



REPORT OF THE

STANDING COMMITTEE ON

CONSTITUTIONAL AFFAIRS

IN RELATION TO

A PETITION REQUESTING THE

LEGISLATIVE COUNCIL TO ENQUIRE

INTO THE CITY OF PERTH'S OWNERSHIP

OF LOT 17 MINDARIE/TAMALA PARK

Presented by the Hon Murray Nixon JP MLC (Chairman)

Report 39

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

21 December 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 date of this report:

Hon Murray Nixon JP MLC (Chairman)

Hon Ray Halligan MLC

Hon Tom Helm MLC

Staff as at the date of this report:

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**REPORT OF THE LEGISLATIVE COUNCIL
CONSTITUTIONAL AFFAIRS COMMITTEE**

IN RELATION TO

**A PETITION REQUESTING THE LEGISLATIVE COUNCIL TO ENQUIRE INTO THE CITY OF
PERTH'S OWNERSHIP OF LOT 17 MINDARIE/TAMALA PARK**

1. INTRODUCTION

1.1 THE PETITION

- 1.1.1 On 17 December 1998, Hon Ken Travers MLC tabled a petition (*TP# 652*) requesting the Legislative Council to enquire into the City of Perth's ownership of Lot 17 Mindarie/Tamala Park ("Lot 17").
- 1.1.2 The petition was signed by residents of the Towns of Cambridge, Victoria Park and Vincent which comprised parts of the former City of Perth prior to its restructure. The petitioners stated their belief that each of these new Towns should have received a quarter share of the City of Perth's ownership of Lot 17.
- 1.1.3 The petitioners stated that following the restructure of the former City of Perth, the City retained full ownership of the asset without an equitable share being returned to the three new Towns and their ratepayers and residents. The petition called upon the Legislative Council to enquire into why this decision was made and how the situation could be rectified to return to the three new Towns a quarter share each of the City of Perth's ownership of Lot 17.

2. THE PETITIONERS' SUBMISSIONS

- 2.1 In response to its request for information, the Committee received a letter from the Chief Executive Officer of the Town of Cambridge, Mr Graham Partridge, dated 8 April 1998 in support of the matters raised in the petition.
- 2.2 In his letter Mr Partridge stated that, *inter alia*:
- "the *City of Perth Restructuring Act 1993* ("the Restructuring Act") determined the process for dividing the former City of Perth into four municipalities including the three new Towns of Cambridge, Victoria Park and Vincent;

- the Restructuring Act did not provide the manner in which assets outside the former City of Perth boundaries should be distributed. The division of all other assets was catered for;
- assets owned by the former City of Perth outside its boundaries include a one-third share in Lot 17 and Roberts Street Depot;
- the land at Lot 17 could be in the vicinity of \$200 million depending on the final use determined for the land. The City of Perth's equity in the land could therefore be approximately \$67 million; and
- as a result of the restructuring of the former City of Perth, the ratepayers of the three new Towns did not receive a share of the City of Perth's ownership of Lot 17, with 100% equity remaining with the City of Perth."

2.3 Mr Partridge claimed that at the time the former City of Perth purchased the one-third share in Lot 17, it did so for the benefit of all ratepayers in its district and all ratepayers contributed to the acquisition. Mr Partridge also claimed that it was never intended that the benefits would only be available to the ratepayers within the City of Perth following its restructuring. Mr Partridge submitted that as a consequence, a majority of the ratepayers of the former City of Perth had been disenfranchised from an equitable share of the value of the asset at Lot 17. This was estimated to be approximately \$16.5 million for each of the four Councils.

2.4 The Committee was advised by Mr Partridge that the Mindarie Regional Council, of which the three new Towns have been admitted as members, lease part of Lot 17 for a refuse site from the owners, being the Cities of Joondalup, Stirling, Perth and Wanneroo. The lease expires in October 2011. Mr Partridge expressed concern that after the lease expires, the owners may enter into a new lease excluding the Towns of Cambridge, Victoria Park and Vincent. Mr Partridge submitted that this would leave these Councils with no guarantee of a continuing refuse disposal site at the same concessional rates enjoyed by the owners of Lot 17.

2.5 Mr Partridge claimed that as a result of the actions outlined above, the ratepayers of the Towns of Cambridge, Victoria Park and Vincent had been seriously disadvantaged. The disadvantage related to the loss of a share in the capital value of the land and to the uncertainty with respect to future refuse disposal beyond the year 2011.

2.6 Mr Partridge stated that the purpose of the petition is to:

- enquire into why the decision was made to exclude the manner in which assets outside the former City of Perth boundaries should be distributed; and

- enquire into how the situation could be rectified to return to the three new Towns a quarter share each of the City of Perth's ownership of Lot 17.

2.7 Mr Partridge stated that to achieve a quarter share in Lot 17 would not require any payments to be made by the City of Perth to the three new Towns. Mr Partridge proposed that the matter could be resolved by altering the Certificate of Title to Lot 17 to reflect an equal share in that property by the four new municipalities created as a result of the restructuring of the City of Perth.

