p 2.

⁸⁴ *ibid*.

⁸⁵ Hon Sue Ellery MLC, Minister for Education, letter, 1 April 2019.

- 2.97 Consultation will occur with school principals during the process but will not be extended to the wider community because:

While the Department responds to public concerns regarding individual school local-intake areas, active community consultation is not a standard practice because the Department is unable to meet the varied and competing interests of individual community members.⁸⁶

Petition No 93 – Bunbury Outer Ring Road

Number of signatures:	587
Date tabled and Tabled Paper (TP) number:	20 November 2018 (TP 2196)
Date finalised:	10 April 2019
Principal petitioner:	Barbara Stone
Tabling Member:	Hon Diane Evers MLC

- 2.98 This petition opposes the southern section of the Bunbury Outer Ring Road (BORR) and calls for an alternative route that will bypass the Gelorup community.

- 2.99 In her submission, the principal petitioner raised a number of concerns about the southern section of the BORR including:

- the road will be located through the middle of the Gelorup community;
- 97 percent of the community oppose the proposal;
- the close proximity of houses;
- increased noise;
- a heightened risk of bushfire; and
- a risk to threatened trees and species such as the Western Ringtail Possum.⁸⁷

- 2.100 A submission from the tabling Member in support of the petition expressed the view that:

I appreciate that the BORR is a significant infrastructure project aimed at providing an alternative route for freight and general traffic around Bunbury, and achieving a number of other objectives. However, the preferred route for the southern section was chosen decades ago, before the area developed to its current stage. Today, that route would bisect the Capel Shire community of Gelorup. It would be prudent to consider alternatives at this point.⁸⁸

- 2.101 A response to the petition from the Minister for Transport advised that:

- the existing road reserve has been protected in the Greater Bunbury Region Scheme for many years to ensure it remains suitable for road construction purposes, including noise mitigation measures consistent with the requirements of State Planning Policy 5.4;
- the road reserve needed for BORR varies by location and environment;
- the access strategy for local road connections is yet to be finalised and will be subject to further community consultation;

⁸⁶ *ibid.*

⁸⁷ Submission from Barbara Stone, 30 November 2018, pp 1-2.

⁸⁸ Submission from Hon Diane Evers MLC, undated, received 21 December 2018, p 1.

- the project team have liaised with the Shire of Capel and local stakeholders in regard to bushfire risk and access issues with further discussions to be held, including with the Department of Fire and Emergency Services;
- the environmental values of the southern section are recognised and will be a consideration in seeking environmental approval for the project;
- consideration is being given to feasible alternatives that will have a reduced environmental impact;
- environmental approval from the Environmental Protection Authority will require Main Roads to demonstrate that potential environmental impacts are addressed;
- upgrading existing roads would be unsuitable for the project (due to insufficient width for a freeway); and
- community views will be taken into account and the Bunbury Outer Ring Road Southern Community Reference Group will contribute to informing the project's planning and development process.⁸⁹

Petition No 94 – Harvest Lakes Shopping Centre

Number of signatures:	126
Date tabled and Tabled Paper (TP) number:	20 November 2018 (TP 2198)
Date finalised:	13 February 2019
Principal petitioner:	Teresa McDonald
Tabling Member:	Hon Simon O'Brien MLC

2.102 This petition opposes the City of Cockburn's (City) intention to remove parking bays from Lyon Road, near Harvest Lakes Shopping Centre on the basis it will negatively impact local businesses by reducing opportunities for customers to access their premises. The petitioners support a shared zone along Lyon Road without removal of existing parking.

2.103 The principal petitioner submitted that she supports a revised proposal (also accepted by the City) which only involves the loss of two parking bays. She calls on Main Roads WA (Main Roads) and the Public Transport Authority to approve the revised plan.⁹⁰

2.104 The tabling Member provided a submission in support of the petition in which he expresses the view that:

it should not be beyond Main Roads WA and the Public Transport Authority to accommodate a proposal acceptable to the City of Cockburn which would result in Lyon Road bus stops and a loss of only two parking bays.⁹¹

2.105 A response from the City advised that:

Council's decision was made after significant consultation with residents, the shopping centre's management, their tenants, Main Roads Western Australia (MRWA) and the Public Transport Authority (PTA).⁹²

⁸⁹ Hon Rita Saffioti MLA, Minister for Transport, letter, 2 April 2019, pp 1-3.

⁹⁰ Submission from Teresa McDonald, 27 November 2018, p 2.

⁹¹ Submission from Hon Simon O'Brien MLC, 29 November 2018, p 1.

⁹² Stephen Cain, Chief Executive Officer, City of Cockburn, letter, 21 December 2018.

2.106 The Minister for Transport confirmed that Main Roads had approved the revised plan:

Main Roads has received, reviewed and approved the regulatory signs and pavement markings associated with the installation of a zebra crossing on Lyon Road as requested by the City of Cockburn. The anticipated date of installation is dependent on the City of Cockburn and the completion of their civil works.

While the Public Transport Authority (PTA) has advocated for bus stops at this location, its initial proposal was to remove the on-road garden beds without the loss of any parking bays. This was not accepted by the City of Cockburn. The current design of the proposed changes, including the construction of the zebra crossing, has been influenced and driven by the City of Cockburn. In this respect, I can confirm that the PTA has supplied the City of Cockburn with an approved design for the two new planned bus stops which the City will construct when a work schedule is determined.⁹³

Petition No 95 – International School of WA

Number of signatures:	40
Date tabled and Tabled Paper (TP) number:	22 November 2018 (TP 2219)
Date finalised:	13 February 2019
Principal petitioner:	Stuart McDonald
Tabling Member:	Hon Alison Xamon MLC

2.107 This petition and the submission from the principal petitioner opposes the relocation and construction of the International School of Western Australia (International School) at the old Doubleview Primary School Site on the basis that:

- public money set aside for the \$21.6 million project is not authorised under the *Schools Act 1999* (Schools Act); and
- the requirement for the provision of ‘like-for-like’ facilities is not reflected in the planning application which incorrectly puts student capacity at 350 rather than 600 students.⁹⁴

2.108 The petition seeks to halt work on the development until the Solicitor General determines whether the relocation is lawful and a public inquiry is conducted.

2.109 The submission from the tabling Member explained that the International School currently leases the City Beach High School site from the State Government. The decision to move the International School to the Doubleview Primary School site was made in preparation for the re-opening of City Beach High School for public students however the building of an inner city school instead negated this need.⁹⁵

2.110 Despite assurances from the Minister for Education that ‘like-for-like’ facilities will be provided at the Doubleview site (based on enrolment of 350 students), the International School had undertaken a development program at its City Beach campus to prepare for future enrolments of 600 students. The government maintains that an increase in student population above 350 will require another development application approval and a traffic management study.⁹⁶

⁹³ Hon Rita Saffioti MLA, Minister for Transport, letter, undated, received 16 January 2019.

⁹⁴ Submission from Stuart McDonald, 4 December 2018.

⁹⁵ Submission from Hon Alison Xamon MLC, 21 December 2018, p 1.

⁹⁶ *ibid.*

- 2.111 The tabling Member also noted community concern that inclusion of a potential 600 International School students at the Doubleview Primary School site may negatively impact the primary school's operations:

With projections that the population of Doubleview Primary School is likely to exceed capacity within the decade and that nearby Scarborough Primary will be over capacity within four years, the community is understandably very concerned that the Government has not ruled out supporting ISWA's growth plans, possibly leading to more than 1,000 students on the Doubleview Primary School site, with a number of those students being high school-age students.⁹⁷

Response from the City of Stirling

- 2.112 A response to the petition from the City of Stirling (City) advised that the City did not have a decision making role in regard to this matter. The City received three petitions related to the issues raised, all of which were tabled at Council meetings.⁹⁸

Response from the Minister for Planning

- 2.113 In response to the planning issues raised in the petition, the Minister for Planning outlined the planning approval process that had occurred:

The Metro North-West Joint Development Assessment Panel (JDAP) approved a development application for the replacement of the existing Doubleview Primary School on 25 January 2017. The Department of Finance (Building Management and Works) prepared a Responsible Authority Report (RAR) for approval under the Metropolitan Region Scheme (MRS), as the development constituted a public work. Public works are exempt from the need to obtain development approval under a local planning scheme. The Western Australian Planning Commission (WAPC) has delegated the ability to determine applications for such public primary schools under the MRS to the Department of Finance as the land is zoned Urban in the MRS.

The JDAP subsequently approved a development application for the redevelopment of the northern half of the existing Doubleview Primary School site, to accommodate the relocation of ISWA on 22 February 2018. The JDAP had previously deferred its consideration of the application in July and December 2017 to address procedural matters and obtain additional information from the applicant. The WAPC and the City of Stirling prepared separate RARs for the application, under the MRS and City of Stirling Local Planning Scheme No. 3 (IPS 3) respectively. This was because the development did not entirely constitute a public primary school, but included elements shared with Doubleview Primary School that were classified as public works.⁹⁹

- 2.114 In regard to student capacity, development approval for the International School was provided for a maximum of 350 students:

Any proposal to increase the capacity of the development beyond 350 students would require further approval to be obtained from the JDAP and would be considered on its merits at that time.¹⁰⁰

⁹⁷ *ibid.*, p 2.

⁹⁸ Stuart Jardine, Chief Executive Officer, City of Stirling, letter, 20 December 2018, p 1.

⁹⁹ Hon Rita Saffioti MLA, Minister for Planning, letter, 22 January 2019, pp 1-2.

¹⁰⁰ *ibid.*, p 2.

