



REPORT OF THE

STANDING COMMITTEE ON CONSTITUTIONAL

AFFAIRS

IN RELATION TO

A PETITION REQUESTING THE SUSPENSION

OF THE JOINT VENTURE TENDER

PROCESS AND COMMUNITY CONSULTATION

WITH RESPECT TO THE LEIGHTON

MARSHALLING YARDS REDEVELOPMENT

Presented by Hon Murray Nixon JP MLC (Chairman)

Report 54

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

December 21 1989

Terms of Reference:

- 1 The functions of the committee are to inquire into and report on:
 - a) the constitutional law, customs and usages of Western Australia;
 - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the time of this inquiry:

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CONTENTS

1	INTRODUCTION.....	1
2	INQUIRY PROCEDURE.....	1
3	THE PETITIONERS' SUBMISSION	2
4	THE MINISTER FOR PLANNING'S SUBMISSION.....	4
5	CITY OF FREMANTLE'S SUBMISSION	4
6	TOWN OF COTTESLOE'S SUBMISSION	5
7	TOWN OF MOSMAN PARK'S SUBMISSION	7
8	JOINT MEDIA STATEMENT – MINISTER FOR PLANNING AND MINISTER FOR TRANSPORT .	8
9	MINISTER FOR TRANSPORT'S SUBMISSION.....	9
10	CONCLUSIONS	10
11	RECOMMENDATION.....	10

REPORT OF THE STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

IN RELATION TO

**A PETITION REQUESTING THE SUSPENSION OF THE JOINT VENTURE TENDER PROCESS AND
COMMUNITY CONSULTATION WITH RESPECT TO THE LEIGHTON MARSHALLING YARDS
REDEVELOPMENT**

1 INTRODUCTION

1.1 On November 10 1999 Hon Giz Watson MLC tabled a petition (*Tabled Paper #370*) requesting the Legislative Council to investigate community concerns about the redevelopment of the Leighton Marshalling yards.

1.2 The petitioners expressed their concern about the redevelopment of the Leighton Marshalling yards and stated that the public were not given the opportunity to express their needs in the planning process. The petitioners also stated that there are grave community concerns regarding beach access and the loss of views. The petition states that *“This area presents a once-only opportunity to create parklands which would complement the safe swimming beaches in the South Metropolitan region.”*

1.3 The petitioners requested that the Legislative Council investigate the community concerns and make recommendations to the Premier and Cabinet to ensure that:

- *“the Leighton Shores Joint Venture tender process is immediately suspended so that the Government can facilitate an open and interactive planning process to develop a sustainable vision for the Port and Leighton beach coastal zones and the Leighton Marshalling yards in keeping with current best practice coastal management policies; and*
- *no land be sold off or developed until the community have developed a stated vision.”*

2 INQUIRY PROCEDURE

2.1 In accordance with its normal procedure, the Committee wrote to the principal petitioner and tabling member seeking submissions on the petition.

2.2 The Committee also wrote to the City of Fremantle, the Town of Cottesloe, the Town of Mosman Park, the Minister for Planning and the Minister for Transport seeking submissions on the petition.

3 THE PETITIONERS' SUBMISSION

3.1 The Committee received a letter dated January 6 2000 from Ms Susan Harrington, the principal petitioner and Spokesperson for the Leighton Action Coalition (LAC).

The Planning Process

3.2 Ms Harrington began her submission by addressing issues concerning the planning process. She stated that the Fremantle Regional Strategy 1994 (FRS) proposed the Metropolitan Region Scheme (MRS) re-zoning of the Leighton Marshalling yards and the adjoining Port Beach Road reserve to 'Urban'. She claimed that the FRS failed to satisfy the aims and objectives of the study which were to include a comprehensive approach to land-use planning.

3.3 Ms Harrington claimed that the FRS did not consider the adequacy of the existing coastal Parks and Recreation reserves, a process which under normal circumstances should have been considered as integral to achieving a comprehensive review.