2.8 Mr Partridge concluded by stating that:

"...the ratepayers of the three Towns created as a result of the restructure of the City of Perth are severely aggrieved at the process in which their equitable share of Lot 17 has been removed. The Towns have been morally and financially disadvantaged by this decision which will have consequences for many years to come, particularly in relation to the future of their refuse disposal."

2.9 The Committee notes that, contrary to Mr Partridge's statement quoted above, a share in the equity of Lot 17 was at no time vested in the three Towns. The equity in Lot 17 has at all times remained vested in the City of Perth.

3. THE CARR-FARDON REPORT

3.1 The Carr-Fardon Report was prepared by Dr David Carr, former Town Planning Commissioner for Western Australia and Mr Ralph Fardon, former City Manager/Town Clerk of the City of Stirling. Dr Carr and Mr Fardon were engaged as consultants to complete the proposal for the restructuring of the City of Perth. The report, dated 31 August 1993, is entitled "A Capital City for Western Australia" and was tabled in the Legislative Council (TP # 742) on 2 November 1993.

3.2 The Carr-Fardon Report stated that:

"The City of Perth has been well managed financially. Currently, the Perth City Council has fixed assets of approximately \$150 million, reserve funds of approximately \$50 million including Parking (\$20 million), Endowment Lands (\$15 million) and General Purposes (\$5 million), an annual income of approximately \$70 million and total debts of less than \$25 million."

3.3 The Carr-Fardon Report also stated that:

"It is possible to create three new Towns by May 1995 which would be community oriented and financially independent".

3.4 As part of the financing for the restructuring of the City of Perth, the Carr-Fardon Report proposed that:

- the newly created City of Perth "accept all loan indebtedness and any facilities made over to the three Towns to be loan free";
- access be provided to the Reserve Funds which had been created on both the *City of Perth Parking Facilities Act 1956* ("the Parking Facilities Act") and the *City of Perth Endowment Lands Act 1920* ("the Endowment Lands Act");
- following the creation of the three new Towns and the transfer of assets, any remainder of the Parking Facilities and Endowment Land Funds remain with the City of Perth; and
- the investment in Lot 17 Mindarie remain with the City of Perth.

3.5 It was noted in the Carr-Fardon Report that amendments to the Endowment Lands Act and the Parking Facilities Act would be required to permit a distribution from the reserve funds to the newly created Towns with the balances to remain at the discretion of the City of Perth (as re-constituted).

3.6 The Carr-Fardon Report proposed that all existing legal obligations, responsibilities, vestings and contractual liabilities as apply to any transferred property of the current City of Perth be carried through to the newly created Towns. The report proposed that an exception to this assignment be made for the Endowment Lands and any works in progress (such as the Beatty Park Pool Redevelopment), which would remain in the confines of the City of Perth. Following assignment of these elements and any distribution of assets and liabilities as scheduled by the Governor, the report proposed that the balance of assets and property would remain in the ownership and the care and control of the City of Perth (as re-constituted).

4. PARLIAMENTARY QUESTION

4.1 A question concerning the Mindarie Land Split was put to Hon Paul Omedei MLA, Minister for Local Government, by Dr Constable MLA in the Legislative Assembly on Thursday, 12 March 1998. In his response, the Minister referred to the Carr-Fardon Report and stated that:

"The commissioners set up the cities with staff, new plant and equipment, new office accommodation and \$1 million in reserves. The towns' annual financial reports show that they have progressed well financially with considerable reserves held on account. The commissioners made the decisions at the time in relation to the split and they were agreed to by the Government."

4.2 The Minister also stated that:

"The one-third of the Mindarie land that belonged to the old City of Perth will not be split because a decision has been made already about how the assets are to be allocated. A number of assets were addressed, including the endowment land fund held by the City of Perth and the parking fund of which the Minister for Local Government has control until May 1999. It is important that those funds are distributed equitably. The funds held by the City of Perth were distributed to set up the three new towns, which are now running very well and efficiently."

5. CONCLUSIONS

5.1 The Committee has considered the petition and the submission from the Town of Cambridge. The Committee has not been presented with evidence to suggest that the correct procedures for the division of the assets of the former City of Perth have not been followed. The Committee notes that the Restructuring Act incorporated the recommendations made in the Carr-Fardon Report.

5.2 As the issues raised in the petition involve a property dispute between local government authorities, the Committee believes that the best procedure for pursuing the claim would be for the petitioners to approach the Minister for Local Government. If the Minister is convinced of the merits of the claim, it would be necessary for Parliament to amend the Restructuring Act.

Recommendation: That should the petitioners wish to take this matter further, the best course of action would be for them to approach the Minister for Local Government to negotiate amendments to the Restructuring Act.

Hon Murray Nixon JP MLC

Date:

