



REPORT OF THE

STANDING COMMITTEE ON

CONSTITUTIONAL AFFAIRS

IN RELATION TO

A PETITION TO PRESERVE SWANBOURNE

VILLAGE BY OPPOSING THE METROPOLITAN

REGION SCHEME AMENDMENT

No. 982/33 - REGIONAL ROADS (PART 3)

Presented by the Hon Murray Nixon JP MLC (Chairman)

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:

Ms Felicity Beattie, Advisory/Research Officer

Mr David Driscoll, Committee Clerk

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

ISBN 0 7309 8935 6

CONTENTS

1.	Introduction	1
2.	Background to the Petition	2
3.	The Claremont Crescent/Shenton Road Proposal	3
4.	The Petitioners' Submissions	4
5.	The Town of Claremont's Submissions	5
6.	The Town of Cottesloe's Submissions	6
7.	The Ministry for Planning's Submissions	7
8.	Conclusions	10

**Report of the Legislative Council
Constitutional Affairs Committee**

in relation to

**A Petition to preserve Swanbourne Village by opposing the Metropolitan
Region Scheme Amendment No. 982/33 Regional Roads (Part 3)**

1. Introduction

1.1 The Petition

1.1.1 On 23 October 1997, Hon Jim Scott MLC tabled a petition (*TP# 924*) requesting the Legislative Council to preserve the Swanbourne Village by opposing the Metropolitan Region Scheme Amendment No. 982/33 - Regional Roads (Part 3). In particular, the petition requested the Legislative Council to:

- oppose the Metropolitan Regional Scheme Amendment No. 982/33 Regional Roads (Part 3) in so far as it effects the Claremont Crescent and Shenton Road reserve; and
- support the removal of the Claremont Crescent and Shenton Road reserve in its entirety.

1.1.2 The petitioners stated that in the event that neither of the above was achievable, they would like the following to happen prior to any road works occurring through the Swanbourne Village:

- a social impact study of any proposed road construction be effected;
- an environmental impact study of any proposed road construction be effected;
- any new regional road construction be made inside the existing rail reserve and be sunk concurrently with the existing rail line; and
- other means of public transport through the district be investigated.

1.1.3 The petition was retabled on 19 March 1998 (*TP # 1452*) and 21 October 1998 (*TP # 288*) by Hon Jim Scott MLC. The petitioners again requested that the Legislative Council pursue the above course of action.

2. Background to the Petition

- 2.1 The Metropolitan Region Scheme Amendment No. 982/33 - Regional Roads (Part 3) ("the proposed amendment") to the Metropolitan Region Scheme ("the MRS") was initiated by the Western Australian Planning Commission ("the WAPC") in September 1996. The purpose of the proposed amendment is to revise the reservation and land requirements for future improvements to sections of eight regional roads, namely Beaufort Street, Broun Avenue, William Street, Main Street, Claremont Crescent, Shenton Road, Sevenoaks Street and Albany Highway.
- 2.2 The reservations are intended to protect future opportunities for road improvements when warranted and allow orderly development of abutting properties.
- 2.3 At its meeting on 10 September 1996 the Perth Region Planning Commission, acting under delegated authority from the WAPC, resolved to formulate the proposed amendment to the MRS and refer it to the Environmental Protection Authority ("the EPA") in accordance with Section 33 of the *Metropolitan Region Town Planning Scheme Act 1959* ("the MRTPS Act"). The EPA decided that the proposed amendment did not require assessment under Part IV of the *Environmental Protection Act 1986* and on 12 November 1996 the Perth Region Planning Committee resolved to proceed with the proposed amendment.
- 2.4 The Minister for Planning gave preliminary approval to the proposed amendment which was gazetted on 14 February 1997. The proposed amendment was then advertised for public submissions between 17 February 1997 and 23 May 1997, a period slightly in excess of the three months required under the MRTPS Act.
- 2.5 Copies of the proposed amendment were made available for public inspection during ordinary business hours at the:
- Ministry for Planning;
 - offices of, *inter alia*, the Town of Claremont;
 - offices of Main Roads WA; and
 - State Reference Library.