3.4 In her letter Ms Harrington stated that *"It remains unclear why coastal planning issues were not considered as part of the FRS process, however the process relating to Leighton Beach and the marshalling yards appears to have resulted in an outcome-driven concept plan rather than an integrated strategy for the area."*

3.5 She also claimed that the FRS did not have the full support of local government despite being published under both the City of Fremantle and Department of Planning and Urban Development logos. She claimed that the FRS has never been adopted or endorsed by the City of Fremantle and was only adopted by the then State Planning Commission.

3.6 Ms Harrington stated that at the time the City of Fremantle had no first hand knowledge of coastal management issues relating to Leighton since the Fremantle Port Authority controlled the beach. She claimed that the Mosman Park Council, who are responsible for the northern section of Leighton beach, were not invited onto the Regional Strategy Taskforce, despite having requested a position in light of the direct impact on Mosman Park.

Coastal Management Provisions

3.7 Ms Harrington claimed that there has been a failure by the Minister for Planning and the Multiplex/Westrail consortium to acknowledge the endorsed State Government position on coastal reserves. The Committee was advised that the Western Australian Planning Commission (WAPC) has two endorsed policies which refer specifically to coastal Parks and Recreation Reserves, being WAPC Policy No 2.3 and WAPC Policy No 6.1. The principal petitioner advised that together, these policies recommend that

setbacks of 100 metres from the line of permanent vegetation be used as the guideline for sandy and rocky coasts.

- 3.8 The letter stated that the FRS and any responsible land-use planning for coastlines should reflect these regional coastal requirements by recommending a minimum effective reserve of 100 metres, or 150 metres adjacent to the high-use beach node at the Fremantle Surf Life Saving Club and possibly also at the Old Cable Station at the northern margin of the site.

Community Consultation

- 3.9 Ms Harrington claimed that the public were unaware of the significance of the decisions being made during the FRS process. She claimed that public promotion of the FRS during its development was primarily focused on the Fremantle local authority area.
- 3.10 The letter acknowledged that while general advertisements were placed in newspapers with state circulation, LAC consultations had shown that the vast majority of beach users were completely unaware of the FRS process and outcomes.
- 3.11 The Committee was advised that the few studies which have been made of beach-use suggest that beach users come from a wide regional catchment and that beach-use is increasing at Leighton, which is in contrast to the decreasing use at many other metropolitan beaches.
- 3.12 Ms Harrington claimed that *“There is no doubt that community (sic) has now become aware of what is at stake and current priorities are strongly in support of the Leighton land being set aside as coastal reserve.”*
- 3.13 She also stated that *“Indeed, the ‘community vision’ developed through a public workshop facilitated by the Leighton Action Coalition, devotes most of the Leighton site to environmental and recreational reserve, with the only area available for residential/commercial development being adjacent to the North Fremantle railway station, where the land is widest.”*

Summary

- 3.14 Ms Harrington concluded her submission by stating that the planning process which has led to the current community furore over the proposed residential development of Leighton beach and the Leighton Marshalling yards has resulted from inept and incomplete land-use planning dating back many years. She claimed that this type of reactionary planning approach is very divisive and cannot lead to anything like a best practice planning outcome.

- 3.15 The letter concluded by stating that *“It is crucially important that a mechanism be found to ensure that appropriate and forward-looking planning is undertaken to ensure a sustainable future for the Leighton coastal zone, to provide for erosion processes and the increasing recreational needs of our growing population.”*

4 THE MINISTER FOR PLANNING’S SUBMISSION

- 4.1 The Committee wrote to Hon Graham Kierath MLA, Minister for Planning on January 20 2000 advising him that the petition had been tabled in the Legislative Council and requesting information about the WAPC policies with respect to coastal parks and recreation reserves. The Committee sought specific information about WAPC Policy No 2.3 (Public open space in residential areas) and WAPC Policy No 6.1 (Country coastal planning policy) and whether they apply to the Leighton area. The Committee also asked the Minister whether the appropriate setbacks and Department of Environmental Protection (DEP) requirements would be applied to any future development in the Leighton area and if not, why not.

- 4.2 The Committee received a reply from the Minister for Planning dated February 10 2000. The Minister advised the Committee that the WAPC will play a key role in statutory approvals. It will make recommendations to him on any proposed Town Planning Scheme amendment and is the approval authority for any subdivision of the land.

- 4.3 The Minister advised that in giving him advice and in its role of determining applications for subdivisions, the WAPC will take into account a number of operational policies, including WAPC Policy No 2.3.

- 4.4 The Minister also advised that the Leighton beach area requires a Town Planning Scheme amendment to the City of Fremantle Town Planning Scheme for any subdivision and development to proceed. The Minister advised that all proposed Town Planning Scheme amendments are referred to the Environmental Protection Authority for environmental assessment. It is through this mechanism that environmental requirements would be set for Leighton beach.

5 CITY OF FREMANTLE’S SUBMISSION

- 5.1 In response to its invitation to advise the Committee on the City of Fremantle’s view regarding the planning process for the Leighton Shores Joint Venture, the Committee received a letter from Mr Geoff Broad, Acting Chief Executive Officer, City of Fremantle on January 25 2000.

- 5.2 Mr Broad advised the Committee that the City of Fremantle has consistently voiced its opposition to the current tender process for the Leighton Marshalling yards since it was announced in June 1998.
- 5.3 He advised that the City of Fremantle Council wrote to the Ministers for Transport and Planning and the Member for Cottesloe, and advised the Council's concerns regarding the need for a proper and thorough planning process to identify and resolve contamination, regional and local roads, public transport connections, beach access, freight rail access and open space planning. The Council also identified at that time that the process was inconsistent with the FRS.
- 5.4 The Committee was advised that the City of Fremantle's opposition to the process increased when the draft concept plan for the site was released for community comment in September 1999.
- 5.5 At that time, the City of Fremantle wrote to the Premier and others and reiterated concern with the process. The City of Fremantle suggested that the WAPC should direct, lead and co-ordinate the planning process for the site.
- 5.6 The City of Fremantle's concerns were also reflected in a submission lodged on the concept plan and in a joint submission lodged on behalf of the City of Fremantle and the Towns of Cottesloe and Mosman Park.

6 TOWN OF COTTESLOE'S SUBMISSION

- 6.1 On February 4 2000 the Committee received a letter from Mr Stephen Sullivan, Manager, Development Services, Town of Cottesloe.
- 6.2 Mr Sullivan advised that although the Town of Cottesloe has only a small portion of the development site located within its boundaries, Council is concerned that there has not been enough work carried out in the early stages to clearly identify all the constraints applicable to the site. He advised that important issues that need to be addressed include:
- coastal setback and foreshore requirements;
 - open space allocation;
 - compatibility with the Vlamingh Parklands study;
 - assessment and establishment of buffer zones to industry and transport corridors;
 - consideration to the re-opening of the Leighton train station;
 - freight rail requirements; and

- local and regional road connections.
- 6.3 Mr Sullivan submitted that *“Only when all the local and regional issues within and surrounding the site have been clearly identified and addressed, can all parties feel confident in moving forward in the development of this important and difficult site, while safeguarding the importance of this area as a regional asset.”*
- 6.4 Mr Sullivan advised the Committee that the Town of Cottesloe Council was requested to make a submission on the Leighton Shores proposal for the redevelopment of the Leighton Marshalling yards and at its November 1999 meeting resolved, *inter alia*:
- “(1) That the consultants for the Leighton Shores proposal be advised that:*
- (a) Council reiterates its concern in relation to the process that is being followed, which has previously been expressed to the Premier by Council, and the other Local Authorities of the City of Fremantle and the Town of Mosman Park;*
 - (b) Council has major concerns in relation to the unresolved issues of:*
 - (i) coastal management;*
 - (ii) transportation (road and rail);*
 - (iii) open space as it relates to the concept proposal; and*
 - (iv) the concept proposal, and how it relates to the recommendations contained within the final report on the Vlamingh Parklands.*
 - (c) Council believes that the issues raised in (b) must be addressed first, and the implications of that research should be considered before any further consideration is given to the project.”*
- 6.5 Mr Sullivan submitted that the community is demanding a say in how the government controlled land should be developed. He submitted that *“Therefore, the process to be used to develop this important and difficult site must be logical, soundly based, transparent and provides an outcome that the public can feel confident with.”*
- 6.6 Mr Sullivan stated that the developers have used the FRS as the basis for the concept plan, however submitted that the FRS is flawed in that it did not address issues such as coastal setback or regional recreation needs.
- 6.7 He submitted that the current process has resulted in a concept plan for the site that has not properly addressed all the constraints on the site and that issues such as the demands of the community for a greater amount of open space have not been addressed.

- 6.8 Mr Sullivan advised that the Town of Cottesloe did not support the current process as it is not clear to any group what all the constraints are, the effect those constraints will have on the final development of the site or how the locality will be developed. He submitted that public confidence in the process will be low as the outcome for the development site will not be known until the end of the statutory process.
- 6.9 Mr Sullivan outlined the Council's preferred process for the development of the land. Council believed that all the planning and environmental issues associated with the site should be identified and decisions should then be made in response to those matters. A development plan could then be prepared that took into account all the relevant factors up front rather than trying to address them in the final statutory processes.
- 6.10 Mr Sullivan submitted that the development plan could then be tested for public acceptance during a consultation process. The views of the community could then be based on a more realistic concept proposal that had addressed the major planning and environmental issues, rather than the current proposal that sought public comment on a concept plan that did not address major planning and environmental issues.
- 6.11 He submitted that the government's response to that consultation process would result in a planned outcome for the development of the site. Only when this was done would the community, the developers, the various state agencies and the relevant local authorities have a clear picture of the suitability of the site for development and the anticipated form that it would take.

7 TOWN OF MOSMAN PARK'S SUBMISSION

- 7.1 The Committee received a letter from Mr TJ Harken, Chief Executive Officer, Town of Mosman Park on February 8 2000.
- 7.2 Mr Harken advised the Committee that the Town of Mosman Park was not invited to have representation on the FRS Taskforce despite specific request. The Town of Mosman Park had requested representation because the study proposed to include transport requirements extending into Mosman Park. Further, the proposed Leighton Marshalling yards development included in the Draft Strategy showing a hotel and other commercial uses on land within the Town of Mosman Park was not canvassed with the Mosman Park Council.
- 7.3 The Committee was advised that the Mosman Park Council resolved to reaffirm its preferred option for the land to be set aside as a regional park and maintained in perpetuity by the Government of Western Australia. It re-iterated its concerns in relation to the process being followed which had previously been expressed to the

Premier by the Town of Mosman Park, the City of Fremantle and the Town of Cottesloe.

7.4 The Council also noted that it had major concerns in relation to:

- coastal management; and
- open space as it relates to both the Vlamingh Parklands Recommendations and the Leighton Shores Concept Plan,

and that these issues must be addressed first and the implications of the findings be considered prior to any further consideration being given to the project.

7.5 The Council also resolved that it supported the opening of the Leighton train station to provide the public with the shortest distance from a train station to a public beach.

8 JOINT MEDIA STATEMENT – MINISTER FOR PLANNING AND MINISTER FOR TRANSPORT

8.1 On February 7 2000 the Minister for Planning and the Minister for Transport released a joint media statement (media statement) concerning the proposed development of the Leighton Marshalling yards.

8.2 The media statement announced that the Ministry for Planning would set the key parameters for the proposed enhancement of the former Westrail Marshalling yards at Leighton beach.

8.3 It announced that State Cabinet had agreed that a formal planning process would ultimately shape the final design proposal for redevelopment of the former railway Marshalling yard site at Leighton. The process would involve the community, local government and relevant Government agencies in extensive consultation.