Response from the Minister for Education

2.115 The Minister for Education advised that capital funding provided to the Department of Education is authorised by an appropriation bill rather than the *School Education Act 1999*. Further, under the *Financial Management Act 2006*, the Treasurer's Advance provides the Treasurer with authorisation to make short-term recoverable advances to agencies for the temporary financing of works and services.¹⁰¹

2.116 The Minister affirmed the government's intention to relocate the International School to Doubleview:

The State Government has committed to the relocation of [the International School] to Doubleview following the execution of an agreement for lease between both parties. Due to delays during the planning approvals phase of the project, the relocation of ISWA to the Doubleview Primary School site has been rescheduled to May 2020.¹⁰²

Petition No 96 – Subiaco Draft Local Planning Scheme No 5

Number of signatures:	2133 (total)
Dates tabled and Tabled Paper (TP) number:	28 November 2018 (TP 2244 and 2245)
Date finalised:	20 March 2019
Principal petitioner:	Genevieve Binnie
Tabling Members:	Hon Peter Collier MLC Hon Alison Xamon MLC

2.117 This petition opposes the draft Local Planning Strategy (LPS) and the draft Local Planning Scheme No 5 (LPS5) for the City of Subiaco (City) as modified by the Western Australian Planning Commission (WAPC). The grounds for the petitioners' opposition to the planning instruments include:

- the density in the plans was imposed without justification or consultation;
- the design and Masterplan for Subiaco East should be completed before the LPS and LPS5 is reviewed;
- community submissions should not be ignored because they inadvertently did not comply with a procedural requirement; and
- the draft LPS and LPS5 allow for the destruction of large areas of the City's architectural character and historical value and will negatively impact on its tree canopy, open spaces, schools, streetscape and amenity.

2.118 In relation to density, the principal petitioner's submission (on behalf of community group 'Save Subi') contends that the draft LPS5 allows for approximately 50 percent more dwellings than envisioned in the *Perth and Peel @ 3.5 million* planning framework. The petitioner states that the Chairman of the WAPC told 'Save Subi' that the increased density was at the request of the Minister for Planning and that the scheme was 'faulty' but the process could not be halted:

With these admissions, there is significant concern that proper process was not followed in the assessment and provision back to the City of Subiaco of the WAPC

¹⁰¹ Hon Sue Ellery MLA, Minister for Education, letter, 10 January 2019.

¹⁰² *ibid.*

approved scheme and strategy for public advertisement. The extra density was added without proper justification or consultation with stakeholders.¹⁰³

2.119 The submission outlines the recommendations supported by 'Save Subi' for the City, including a whole-of-city planning process that includes community consultation.¹⁰⁴

2.120 A submission from the tabling Member, Hon Alison Xamon MLC, expresses the view that the situation in Subiaco 'is entirely representative of the issues Perth is facing in becoming a denser, better connected, more liveable city'.¹⁰⁵ The increased housing density contained in the draft LPS5 was unexpected and concerning for the local community:

The response of the WAPC to the initial draft LPS5 was to both increase the amount of infill required and to expand the areas that would experience infill. This response was not anticipated by the community and the need for this level of infill is not reflected in our current planning documents. These are the documents that have been the centre of substantial and ongoing community consultation. It is not reasonable or fair for the first time the community is asked to consider substantially greater infill as an imposition from the WAPC.¹⁰⁶

2.121 The tabling Member observes that many communities are uncertain about what increased density will mean for them and local planning schemes will not necessarily provide a clear picture:

The community cannot rely on any elements of the Local Planning Scheme to impose a hard limit on any proposed design. Indeed, the volume and number of strategic documents that need to be considered is so substantial, that it is possible to find strategic support for most design outcomes. With the lack of third-party right of appeal, the community is very limited in the ability to refuse specific developments.¹⁰⁷

2.122 For these reasons, the tabling Member envisions similar concerns being expressed by other communities:

I anticipate that we will see similar protests and concerns about increasing density in all inner-city suburbs until such time as there are clear and understandable rules and requirements about increasing density enhancing rather than compromising existing neighbourhoods.¹⁰⁸

2.123 A response to the petition from the City explained that although a local government has involvement in the preparation of a planning Scheme and Strategy, the government, through the WAPC and the Minister, is the determining authority.¹⁰⁹

2.124 In noting that density modifications were required by the WAPC prior to advertising the LPS5, the City points out that:

The agenda and minutes of the WAPC Statutory Planning Committee are confidential and the City is not in a position to comment on the validity of the decision of the WAPC to require additional density in Subiaco. It is noted that the

¹⁰³ Submission from Genevieve Binnie and Mark Tonti, Convenors of Save Subi, 31 December 2018, p 1.

¹⁰⁴ *ibid.*, p 2.

¹⁰⁵ Submission from Hon Alison Xamon MLC, 7 January 2019, p 1.

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*, p 2.

¹⁰⁸ *ibid.*

¹⁰⁹ Rochelle Lavery, Chief Executive Officer, City of Subiaco, letter, 7 March 2019, p 2.

density increases were generally within the areas identified as Station Precincts in the *Central Sub-Regional Planning Framework*.¹¹⁰

- 2.125 The draft Strategy and LPS5 were supported by the Subiaco Council with some modifications to address the issues raised in submissions:

While some submissions sought that Council resolve to not support draft LPS 5, the content of most submissions articulated specific issues that were able to be addressed with modifications.¹¹¹

- 2.126 As a consequence:

The extensive feedback received from the community has informed modifications to the Strategy and LPS 5 which seek to protect and enhance existing neighbourhoods with desirable heritage and character values, to allocate density in appropriate locations and to continue to undertake detailed planning studies.¹¹²

- 2.127 It was considered that this approach—of supporting a modified scheme—would ensure the community’s feedback is considered by the WAPC and the Minister when a decision is made. The modifications to LPS5 will be advertised and subject to Council consideration, following which it will be submitted to the WAPC:

The WAPC and the Minister for Planning are required to give due consideration to all submissions and the petition submitted during public consultation prior to making a decision. Accordingly, the Minister for Planning has the option to support the modified scheme, support the scheme with further modifications or not support draft LPS 5¹¹³

- 2.128 In her response to the petition, the Minister for Planning (Minister) explained that as part of the planning process for a new scheme, the WAPC may advise a local government that modifications are required before the scheme is advertised. She points out that the Local Planning Scheme Regulations do not provide for the Minister to be involved in that process.¹¹⁴

- 2.129 The modifications required by the WAPC included increased residential densities near the Shenton Park and Daglish train stations and took into account a number of considerations such as:

- population targets provided by the *Perth and Peel@3.5 million Central Sub-regional Planning Framework* (Framework) are minimum targets;
- the principles outlined in the Framework to guide decisions on land use and residential density; and
- the land near the two train stations being identified within the Local Planning Strategy and the Framework as suitable for increased density.¹¹⁵

- 2.130 The Minister noted that modifications by the City included measures to protect heritage and character areas.¹¹⁶

¹¹⁰ *ibid.*

¹¹¹ *ibid.*, p 3.

¹¹² *ibid.*, p 4.

¹¹³ *ibid.*

¹¹⁴ Hon Rita Saffioti MLA, Minister for Planning, letter, 12 March 2019, p 1.

¹¹⁵ *ibid.*, pp 1-2.

¹¹⁶ *ibid.*, p 2.

2.131 In acknowledging the community's concerns, the Minister advised that her final determination will take into account community feedback:

I acknowledge the community's concerns regarding LPS 5 as expressed through the submissions received during advertising. I also recognise that concern stems from a desire for a Local Planning Strategy and Local Planning Scheme which balance the need for increased density in the City with the preservation of its character and amenity. In considering LPS 5 for final determination I will take into account the submissions of the community, as well as the recommendations of the City and WAPC.¹¹⁷

2.132 Subsequent to the Committee concluding its enquiries, the Minister approved the LPS and LPS5, supporting the City's removal of blanket density from more than 1600 lots but retaining higher density for 200 lots near the Shenton Park and Daglish train stations.¹¹⁸

Petition No 97 – Performance of the Local Government Standards Panel

Number of signatures:	58 (total)
Dates tabled and Tabled Paper (TP) number:	28 November 2018 (TP 2246) 29 November 2018 (TP 2266)
Date finalised:	20 March 2019
Principal petitioners:	Jack Garber and Mark McLerie
Tabling Members:	Hon Charles Smith MLC Hon Pierre Yang MLC

2.133 This petition expresses support for Mark McLerie's concerns about the performance of the Local Government Standards Panel (Panel) including a failure to provide the local government sector 'with guidance and sound benchmarks about acceptable standards of behaviour'.

2.134 The principal petitioner submitted that:

- employees of local government are not subject to the same Code of Conduct as elected councillors;
- the Panel is being misused for political reasons with vexatious complaints being made against councillors who are not aligned to the Chief Executive Officer (CEO) or Mayor;
- some councils are selective in what complaints are sent to the Panel;
- councillors raising concerns about due process may be charged with 'interfering in operational issues' and referred to the Panel for a minor breach;
- the Panel does not undertake mediation, evidence is not required as a basis for decisions and CEO's do not need to justify the referral of a complaint;
- the Panel is a political tool used and abused by local government staff;
- there is inequity and selectiveness in decision making by the Panel;
- the Panel database only shows reasons for decisions for successful cases rather than all cases, giving an inaccurate picture of the operation of the Panel and its lack of procedural fairness; and

¹¹⁷ *ibid.*

¹¹⁸ City of Subiaco, Draft Local Planning Scheme No 5 and Draft Local Planning Strategy. See: <https://www.haveyoursay.subiaco.wa.gov.au/LPS>. Viewed 6 April 2020.

- any appeal from a decision from the Panel to the State Administrative Tribunal is costly and not recoverable.¹¹⁹
- 2.135 In support of the petition, the tabling Member Hon Charles Smith MLC submitted that the findings of a review into the Panel in 2016 have not been publically released and this has exacerbated concerns regarding equity in the Panel's processes.¹²⁰
- 2.136 The response from the Minister of Local Government explained that the Panel is established under the *Local Government Act 1995* (Act) as a quasi-judicial body to examine complaints of minor misconduct that constitute a breach of the *Local Government (Rules of Conduct) Regulations 2007* by council members.¹²¹
- 2.137 The Minister asserts that the petition and submissions contain various errors of fact and reflect a lack of understanding about the 'legislative framework for the Standards Panel and the processes required under the Act to accord natural justice'.¹²² For instance, there was not, as claimed, an independent review of the Panel in 2016:
- The Committee has requested a copy of the 2016 Independent Review into the Local Government Standards Panel. While there was no review which meets that description, a review was conducted by a Departmental employee in 2015/16, which looked at ways to improve the operation of the Standards Panel and the wording of the regulations themselves. It did not examine the selective application of the Local Government (Rules of Conduct) Regulations 2007 (as is suggested in the submission by the Hon Charles Smith MLC).¹²³
- 2.138 The Minister advised that the current review of the Act includes an examination of standards, ethics and performance as well as mechanisms to deal with breaches. Legislative amendments arising from the review will be introduced to Parliament soon and a draft of new Rules of Conduct Regulations will be released for public comment later in 2019.¹²⁴
- 2.139 The Minister's response provides information regarding the legislative and procedural framework of the Panel, including:
- The complaints officer must acknowledge receipt of the complaint (in writing), give a copy of the complaint to the council member, and send the complaint to the Standards Panel within fourteen days (s 5.107). There is no discretion.
 - When a complaint is received by the Standards Panel, a copy of the documentation received is sent to the council member, who is given the opportunity to provide a written response to the allegations contained within the complaint.
 - The Standards Panel has no powers of investigation. It determines matters on the basis of the material placed before it.
 - [A] finding [of a breach] is made in relation to the specific Rule of Conduct against which an allegation has been made. Each element of the particular Rule must be demonstrated for a finding of breach to be made.
 - Each party must be given written notice of the reasons for any finding or any refusal to deal with a complaint (s 5.110(4)).

¹¹⁹ Submission from Jack Garber, 4 January 2019, pp 1-2.

¹²⁰ Submission from Hon Charles Smith MLC, 3 January 2018, p 1.

¹²¹ Hon David Templeman MLA, Minister for Local Government, letter, 14 March 2019, p 1.

¹²² *ibid.*

¹²³ *ibid.*, p 2.

¹²⁴ *ibid.*

- If the Standards Panel makes a finding of breach, it is required to give the council member the opportunity to make a submission on how the breach should be dealt with (s 5.110(5)).¹²⁵

Petition No 98 – Protect Lake Jasper

Number of signatures:	954 (total)
Dates tabled and Tabled Paper (TP) number:	28 November 2018 (TP 2248) 19 February 2019 (TP 2413)
Date finalised:	13 March 2019
Principal petitioners:	Sarah Clarke and Donald Clarke
Tabling Member:	Hon Diane Evers MLC

2.140 This petition opposes the approval of mining lease applications at Lake Jasper and requests that the area be returned to its former protected status as part of the D'Entrecasteaux National Park. The petition expresses concern that land disturbance at Western Australia's largest fresh water lake and recognised biodiversity hotspot will increase the risk of acid sulphate soil occurring in the area.

2.141 A submission from one of the principal petitioners, Donald Clarke, explained that Lake Jasper is a near-pristine part of the Gingilup-Jasper Wetlands System of freshwater lakes, marshes and shrub-swamps. He pointed out that the area is ranked third among the 27 south coast wetlands for species diversity and abundance.¹²⁶

2.142 Mr Clarke submitted that mining activity has the potential to dry out large areas of the site, making the wetlands unsuitable for breeding for many waterbird species. Mining can also disrupt the lake's natural surface water flow and high rainfall could result in the transfer of mine waste into the lake. Moreover, the proposed sand mine will cut the wetland ecosystem in half:

The surface and groundwater hydrology will be drastically altered and the ecological connectivity significantly damaged through the Gingilup-Jasper Wetland area.¹²⁷

2.143 Mr Clarke's submission warned that the area is susceptible to the development of acid sulphate soil, which when disturbed by mining activity, will oxidize and create sulphuric acid groundwater plumes.¹²⁸

2.144 A submission from the tabling Member highlighted the environmental values and cultural significance of Lake Jasper and its surrounding wetlands and called for its return to the national park:

The excise of 308 hectares of pristine Class A Reserve from the D'Entrecasteaux National Park has threatened these cultural and environmental values and brought no economic benefit. It was a poor decision and it is time to rectify that mistake.¹²⁹

2.145 In response, the Minister for Mines and Petroleum provided the Committee with background information regarding the proposed mining operation. An application for a mining lease

¹²⁵ *ibid.*, Attachment p 1.

¹²⁶ Submission from Donald Clarke, 28 February 2019, p 1.

¹²⁷ *ibid.*

¹²⁸ *ibid.*, p 2.

¹²⁹ Submission from Hon Diane Evers MLC, 31 December 2018.

(M70/1385) by Strategic Sands Pty Ltd was received by the Department of Mines, Industry Regulation and Safety (DMIRS) in August 2018. There were no objections lodged in relation to the application and it was compliant with the *Mining Act 1978* (Mining Act).¹³⁰

2.146 The sand mining application includes the Jangardup South deposit (recognised as a significant heavy mineral sand resource) situated on land which was excised from the D'Entrecasteaux National Park to create a Conservation and Resource Management Reserve (CR44705) to facilitate mining of the deposit. The mining application has been referred to the Minister for Environment for his recommendation as the reserved land is managed by the Department of Biodiversity, Conservation and Attractions (DBCA).¹³¹

2.147 The Minister for Mines pointed out that if a mining lease was granted, the proposal would still need to be assessed under relevant environmental and heritage law before mining could proceed.¹³²

2.148 The response from the Minister for Environment noted that:

The State Government is aware of the 1994 Government commitments to reinstate the area that was excised from D'Entrecasteaux National Park (now within Crown reserve 44705) if the company that previously held a mining lease in this area did not proceed with its mining proposal. I understand that through 2009 and 2010, when that mining proposal was discontinued, the previous Government chose not to proceed with reinstating this area into the national park.¹³³

2.149 The Minister advised that processing of the mining lease application had been suspended while the government examined the various issues relating to the site (including native title) and he confirmed that it was the government's intention to reinstate the area back into the D'Entrecasteaux National Park.¹³⁴

Petition No 99 – SMART Drumline Trials

Number of signatures:	174
Date tabled and Tabled Paper (TP) number:	29 November 2018 (TP 2265)
Date finalised:	20 March 2019
Principal petitioner:	Donna Martin and Della Grunwald
Tabling Member:	Hon Diane Evers MLC

2.150 This petition opposes a Shark Management Alert in Real Time (SMART) Drumline Trial (SDL) in Gracetown on the basis that:

- there is no evidence that SDLs reduce the risk of shark attacks and they may actually attract more sharks to an area;
- SDLs are potentially lethal to sharks which are necessary for the health of the ocean; and
- sharks are being demonized.

2.151 The petitioners request that the government obtains reliable evidence regarding the efficacy of SDLs and investigate other approaches that increase safety while protecting sharks.

¹³⁰ Hon Bill Johnston MLA, Minister for Mines and Petroleum, letter, 6 March 2019, p 1.

¹³¹ *ibid.*

¹³² *ibid.*, p 2.

¹³³ Hon Stephen Dawson MLC, Minister for Environment, letter, 28 February 2019.

¹³⁴ *ibid.*

2.152 The principal petitioner submitted that following a drum line shark hazard mitigation trial in 2014, 14 percent of sharks were found dead on the gear or had to be destroyed due to their injuries. Most of the sharks caught were tiger sharks (91 percent) with over half of them undersized.¹³⁵

2.153 The tabling Member provided a submission in support of the petition and reiterated the petitioners' call for further evidence before proceeding with the trial:

The petitioners request that reliable evidence that SDLs increase safety and protect sharks and other marine life is sought from the New South Wales SDL trial, before considering their use in Western Australia.¹³⁶

Response from Minister for Fisheries

2.154 The Minister for Fisheries provided a comprehensive response to the issues raised in the petition and submissions, an outline of which is provided below.

2.155 Lack of evidence regarding SDLs:

- the government agrees that more scientific evidence is required in relation to SDLs and the trial has been designed to provide robust data that can be used to assess their efficacy.¹³⁷

2.156 Threat to the ocean environment:

- non-lethal methods have been selected for scientific testing;
- additional data will be collected during the trial to improve understanding of white shark behaviour and population dynamics;
- SDLs provide an alert via satellite if a bait is taken so that an immediate response can be initiated by a vessel on standby for this purpose;
- published figures from the New South Wales SMART drumline program demonstrate the very high survival rates for white sharks and other hooked animals; and
- a crucial component of the study is the assessment of post-release survival of white sharks over a period of months.¹³⁸

2.157 Potential for lethal measures to be adopted:

- the WA Government is committed to non-lethal shark mitigation options and welfare of sharks and bycatch animals will be a primary concern during the trial;
- the non-lethal methods being adopted were subject to a rigorous and independent animal ethics approval process; and
- a Ministerial Reference Group (MRG) will provide feedback on the trial and independent observers, nominated through the MRG, may observe SMART drumline fishing activities on board the contractor's vessel and provide feedback.¹³⁹

¹³⁵ Submission from Donna Martin, 5 January 2019, p 2.

¹³⁶ Submission from Hon Diane Evers MLC, 20 December 2019, p 1.

¹³⁷ Hon Dave Kelly MLA, Minister for Fisheries, letter, undated, received 12 March 2019, p 1.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

- 2.158 Delay the trial until evidence from the NSW drumline trial is available:
- since the New South Wales Government refused to provide data from its SMART drumline trials, the WA Government decided to conduct its own scientific trial to assess the effectiveness of SMART drumlines as a shark hazard mitigation tool.¹⁴⁰
- 2.159 Promote alternative technology by offering a higher rebate:
- the government continues to consider scientifically tested shark mitigation technology, and provides a \$200 rebate for approved personal shark deterrent devices.¹⁴¹
- 2.160 Timely removal of whale carcasses and other mitigation:
- the land manager is responsible for carcass removal and depending on where it is located, multiple government bodies may be involved in managing these incidents;
 - a carcass will be towed out to sea or removed from the beach as soon as possible, however sometimes this cannot be done due to the location of the carcass or its state of decomposition;
 - the Sharksmart website educates the public on safe beach use practices including avoiding surfing or swimming near salmon schools;
 - for safety reasons, rock lobster pots cannot be used in special purpose (surfing) zones at popular surf breaks within the Ngari Capes Marine Park; and
 - there has been negligible if any commercial fishing for western rock lobster along the Capes region in recent years and only a small amount of recreational fishing in the area.¹⁴²
- 2.161 Trial of other systems that do not harm the environment:
- funding has been provided towards the installation of beach enclosures at Albany, Dunsborough, Busselton, Sorrento, Quinns and at Falcon Beach; and
 - trials of other systems will be considered on a case by case basis—new technologies that have merit will be referred to the Shark Science Panel for assessment and advice.¹⁴³
- 2.162 Assistance to communities affected by shark incidents:
- investment has been provided for aerial and beach patrols, shark tagging, extensions to the shark monitoring network, increasing the number of tagged shark receivers and a partnership with Surfing WA to provide jet ski and drone patrol capabilities and free first aid training specifically designed for surfers; and
 - there is a state-wide ban on shark tourism ventures involving the use of a safety cage to protect swimmers or divers from sharks as this risks changing the behaviour of sharks.¹⁴⁴
- 2.163 Countering negative stereotypes:
- a strong community awareness program will continue throughout the SMART drumline trial; and

¹⁴⁰ *ibid.*, p 2.

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*, p 3.

- the SharkSmart website is a central online education and information source regarding shark hazard mitigation.¹⁴⁵

Petition No 100 – 3 Oceans Development Scarborough

Number of signatures:	1067 (total)
Dates tabled and Tabled Paper (TP) number:	5 December 2018 (TP 2300) 13 February 2019 (TP 2392)
Date finalised:	3 April 2019
Principal petitioner:	Kieran Kelly
Tabling Member:	Hon Alison Xamon MLC

- 2.164 This petition expresses serious concern that the Metropolitan Redevelopment Authority (MRA) failed to adhere to the 2-12 story height controls for buildings in the Scarborough Redevelopment area in its approval of the 3 Oceans development proposal. Contrary to those controls, approval was provided for two towers of 43 and 33 storeys. The petitioners request that the Minister for Planning (Minister) direct the MRA to:
- adhere to the Scarborough Planning Framework, and
 - reject the proposal since it does not adhere to the Planning Framework, design guidelines or height controls that were agreed to by the community following public consultation in 2016.
- 2.165 The submission from the principal petitioner, on behalf of the community group ‘Sunsets not Skyscrapers’, is critical of the broad discretionary power exercised by the MRA:
- Given the substantial variation from the Scarborough Design Guidelines and Height Controls of the development (towers of 43 and 33 storeys, as opposed to the 12 storey limit) and bulk (45m high podium, as opposed to 30m) the MRA has used its discretionary power to approve a building which far exceeds community expectations about the scale of development as outlined in the 2016 Scarborough Planning Framework.¹⁴⁶
- 2.166 According to the principal petitioner, there have been anomalies in the planning approval process and non-compliance with the *Metropolitan Redevelopment Authority Act 2011* (MRA Act). The petitioner questions the involvement of the Minister in the approval process, the ‘informal mediation’ conducted with the developer, and real or perceived conflicts of interest of MRA Board members.¹⁴⁷
- 2.167 The submission from the tabling Member acknowledged the petitioners’ concerns regarding the height of the development and perceived conflicts of interest among members of the MRA Board. The Member concludes that an overhaul of the planning system is required:
- The planning system needs an overhaul to make it clearer for both the community and the developers. Great public consultation such as that which resulted in the Scarborough Master Plan should not then be set aside. The community needs to have certainty around the elements that it considers most important - building height is one of the those essential elements.¹⁴⁸

¹⁴⁵ *ibid.*

¹⁴⁶ Submission from Kieran Kelly, 31 January 2019, p 1.

¹⁴⁷ *ibid.*, pp 1-2.

¹⁴⁸ Submission from Hon Alison Xamon MLC, 9 January 2019, p 2.

2.168 And that:

Transparency of MRA processes needs to be a priority and a robust approach to conflict of interest needs to be undertaken. The work of the MRA is too important for a lack of trust in the processes of this body to be fostered in the community.¹⁴⁹

2.169 A response from the Minister explained that the Scarborough Redevelopment Scheme and Design Guidelines provide the MRA with discretion to consider development proposals that vary development controls (including height) if other outcomes, such as design excellence, are satisfied.¹⁵⁰

2.170 The Minister advised that the Scarborough Land Redevelopment Committee (LRC) and the MRA Board had considered all of the submissions as well as advice from the Design Mediation Panel (DMP) in reaching their decision. They concluded that the development proposal:

- was consistent with the vision and intent of the Redevelopment Area, noting that the vision for Scarborough identified within the Redevelopment Scheme relates to mix of uses, including high density residential and tourism, as well as the provision of amenities for the area, rather than building form or height;
- achieved design excellence, noting that conditions of approval would require design quality to be preserved through design development; and
- provided a range of benefits to the area that warranted approval for the variations sought. This included provision of diverse residential accommodation, a hotel, public car parking, affordable housing consistent with the Department of Communities expectations, public art and the ability to achieve a five Star Green Star rating.¹⁵¹

2.171 In relation to the principal petitioner's concerns about the informal mediation that occurred with the developer, the Minister advised that:

The SAT adjourned the formal process for review following agreement by the parties to enter into "informal" mediation, with the Director General of the Department of Planning, Lands and Heritage facilitating the process. The parties felt that the complexity of the issues, particularly around design quality, would be able to be better interrogated in this format, albeit with any outcome of the discussions still required to follow and satisfy SAT requirements. In this regard, at the conclusion of the mediation process, the SAT made orders to invite the MRA to reconsider its original decision for refusal.¹⁵²

2.172 The Minister did not agree that there may be a real or perceived conflict of interest by MRA Board Members who work in the industry:

Given the qualification requirement, a Board member's participation in industry activities and associated organisations is characteristic of professional life.¹⁵³

¹⁴⁹ *ibid.*

¹⁵⁰ Hon Rita Saffioti MLA, Minister for Planning, letter, 19 March 2019, p 1.

¹⁵¹ *ibid.*, p 2.

¹⁵² *ibid.*, p 3.

¹⁵³ *ibid.*

- 2.173 She advised that Board Members are required to complete a standing declaration in relation to interests that could impact their decision making and these declarations are noted in each agenda and reviewed before Board papers are considered.¹⁵⁴

Petition No 101 – Performance of Integrity Oversight Bodies

Number of signatures:	15
Date tabled and Tabled Paper (TP) number:	5 December 2018 (TP 2301))
Date finalised:	8 May 2019
Principal petitioner:	Jack Garber
Tabling Member:	Hon Charles Smith MLC

- 2.174 This petition expresses concern about the performance of the Office of the Information Commissioner; the Public Sector Commission and the Parliamentary Commissioner for Administrative Investigations (Ombudsman) in relation to their handling of complaints and applications involving local government officers and staff. The petition suggests that local government officers and staff be subject to the same Code of Conduct as applies to elected councillors.

- 2.175 In noting that the performance of integrity oversight bodies was the subject of a previous petition (see Petition No 84 at paragraphs 2.19 to 2.28), the Committee focused its enquiries on the issue of codes of conduct for public sector and local government employees.

- 2.176 In his submission, the principal petitioner contends that since the authority exercised by local government officers is a delegation of power by a local government Council, those officers should be subject to the same rules of conduct and processes for dealing with breaches as elected councillors:

Quite simply, since the powers and authority has been granted to Local Government officers and staff which arises from the delegation of powers otherwise reserved to the Local Council, the administration of justice of breaches and violations should be administrated by the same authority as [the Local Government Standards Panel (LGSP)] as if the breach or violation has been committed by a Councillor and any other agency should not be involved, such as Public Sector Management (PSM).¹⁵⁵

- 2.177 In addition, since decisions of the LGSP or the State Administrative Tribunal (SAT) pertaining to a local government councillor are made public, the petitioner believes that decisions relating to the conduct of government employees should similarly be made public.¹⁵⁶

- 2.178 The tabling Member's submission in support of the petition identified a number of concerns about the government complaints system:

The complaint system is becoming a farcical reality. Anecdotal evidence presented to me suggests complaints are selectively looked into; confidentiality breaches; procedures not followed; nepotistic collaboration on the truth and above all, there does not appear to be any public servant that you can forward the public

¹⁵⁴ *ibid.*

¹⁵⁵ Submission from Jack Garber, 5 January 2019, p 1.

¹⁵⁶ *ibid.*

complaints to that considers honesty and evidence as the front runner to establishing what is actually happening in the workplace and in the community.¹⁵⁷

2.179 And that:

Some of this inequity lies in the fact that public servants are not subjected to the same rules, the same code of conduct, the same regulations as those of state parliamentarians and of local government elected members.¹⁵⁸

2.180 A response to the petition from the Premier provided detailed information about the various codes of conduct that apply to public servants, public sector employees and local government employees.¹⁵⁹

2.181 In relation to the Public Sector Commission (Commission), the Premier explained that:

the Commission contributes to the WA public sector accountability framework through the establishment of the Code of Ethics, Commissioner's Instructions and whole of government policy, and through monitoring and assistance roles under the [*Public Sector Management Act 1994*] and [*Public Interest Disclosure Act 2003*].¹⁶⁰

2.182 All public sector agencies must develop and implement a code of conduct that is consistent with the principles of the Code of Ethics:

The Commission's Conduct Guide assists agencies to develop their own codes of conduct. It sets out the accountability framework established by legislation and across government requirements such as Premier's Circulars, Commissioner's Instructions and Treasurer's Instructions. It is designed to assist agencies to practically apply the Code of Ethics in their workplaces.¹⁶¹

2.183 Although the Commission does not administer the *Local Government Act 1995* (LG Act), in accordance with its prevention of misconduct function, it provides local government with integrity promotion resources including a guide to developing a code of conduct.¹⁶²

2.184 A response to the petition was also obtained from the Minister for Local Government who advised that:

- the *Local Government Act 1995* requires all local governments to adopt a code of conduct for council members and employees;
- as distinct from the code of conduct, the Local Government (Rules of Conduct) Regulations 2007 apply only to council members;
- local government elected members and employees have separate and distinct prescribed roles and responsibilities; and
- issues regarding conduct and the roles of elected members and employees are under consideration as part of the review of the *Local Government Act 1995*.¹⁶³

¹⁵⁷ Submission from Hon Charles Smith MLC, 4 January 2019, p 1.

¹⁵⁸ *ibid.*

¹⁵⁹ Hon Mark McGowan MLA, Premier, letter, 15 March 2019.

¹⁶⁰ *ibid.*, p 1.

¹⁶¹ *ibid.*, p 2.

¹⁶² *ibid.*

¹⁶³ Hon David Templeman MLA, Minister for Local Government, letter, 18 March 2019.

Petition No 102 – Department of Local Government, Sport and Cultural Industries

Number of signatures:	16
Date tabled and Tabled Paper (TP) number:	6 December 2018 (TP 2308)
Date finalised:	20 February 2019
Principal petitioner:	Gary Crawford
Tabling Member:	Hon Robin Chapple MLC

- 2.185 This petition expresses concern about the complaint handling processes of the Department of Local Government, Sport and Cultural Industries with regard to complaints made against local government authorities.
- 2.186 The Committee received a submission from the principal petitioner and resolved not to conduct further enquiries since the issues raised were the subject of previous petitions considered by the Committee.¹⁶⁴

Petition No 103 – Black Spot Mobile Coverage

Number of signatures:	190
Date tabled and Tabled Paper (TP) number:	6 December 2018 (TP 2310)
Date finalised:	8 May 2019
Principal petitioner:	Dorothy Saddleton
Tabling Member:	Hon Adele Farina MLC

- 2.187 This petition calls for the installation of a mobile tower at Ironstone Gully Falls on Goodwood Road between Donnybrook and Capel to provide urgently needed mobile coverage for the State Emergency Service (SES), residents, tourists and motorbike eventers.
- 2.188 The submission from the principal petitioner outlines the hazards that make Goodwood Road dangerous—it is hilly and winding, with hairpin bends and a high kangaroo and emu population. Since there is no mobile coverage for approximately 25 kilometres, accidents or breakdowns are only reportable by landline.¹⁶⁵
- 2.189 The principal petitioner points to the inequity of the lack of mobile coverage:
- The farms along the Goodwood road have supplied food and resources since early 1900's to many regions; the current inhabitants deserve equitable digital resources.¹⁶⁶
- 2.190 The area is part of a scenic tourist route frequented by many travellers and campers who may not be aware of Australian conditions. The petitioner relates her experience of finding an unattended campfire burning at 4 am and having to seek help from a local farmer because of the lack of mobile coverage.¹⁶⁷

¹⁶⁴ See Petition No 84 (paragraphs 2.19 to 2.28), Petition No 97 (paragraphs 2.133 to 2.139), and Petition No 101 (paragraphs 2.174 to 2.184).

¹⁶⁵ Submission from Dorothy Saddleton, 11 December 2018, p 1.

¹⁶⁶ *ibid.*, p 2.

¹⁶⁷ *ibid.*, p 1.

2.191 The high fire risk of the area is a particular concern:

The large area involved has no mobile coverage for SES Services, or community warnings during fire season. There is heavy forestation in this area, and high fire risk.¹⁶⁸

2.192 The petitioner identifies other potential emergency situations including:

- visitors frequent the waterfalls where there is a danger of injury from drowning, falls from rocks, becoming lost or other health emergencies;
- nearby forestry workers felling and collecting trees;
- people using chainsaws to collect fire wood;
- snakebites;
- farm accidents; and
- motorbike events in the forest.¹⁶⁹

2.193 In response to the petition, the Minister for Regional Development advised that a new mobile base station near Newlands had been awarded funding under the Mobile Black Spot Program. The station will be completed during 2019-20 and will significantly improve reception along the eastern end of Goodwood Road 'however vehicles will need an external antenna for continuous handheld coverage due to the tree cover and undulating nature of the terrain'.¹⁷⁰

2.194 Subject to additional State and Commonwealth funding becoming available, two further mobile base station sites near Ironstone Gully Falls and Goodwood Road have been identified for future investment.¹⁷¹

Petition No 105 – Alternative Bunbury Outer Ring Road

Number of signatures:	847
Date tabled and Tabled Paper (TP) number:	13 February 2019 (TP 2391)
Date finalised:	12 June 2019
Principal petitioner:	Christopher Scott
Tabling Member:	Hon Colin Holt MLC

2.195 This petition opposes the alternative alignment of the southern corridor of the Bunbury Outer Ring Road (BORR) due to unacceptable impacts on the environment, farming land and the community. The petitioners support the long-standing original alignment contained in the Greater Bunbury Region Scheme.¹⁷²

2.196 The principal petitioner's submission points out that the original alignment of the southern section of the BORR was located on land earmarked for the purpose for many years. The newly proposed 'green' route, which the petitioners oppose, would mean that:

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*, pp 1-2.

¹⁷⁰ Hon Alannah MacTiernan MLC, Minister for Regional Development, letter, 10 April 2019.

¹⁷¹ *ibid.*

¹⁷² In contrast, Petition No 93 (see paragraphs 2.98 to 101) opposed the original alignment of the southern section of the Bunbury Outer Ring Road and supported development of an alternative route.

the BORR would tear through precious wetlands, natural bush and productive farmlands. A previous environmental study on the 'green' alternative route deemed the wetlands and banksia woodlands too valuable to be destroyed, and that the 'red' southern alignment would have less impact.¹⁷³

- 2.197 The principal petitioner argues that previous environmental impact reports have been ignored and new studies were 'hurriedly commissioned'.¹⁷⁴ He expresses concern about the rigour of recent studies, inadequate documentation of findings and a failure to disclose data.¹⁷⁵
- 2.198 The principal petitioner believes that the alternative alignment will:
- cause habitat degradation and fragmentation for rare, vulnerable and threatened fauna and flora;
 - negatively affect water flow, degrading water quality over time;
 - disrupt the area's hydrology and increase the risk of acid sulphate soil disturbance with a catastrophic effect on primary producers;
 - facilitate the spread of plant and animal pests; and
 - increase chemical, noise and light pollution on wetlands and farms.¹⁷⁶
- 2.199 The petitioner also expresses concern that the community had not been adequately consulted.¹⁷⁷
- 2.200 A submission from the tabling Member informed the Committee that:
- The changes to the route has broadened the impact of the BORR and many questions are being asked by the community and those impacted. Many feel they are not getting answers to these questions.¹⁷⁸
- 2.201 It was his view that at a cost of more than \$500 million, the project was too large and important for the petitioners' concerns to be unaddressed.¹⁷⁹
- 2.202 In response to the petition, the Minister for Transport explained that alternative corridors for the southern section of the BORR were investigated in light of significant environmental considerations. These issues included the presence of the Black Cockatoo and Black-stripe Minnow and the elevation of the conservation status of the Western Ringtail Possum from vulnerable to critically endangered in May 2018.¹⁸⁰
- 2.203 Detailed environmental site surveys and environmental impact assessments were completed for both corridors. Regional surveys were also conducted to estimate the population size and potential impact on the western Ringtail Possum, the methodology of which was agreed with the Department of Biodiversity, Conservation and Attractions and the Western Ringtail Possum Recovery Team.¹⁸¹

¹⁷³ Submission from Chris Scott, 8 March 2019, p 1.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.*, pp 1-2.

¹⁷⁷ *ibid.*, p 2.

¹⁷⁸ Submission from Hon Colin Holt MLC, 8 March 2019, p 1.

¹⁷⁹ *ibid.*, p 2.

¹⁸⁰ Hon Rita Saffioti MLA, Minister for Transport, letter, 6 June 2019, p 1.

¹⁸¹ *ibid.*

2.204 Comparison of the alternative alignments for the BORR considered a range of factors:

Given the complexity of this issue, in addition to environmental considerations, the comparison considered a range of factors including those of a social, heritage, land use planning, engineering and economic nature. This also included consideration of the impact on agricultural businesses, raw materials and mining tenements.¹⁸²

2.205 The Minister conceded that both alignments will have environmental impacts 'although of a different scale and nature'.¹⁸³ The original alignment will have a higher impact on the Western Ringtail Possum and native vegetation whereas the alternative alignment will impact more significantly on wetlands and endangered aquatic fauna.¹⁸⁴

2.206 Decisively, the regional surveys revealed that the population of Western Ringtail Possum was greater than previously estimated and the overall impact of either alignment on the species would be less than originally anticipated. As a consequence, Main Roads WA decided to proceed with the original alignment of the BORR rather than the alternative 'green' option.¹⁸⁵

2.207 The Minister advised that the southern alignment will be referred to the Environmental Protection Authority and the Commonwealth Department of the Environment and Energy for environmental review later in 2019 and that those processes would provide the opportunity for further public comment.¹⁸⁶

Petition No 106 – Nursing Service Medal

Number of signatures:	676
Date tabled and Tabled Paper (TP) number:	20 February 2019 (TP 2419)
Date finalised:	8 May 2019
Principal petitioner:	Paul Walling
Tabling Member:	Hon Martin Pritchard MLC

2.208 This petition supports the introduction of a nursing service medal after 10 years of service in Western Australia and a bar or clasp for each subsequent five years of service.

2.209 According to the principal petitioner, nurses receive little recognition compared to other essential and emergency services, such as police, who are eligible to receive a number of service medals.¹⁸⁷

2.210 The principal petitioner is the coordinator of a community group called 'Medals for Nurses' which privately produced 500 medals in 2017, the presentation of which received a very positive response:

The reaction from the recipients was electrifying and very moving at being recognised for their service.¹⁸⁸

¹⁸² *ibid.*, p 2.

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ Submission from Paul Walling, 19 March 2019, p 1.

¹⁸⁸ *ibid.*

- 2.211 In response to the petition, the Minister for Health confirmed that the principal petitioner had previously made a formal request to the Chief Nursing and Midwifery Officer for the introduction of a nursing service medal.¹⁸⁹
- 2.212 The Minister outlined the current ways in which appreciation and recognition is provided to nurses:
- employer and organisational awards;
 - the State Government's WA Nursing and Midwifery Excellence Awards;
 - recognition for outstanding achievement and service in the Australia Day honours system; and
 - the Commonwealth Health Minister's Award for Nursing Trailblazers.¹⁹⁰
- 2.213 The Minister explained that nursing and midwifery professional bodies have been working to change the perception of nursing and midwifery as a hierarchical vocation to a highly respected profession:
- A military style medal such as the one being proposed is not congruent with the image that nurses and midwives are looking to present. Many nurses and midwives no longer wear badges of training or service as they once did. The style of uniform worn by nurses and midwives has moved away from an authoritative style to one that is respected and puts patients at ease.¹⁹¹

Petition No 107 – Lot 501 Paradise Quays Ballajura

Number of signatures:	91
Date tabled and Tabled Paper (TP) number:	20 February 2019 (TP 2420)
Date finalised:	15 March 2019
Principal petitioner:	Mike Hatzidakis
Tabling Member:	Hon Robin Scott MLC

- 2.214 This petition seeks public consultation on the City of Swan's (City) Master Plan for the development of Lot 501 Paradise Quays Ballajura on the Emu Swamp Reserve.
- 2.215 In his submission, the principal petitioner expresses concern about the proposed development of an aged care facility at Paradise Quays. The development is on land adjoining Emu Swamp Wetlands which is part of the Gnangara Water Mound and there is a risk that excavation works will negatively impact the surrounding environment including the lake system in Ballajura.¹⁹²
- 2.216 The petitioner maintains that the City has not fully considered the potential impact of the development:
- I am deeply concerned at the way in which The City of Swan has handled the fast tracking approval of the master plan submitted by Southern Cross Care. It was presented to Council on the 5th December, 2018 and approved at the 12th December, 2018 Council Meeting. Hardly enough time to study and research any

¹⁸⁹ Hon Roger Cook MLA, Minister for Health, letter, 1 May 2019, p 1.

¹⁹⁰ *ibid.*, pp 1-2.

¹⁹¹ *ibid.*, p 2.

¹⁹² Submission from Mike Hatzidakis and Viola Marrapodi, 14 March 2019, p 1.

of the consequences that such a large scale development would have on our already fragile Emu Lakes.¹⁹³

- 2.217 He points out that the current Masterplan is significantly different to the original proposal that was subject to public consultation in 2013. In contrast to the original plan for two buildings (one single storey and one two storey), the new Masterplan envisages several multi-storey blocks—some of which are five stories high:

In my view, this is far too big a development to be carried out on these wetlands.

My concern is the damage that such large scale excavations/earthworks/foundations will have on Emu Swamp Wetlands and Emu Lake considering that the Council has spent the last 10 years trying to rehabilitate Emu Lake and is even now in the process of building a wetland embayment in the central section of the lake.¹⁹⁴

- 2.218 The petitioner outlines a number of potential impacts which should be addressed before the development proceeds, including:

- contamination of waters used for agricultural or domestic water supplies or recreation;
- excessive change to levels of nearby surface water bodies, harming their ecology and vegetation;
- lowering the standing water table in water supply bores;
- movement of nutrient-rich water into surface water bodies, increasing the risk of algae growth;
- reduction of dissolved oxygen in waterways;
- release of toxic metals and arsenic due to disturbance of acid sulphate soils; and
- turbidity and sedimentation in surface waters.¹⁹⁵

- 2.219 The Committee requested responses to the petition from the City and the Minister for Planning.

- 2.220 The response from the City explained that it had been actively working to attract private sector investment to address the serious shortage of aged care facilities within the local area. The purpose of the initial public consultation process in 2013 was 'to seek initial support for the project' with an illustrative concept design—not a Masterplan.¹⁹⁶

- 2.221 The Masterplan for the precinct was approved by the Council in December 2018 and was subject to a number of conditions, including community consultation by the developer. The contractual arrangement between the City and the developer also required approval in accordance with the *Aboriginal Heritage Act 1972*. The developer will need to lodge appropriate planning applications with the City for the staged development and this process will involve further public consultation. The development application will ultimately be determined by the Metro East Joint Development Assessment Panel.¹⁹⁷

- 2.222 The City consulted with the then Department of Environment and Conservation regarding the site and was advised that the proposed land use 'would not result in the loss of

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*, p 2.

¹⁹⁵ *ibid.*, p 3.

¹⁹⁶ M J Foley, Chief Executive Officer, City of Swan, letter, 15 April 2019, p 1.

¹⁹⁷ *ibid.*, pp 2-3.

conservation significant species or pose a significant environmental impact'.¹⁹⁸ Moreover, the boundaries of the development site were determined by the State Government, taking into account the adjacent Emu Swamp which is a Conservation Category Wetland.¹⁹⁹

- 2.223 The Minister for Planning confirmed that development applications for the site will be subject to environmental scrutiny:

all environmental matters will be addressed through the development application process and through consultation with the Department of Biodiversity, Conservation and Attractions, the Department of Water and Environmental Regulation and other relevant agencies.²⁰⁰

Petition No 108 – State Owned Energy Corporations

Number of signatures:	1
Date tabled and Tabled Paper (TP) number:	20 February 2019 (TP 2421)
Date finalised:	10 April 2019
Principal petitioner:	Karl Raszyk
Tabling Member:	Hon Colin de Grussa MLC

- 2.224 This petition requests changes to the selection criteria employed by State-owned energy corporations for power supply procurement to include communities and renewables in power generation. It also seeks the inclusion of community energy cooperatives and WA businesses in solutions to reduce Carbon Dioxide (CO₂) emissions as required in a Western Australian Renewable Energy Target.
- 2.225 The submission from the principal petitioner, on behalf of the Esperance Community Power Project (ECP), explained that the ECP was seeking to participate in the current Horizon Power procurement process to deliver renewable power supply to the Esperance Community however the current selection criteria will prevent them from doing so. The requirements are such that applicants must be a corporate entity with a substantial track record in the construction and operation of a power station and that they can demonstrate credit history and occupational health and safety conditions specifications. The petitioner argues that this 'structural issue' effectively locks out community owned, renewable power generation solutions.²⁰¹
- 2.226 The ECP requests a number of changes to enable the removal of these barriers and points to the benefits of local investment into high renewable energy for the town including:
- the opportunity for community investment and dividend retention within the community;
 - CO₂ reductions and lower priced power to Horizon Power from 10 am to 2 pm;
 - a reduction in taxpayer subsidies; and
 - community board members with an interest in the future viability and resilience of the district.²⁰²

¹⁹⁸ *ibid.*, p 2.

¹⁹⁹ *ibid.*

²⁰⁰ Hon Rita Saffioti MLA, Minister for Planning, letter, 7 May 2019.

²⁰¹ Submission from Esperance Community Power Project, 12 March 2019, p 1.

²⁰² *ibid.*, p 2.

2.227 The submission emphasises the need for a more flexible approach to power delivery:

Our Community investment model, is the first in the state to participate in the Horizon Power procurement process. We would like the opportunity to create a blueprint for future Horizon Power PPA's with island grids, with potential to roll out variations of the model to 35 regional communities.²⁰³

2.228 The Committee received a submission from the tabling Member in which he encourages the Legislative Council to investigate the issues raised in the petition.²⁰⁴

2.229 In response to the petition, the Minister for Energy (Minister) advised that:

All State-owned corporations must comply with government procurement principles to ensure that the outcome reflects balanced and commercial decision-making. Horizon Power and Synergy will seek outcomes that enable them to deliver reliable and secure power supply at the lowest cost.²⁰⁵

2.230 In light of the issues raised in the petition, the Minister requested the Department of Treasury (Treasury) work with Horizon Power and Synergy to review their EOI criteria for power purchase agreements. Consultation with community energy groups and other relevant stakeholders would be part of the review process.²⁰⁶

2.231 The Committee concluded its enquiries on 10 April 2019. Subsequent to finalising the petition, the Minister advised that Treasury had completed its review of EOI processes and a copy of the report was provided to the Committee. The review concluded that:

the EOI process undertaken by Horizon Power for power supply to the locality of Esperance was commercially appropriate and consistent with Government Procurement Guidelines. Esperance Community Power Project's submission, while innovative, presented an increased security of supply risk for Horizon Power's customers and Government.²⁰⁷

2.232 The Minister also informed the Committee that Horizon Power had committed to:

early and ongoing community engagement with each of the communities it serves, to ensure that communities have an opportunity to play a part in future energy supply arrangements.²⁰⁸

Petition No 109 – Nedlands Draft Local Planning Scheme No.3

Number of signatures:	2219 (total)
Dates tabled and Tabled Paper (TP) number:	13 March 2019 (TP 2458) 9 April 2019 (TP 2577 and 2578)
Date finalised:	12 June 2019
Principal petitioner:	Victoria Rogers
Tabling Members:	Hon Alison Xamon MLC Hon Peter Collier MLC

²⁰³ *ibid.*

²⁰⁴ Submission from Hon Colin de Grussa MLC, 25 February 2019.

²⁰⁵ Hon Bill Johnston MLA, Minister for Energy, letter, 1 April 2019.

²⁰⁶ *ibid.*

²⁰⁷ Hon Bill Johnston MLA, Minister for Energy, letter, 10 June 2019.

²⁰⁸ *ibid.*

- 2.233 This petition opposes Draft Local Planning Scheme No. 3 (LPS3) which targets areas within the City of Nedlands (City) for high density redevelopment. Objections to LPS3 include the adoption of density targets without regard for consequences, the destruction of local character and amenity of established residential communities, a reduction in green space and the failure to listen to the community's concerns.
- 2.234 The principal petitioner submitted that the petition reflects concern about the approach adopted by the government to increase density within the City, including the intervention of the Minister for Planning. She explains that the LPS3 developed by the City included 4400 additional dwellings but this number was increased to 9000 following consultation with the Western Australian Planning Commission (WAPC). Following opposition from local residents, the Minister made modifications to the LPS3, reducing new dwellings to 7500 and 'directed that the City of Nedlands approve her version of LPS3, which the Council did under protest and only to comply with the law'.²⁰⁹ Residents were not consulted on the final version of the scheme.²¹⁰
- 2.235 Objections levelled at LPS3 (as modified) include:
- no opportunity for residents to provide feedback;
 - failure to value the existing character and heritage of homes in the affected area;
 - no transport solution to accommodate additional traffic;
 - destruction of the green canopy and the wildlife it supports, including the endangered Carnaby's cockatoos;
 - lack of supporting infrastructure; and
 - radical rezoning that will allow existing dwellings to be juxtaposed with new multi-level apartment complexes, resulting in differing street setbacks, side setbacks, overshadowing, and an inevitable loss of privacy and liveability.²¹¹
- 2.236 A submission from the tabling Member drew the Committee's attention to similar concerns about the planning system that were raised by petitioners and herself in regard to Petition No 96 – Subiaco Draft Local Planning Scheme (see paragraphs 2.117 to 2.132):
- The planning system has failed both of these communities.²¹²
- 2.237 A key issue identified by the tabling Member is a lack of certainty for local communities about what increased density will mean for them:
- the relevant decision-making bodies still have absolute discretion about which elements of the planning scheme and the design guidelines can be waived. In effect, the community does not know and cannot know exactly what will be built.²¹³
- 2.238 The Committee sought responses from the City and the Minister for Planning, who both advised LPS3 was gazetted on 16 April 2019.²¹⁴

²⁰⁹ Submission from Dr Victoria Rogers, 12 April 2019, p 1.

²¹⁰ *ibid.*

²¹¹ *ibid.*, pp 1-2.

²¹² Submission from Hon Alison Xamon MLC, 8 April 2019, p 1.

²¹³ *ibid.*, p 2.

²¹⁴ Mark Goodlet, Chief Executive Officer, City of Nedlands, letter, 13 May 2019; Hon Rita Saffioti MLA, Minister for Planning, letter, 7 June 2019.

- 2.239 The City provided a copy of a letter by the Mayor to the Nedlands community in which the Mayor expresses the view that:

The Minister's scheme is not based on the needs and aspirations of residents and ratepayers of the City of Nedlands. Instead, it is focused on achieving higher density with scant consideration of the issues and options raised in the many responses to the original LPS3 consultation. Sadly, many residents and ratepayers will be worse off as a result of the Minister's directions, an outcome that the Council was seeking to avoid.²¹⁵

- 2.240 The Mayor informed the community that the State Government had committed to undertake comprehensive land use and transport planning for Stirling Highway, that the City was developing supplementary plans and policies to support the new scheme, and that the WAPC had advised that any deficiencies in LPS3 may be rectified by later amendments:

It is possible that some concerns can be mitigated through this process.²¹⁶

- 2.241 The response from the Minister for Planning asserted that the LPS3 'reflects planning principles advocated in approved State planning strategies and policies' and pointed out that a significant proportion of public submissions supported opportunities for increased residential density, housing choice and diversity.²¹⁷ She explained that planning regulations and design policies would enable the City to regulate built form outcomes having regard to considerations such as the established character of an area.²¹⁸

- 2.242 The Minister concluded that:

LPS 3 represents a sensible and balanced representation of State and local strategic planning considerations to provide for the needs of current and future residents of the City.²¹⁹

Petition No 111—Lots 16 and 32, Great Northern Highway

Number of signatures:	156
Date tabled and Tabled Paper (TP) number:	14 March 2019 (TP 2467)
Date finalised:	26 June 2019
Principal petitioner:	Ann Winchester
Tabling Member:	Hon Tim Clifford MLC

- 2.243 This petition opposes Amendment No 150 to the City of Swan Local Planning Scheme No. 17 which will enable bitumen processing at lots 16 and 32 on Great Northern Highway. The petitioners are concerned that the impacts from bitumen manufacturing (such as odour) are incompatible with the adjacent sensitive land uses, including residential properties. The petition requests an inquiry into the processes associated with Development Application 774/15 (DA 774/15) which was approved by the City of Swan (City) permitting the storage of bitumen at the site.

²¹⁵ Mark Goodlet, Chief Executive Officer, City of Nedlands, letter, 13 May 2019, Attachment 1, Max Hipkins, Mayor, City of Nedlands, Mayor's message, 30 March 2019, p 3.

²¹⁶ *ibid.*

²¹⁷ Hon Rita Saffioti MLA, Minister for Planning, letter, 7 June 2019.

²¹⁸ *ibid.*

²¹⁹ *ibid.*

2.244 The principal petitioner's submission informed the Committee that acrid bitumen odour was already being experienced by local residents as a result of the transport and storage of bitumen at the site and it is feared that approval to conduct processing activities will increase odour and noise levels.²²⁰

2.245 The petitioner points to a recommendation in Council minutes from 1997 that rezoning of land close to the town should not occur prior to the adoption of a Structure Plan for the Upper Swan area. Despite this, the planning report to Council for Amendment 150 did not make reference to any current planning framework. The petitioner questions how the City reached its decision:

How did the City of Swan weigh up the benefits to the proponent to maximise the commercial interest in his property against the environmental, social and economic losses to the adjacent residential area and intrinsic landscape value of country.²²¹

2.246 Key questions and concerns raised by the petitioner include:

- whether the City gave due regard to procedure in approving DA 774/15;
- whether due regard was given to the Environmental Protection Authority's (EPA) *Guidance Statement No 3 – Separation Distances Between Industrial and Sensitive Land Uses* (Guidance Statement);
- whether sufficient conditions have been imposed in order to manage the impact on surrounding residential areas; and
- a lack of action regarding the proponent's non-compliance with the conditions of DA 774/15.²²²

2.247 The tabling Member's submission advised that his office had been contacted by numerous residents regarding the acrid odour emanating from the site. He noted that there is no buffer zone between the site and existing residential areas and, of additional concern, a new residential development is planned less than a kilometre from the site.²²³

2.248 According to the tabling Member:

I share the concerns of the petitioners about Amendment 150, and I believe that allowing a rezoning to 'Industry-General' would permit the Site to be used in a way that is grossly incompatible with the Upper Swan residential area. The City of Swan has historically refused to permit General Industry uses on the Site for this exact reason and I cannot see any justification for why this should be changed now.²²⁴

2.249 The tabling Member observed that the operator, Bitutek, had breached its development application conditions several times and had received a formal warning from DWER for failing to obtain a works approval and licence before commencing operations. He was aware of concerns that Bitutek has continued to store and transfer hot bitumen on site in breach of applicable conditions:

It has been asserted by residents that, by approving DA774/15 and allowing the storage and transfer of hot bitumen on the Site, the City has facilitated the creation of circumstances in which Bitutek has been conducting activities beyond

²²⁰ Submission from Ann Winchester, 16 April 2019, p 1.

²²¹ *ibid.*

²²² *ibid.*, p 2.

²²³ Submission from Hon Tim Clifford MLC, 18 April 2019, p 1.

²²⁴ *ibid.*, p 2.

the scope of the current permitted land use, and that the City is now attempting to pass Amendment 150 in order to make those activities permissible.²²⁵

- 2.250 The Committee requested responses to the petition from the City and the Ministers for Environment and Planning.

Response from the City

Approval process for DA 774/15

- 2.251 In regard to the process undertaken in approving DA 774/15, the City advised that the application related to a new workshop containing a blending facility with storage tanks for bitumen, emulsion, primer kerosene and rainwater for recycling in the blending process. In addition to consulting with nearby property owners, the City referred the application to DWER which advised that a premises in which bitumen is mixed or prepared requires a works approval in accordance with the *Environmental Protection Act 1986* (EP Act).²²⁶

- 2.252 The City considered that activities involving the blending or heating of bitumen constituted an industrial use (classified as 'Industry-General') under the Local Planning Scheme. This type of land use is prohibited within the 'Resource' zoning applicable to the land and was therefore not approved. The applicant subsequently modified their application to remove the proposal for a bitumen blending facility:

The application was accordingly approved by Council on the basis that the storage of bitumen in the tanks, without any blending, mixing or heating, and it's transferral to and from the tanks into the tanker trucks, was consistent with the definition of "Transport Depot" under the old Town Planning Scheme No.9 under which the original planning approval was issued in 1992 and under the new Local Planning Scheme No.17.²²⁷

- 2.253 In reaching its decision, the Council considered the impact of odour, noise and light emissions. The industrial classification of the premises is a 'Transport Depot' for the purposes of the EPA's Guidance Statement on separation distances and this type land use had been approved for the site since 1992. The City pointed out that '[a] separation distance cannot be retrospectively applied to an existing approved use'.²²⁸
- 2.254 The City confirmed that it issued a non-compliance notice to Bitutek which had, to the best of the City's knowledge, subsequently complied with the condition that prohibits blending, mixing or heating of bitumen on the site.²²⁹

Proposed Amendment No 150

- 2.255 The legislative process for a Scheme amendment requires public advertising to enable the community to express its views and the City advised that the public comment period remained open at the time of providing its response to the Committee. The final decision on the Amendment will be made by the Minister for Planning.²³⁰

²²⁵ *ibid.*

²²⁶ M J Foley, Chief Executive Officer, City of Swan, letter, 4 June 2019, p 1.

²²⁷ *ibid.*, p 2.

²²⁸ *ibid.*

²²⁹ *ibid.*

²³⁰ *ibid.*

Response from the Minister for Planning

2.256 The Minister for Planning outlined the legislative process for a scheme amendment. Following the City's consideration of Amendment No 150 and its recommendation to the Western Australian Planning Commission (WAPC), the WAPC will make a recommendation to the Minister who will:

determine the amendment having regard to relevant State and local planning policy considerations, the recommendations of the City and the WAPC, and the contents of submissions.²³¹

Response from the Minister for Environment

2.257 The Minister for Environment advised that the EPA had determined that 'the likely environmental effects of the scheme amendment are not so significant as to warrant formal assessment under Part IV of the EP Act' however, advice was provided regarding appropriate conditions for the premises.²³² The EPA decision took into account odour and acoustic assessments for the site which had been reviewed by experts from DWER.²³³

2.258 Determination of an application for a licence for bitumen processing already submitted to DWER will be postponed until finalisation of Amendment 150 and development approval.²³⁴

Petition No 113 – Liquor Restrictions in the Pilbarra

Number of signatures:	781
Date tabled and Tabled Paper (TP) number:	10 April 2019 (TP 2608)
Date finalised:	12 June 2019
Principal petitioner:	Dion Regan
Tabling Member:	Hon Jacqui Boydell MLC

2.259 This petition opposes liquor restrictions in the Pilbara on the basis that such restrictions do not offer the correct assistance to people affected by excessive alcohol consumption but erodes the right of choice for the general population. The petition suggests a Banned Drinkers Register as an alternative measure.

2.260 The Committee did not receive a submission from the principal petitioner within the requested timeframe and further enquiries were not conducted.

Petition No 114 – Lot 52 Victoria Road West Swan

Number of signatures:	4
Date tabled and Tabled Paper (TP) number:	10 April 2019 (TP 2609)
Date finalised:	12 June 2019
Principal petitioner:	John Bruce Martin
Tabling Member:	Hon Charles Smith MLC

²³¹ Hon Rita Saffioti MLA, Minister for Planning, letter, 19 June 2019.

²³² Hon Stephen Dawson MLC, Minister for Environment, letter, 10 June 2019, p 1.

²³³ *ibid.*, p 2.

²³⁴ *ibid.*

2.261 This petition opposes the conduct of the City of Swan (City) towards the former proprietor of Lot 52 Victoria Road in West Swan (John Bruce Martin) through restrictive covenants and an unwillingness to rezone the area which significantly reduced the commercial and developmental value of the property.

2.262 In his submission, the principal petitioner outlines a number of grievances against the City, including:

- the removal of the right to make 1000 tonnes of compost a year for onsite use;
- withholding a building licence until receipt of a management plan, despite it already having been received;
- requiring an odour mitigation program and refusing an application to construct a shed to contain any odour; and
- the wording of a restrictive covenant preventing another property (Lot 20) from being used as collateral for a loan.²³⁵

2.263 The tabling Member submitted that 'Mr Martin has dealt with ... significant and unnecessary bureaucratic obligations imposed upon him by the City'²³⁶ and that:

Despite attempting to remedy these issues through the appropriate channels, Mr Martin's attempts to solve these issues were consistently rejected by the City of Swan and the Minister for Planning. It appears that while Mr Martin's business was allowed to operate, the City of Swan had development plans for the area which were never revealed to Mr Martin, but were manifested by the increasing number of issues raised by the City of Swan to Mr Martin.²³⁷

2.264 A response from the City explained that the petition stemmed from 'a very longstanding and persistent grievance that Mr Martin has held against this local government since 1991'.²³⁸

2.265 In setting out the nature and outcome of these grievances, the City advised that:

- An application to relax noise restrictions (which limited the hours that trucks could enter and leave the property) was the subject of a successful appeal by Mr Martin to the then Minister for Planning.²³⁹
- Mr Martin's request for an urban buffer zone (within the then town planning scheme) around his property was rejected by the City on numerous occasions on the basis that the obligation to manage emissions from the farm rested with Mr Martin.²⁴⁰
- The City's refusal of an application to extend the mushroom farm in 2001 was successfully appealed by Mr Martin to the Minister for Planning, conditional on submission of an acceptable odour management plan to the City:

Over the course of this decade and in response to complaints from adjoining properties regarding odour, the City frequently had recourse to notify Mr Martin of concerns with the operation of his mushroom farm and request him to redress

²³⁵ Submission from John Bruce Martin, 16 April 2019.

²³⁶ Submission from Hon Charles Smith MLC, 18 April 2019, p 1.

²³⁷ *ibid.*, p 2.

²³⁸ M J Foley, Chief Executive Officer, City of Swan, letter, 24 May 2019, p 1.

²³⁹ *ibid.*

²⁴⁰ *ibid.*

these. Whilst legal action for alleged breach of the scheme was contemplated by Council on several occasions, no action was ever brought against him.²⁴¹

- By 2008, rezoning of West Swan under the Metropolitan Region Scheme saw increasing residential development in the area. As a result, a 1000 metre environmental buffer around Mr Martin's property (Lot 52) was appropriate to prevent subdivision for urban development unless it was established there would be no emission impacts. The buffer constrained development and a group of developers entered into a commercial agreement with Mr Martin for him to cease operation of his mushroom farm:

Prior to that Mr Martin had ceased operation of the mushroom farm but continued to operate it every couple of months for one day at a time to maintain the buffer zone. From recollection this agreement entailed payment to Mr Martin of a sum in the order of a million dollars. With the execution of that agreement both the Council and the WAPC were satisfied that the buffer could be deleted from the structure plan and subdivision subsequently followed. It is noted that Mr Martin subsequently sought and obtained approval for the subdivision of Lot 52 into urban residential lots in 2015.²⁴²

- In regard to Lot 20, a condition was attached to the Ministerial approval of a subdivision application and avenues of appeal are available to Mr Martin. This matter 'has nothing to do with the City'.²⁴³

2.266 The response from the City contained the following concluding remarks:

In conclusion I must express my amazement that Mr Martin is still persisting with these same grievances which have been resoundingly rejected by numerous regulatory entities over a period of 30 years. For what it is worth, on the face of it, I struggle to see how the circumstances have been unfavourable to Mr Martin – he was able to operate the mushroom farm he applied for originally back in 1991, he was paid a seemingly very generous sum to cease its operations and he has been able to capitalise on the rezoning of the land and its subdivision that ensued.²⁴⁴

2.267 A further letter from the tabling Member acknowledged the City's thorough response to the petition but disagreed with its conclusion:

It is not a question of whether Mr Martin was later able to "capitalise" on changes to his land, it is the fact that he was unable to use his land for the intended purpose without significant restrictions at every step. Later compensation does not exclude or excuse that fact, which appears to have been the main issue Mr Martin has attempted to raise.

Ultimately, Mr Martin merely wanted confirmation that the treatment of him regarding this land was unusual or "heavy-handed", of which I am inclined to agree.²⁴⁵

²⁴¹ *ibid.*, p 2.

²⁴² *ibid.*

²⁴³ *ibid.*

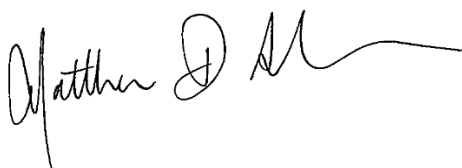
²⁴⁴ *ibid.*

²⁴⁵ Hon Charles Smith MLC, tabling Member, letter, 7 February 2020.

Petition No 121 – Mandatory Vaccination

Number of signatures:	776
Date tabled and Tabled Paper (TP) number:	11 June 2019 (TP 2759)
Date finalised:	26 June 2019
Principal petitioner:	Roslyn Wilyman
Tabling Member:	Hon Robin Scott MLC

- 2.268 This petition states that it is the will of the petitioners that Members of the Legislative Council vote against coercive or mandatory vaccination policies, including the No Jab, No Play policy initiative.
- 2.269 At the time the petition was tabled, the Public Health Amendment (Immunisation Requirements for Enrolment) Bill 2019, which seeks to increase childhood immunisation rates in Western Australia through strengthening immunisation requirements for enrolment in early childhood education and care, was being debated in the Legislative Council.
- 2.270 Tabling of the petition enabled Members to be made aware of the petitioners' views.



Hon Matthew Swinbourn MLC

Chairman

Standing Committee on Environment and Public Affairs

Date first appointed:

23 May 2017

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'2. Environment and Public Affairs Committee

- 2.1 *An Environment and Public Affairs Committee is established.*
- 2.2 The Committee consists of 5 Members.
- 2.3 The functions of the Committee are to inquire into and report on –
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any Bill referred by the Council; and
 - (c) petitions.
- 2.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 2.5 The Committee may refer a petition to another Committee where the subject matter of the petition is within the competence of that Committee.
- 2.6 In this order "environment" has the meaning assigned to it under section 3 (1) and (2) of the *Environmental Protection Act 1986*.'



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