8.4 The media statement announced that the Minister for Planning, through the FRS Implementation Committee, would address, among other issues:

- the setback of the development from the beach;
- the level of public open space;
- transport corridors;
- coastal management; and
- planning and environmental issues.

8.5 The Minister for Planning said that the Government expected an interim report from the Ministry for Planning later this year.

9 MINISTER FOR TRANSPORT'S SUBMISSION

- 9.1 On February 9 2000 the Committee wrote to Hon Murray Criddle MLC, Minister for Transport advising him that the petition had been tabled in the Legislative Council. The Committee's letter outlined the petitioners' concerns and advised that they had requested, among other things, that the tender process be suspended and no land be sold off or developed until the community has been properly consulted.
- 9.2 In accordance with the terms of the petition and the petitioners' express request, the Committee sought confirmation from the Minister that the land the subject of the petition would not be sold off or developed until the new concept plan had been approved.
- 9.3 In response to its letter to the Minister for Transport of February 9 2000 the Committee received a letter from the Minister for Planning on April 20 2000. The Minister advised that the Minister for Transport had asked him to respond to the Committee.
- 9.4 The Minister for Planning stated that *"In regard to the land the subject of the petition, I confirm that Cabinet decided that Regional Planning Guidelines will be prepared prior to any development of the Leighton Marshalling Yards site. Accordingly none of the subject land will be able to be developed before the guidelines have been completed and the normal statutory planning and environmental processes have been undertaken."*
- 9.5 The Committee considered that this response did not answer the question regarding the sale of the land asked of the Minister for Transport. Accordingly, the Committee wrote to the Minister for Transport by facsimile letter dated May 8 2000 again seeking confirmation that the land the subject of the petition would not be sold until the new concept plan had been approved. The Committee's letter was very specific in addressing the question of the sale of the land, as opposed to the development of the land.
- 9.6 On May 17 2000 the Committee received a response from the Minister for Transport in which he stated that *"The Government has made its position on this issue clear. That is, Regional Planning Guidelines will be determined, and the normal statutory and environmental processes will be undertaken prior to any development of the former Leighton railway marshalling yard site."*
- 9.7 Again, the Committee considered that this did not answer the question that had been asked. The Committee again wrote to the Minister for Transport by letter dated May 31 2000 advising that unless the Committee received confirmation by June 21 2000 as to when he would be in a position to address the issue of the sale of the land, the

Committee intended to report to the Legislative Council that it had been unable to obtain an answer to the question.

9.8 The Committee received a facsimile letter from the Minister for Transport on June 21 2000. The letter stated that the Government has no proposal before it for the sale of the land other than the Westrail joint venture redevelopment proposal that had previously been the subject of a public consultation process.

9.9 The Minister stated that the future use of the land will be directed by the parameters set by the Minister of Planning which will oversee the normal statutory and environmental processes applying to any redevelopment proposal.

10 CONCLUSIONS

10.1 The Committee notes that State Cabinet has agreed that a formal planning process will shape the final design proposal for redevelopment of the Leighton Marshalling yard site and that this process will involve the community, local government and relevant Government agencies in extensive consultation. The Committee concludes that the petitioners' request that the Leighton Shores Joint Venture tender process be suspended so that the Government can facilitate an open and interactive planning process has been satisfied.

10.2 The Committee notes the advice from the Ministers for Transport and Planning that Cabinet has decided that Regional Planning Guidelines will be prepared prior to any development of the Leighton Marshalling Yards site. The Committee concludes that the petitioners' request that "*...no land be developed until the community have developed a stated vision*" should be satisfied by the public consultation outlined in section 8 of this report.

10.3 Despite numerous requests concerning the sale of the land, the Minister for Transport has not answered the Committee's specific question concerning this issue. The Committee concludes that this part of the petition has not been satisfied.

11 RECOMMENDATION

11.1 That the Minister for Transport advise the Committee whether or not the Leighton Marshalling yards site will be sold prior to the final design proposal being approved.



Hon Murray Nixon JP MLC
Date: July 10 2000