During the public inspection period, notice of the proposed amendment was published on three occasions in, *inter alia*:

- *The Government Gazette;*
- *The West Australian newspaper;*
- *The Sunday Times newspaper;*
- *The Claremont/Nedlands Post; and*
- *The Guardian Express.*

2.6 Owners of land affected by the proposed zonings and reservations contained in the proposed amendment were provided with a copy of a summary brochure, a technical report and (where appropriate) a plan showing how their property would be affected. The land owners were also advised of the opportunity and procedure for making submissions.

2.7 A total of 182 submissions were received on the proposed amendment. Hearings on the submissions were held on 25 and 27 June 1997 and 3 July 1997 by a Hearings Committee established by the Perth Region Planning Committee of the WAPC. A total of 40 hearings, representing 46 submissions, were held.

3. The Claremont Crescent/Shenton Road Proposal

3.1 The part of the proposed amendment to which the petition relates is that section of Claremont Crescent and Shenton Road which runs between Servetus Street and Graylands Road in the Town of Claremont. It is classified as an Important Regional Road reservation under the MRS. The existing Important Regional Road reservations for Claremont Crescent/Shenton Road vary between approximately 35 and 60 metres wide, with most sections being more than 50 metres wide.

3.2 The proposed amendment would reduce the width of the reservation to 23-25 metres. In the *Western Australian Planning Commission's Technical Report (February 1997)* ("the WAPC's Technical Report") it was noted that this would be sufficient to accommodate a dual carriageway road with a 1.8 metre wide median to protect pedestrians. It would also allow wider kerbside lanes for improved safety for on-road cyclists. Intersection improvements such as roundabouts or protected right-turn lanes at major intersections had also been allowed for in the proposed reservation.

3.3 It was noted in the *Western Australian Planning Commission's Report on Submissions (September 1997)* ("the WAPC's Report on Submissions") that "the size of the reservation that is to be retained for Claremont Crescent would accommodate a four lane road because the future need for this can not be entirely ruled out at this point in time." It was explained that "future need for this upgrading can not be determined with any

degree of accuracy yet due to unknown factors such as proposals for increases in retail and other land uses in the Claremont Town Centre." The WAPC's Report on Submissions stated that, as a result, the WAPC considered it prudent to maintain the option for future improvements to Claremont Crescent as and when required.

- 3.4 It was further pointed out in the WAPC's Report on Submissions that upgrading Claremont Crescent to four lanes was just one option for how the Town of Claremont could decide to improve the road and other facilities within the reservation. It was noted that this was not a construction proposal, but rather a proposal to reduce and rationalise an existing reservation that had been in place since 1963. It was stated that this would allow an unnecessary constraint on development potential and property values to be reduced or removed altogether from as many properties as possible. The WAPC's Report on Submissions stated that the proposed, reduced reservation actually protects options that can meet the needs of the shopping centre for access and parking as well as improving capacity for regional traffic movements, as and when required.

4. The Petitioners' Submissions

- 4.1 As part of their submission, the petitioners wrote to the Committee on 24 December 1997 setting out their objections to that part of the proposed amendment that related to Claremont Crescent. Those objections are outlined below.
- 4.1.1 The petitioners stated that the development of the St John's Wood housing estate in Mount Claremont and the construction of other major roads in the area such as Servetus Street and West Coast Highway west of Rochdale Road had put an end to the need for Claremont Crescent to be included in the "important regional road scheme".

The petitioners noted that the Claremont Crescent /Shenton Road reserve formed part of the original Stephenson Hepburn Report Plan which was put together in the 1950's. It was noted that the population density forecast in the Stephenson Hepburn Report for people living between Nedlands and Fremantle had been exceeded due to suburban infill near the railway. The petitioners claimed that the report could not have predicted the increased use of motor vehicles and the increased demand for parking space. It was therefore argued that the Claremont Crescent/ Shenton Road reserve was now obsolete due to these unforeseen changes in technology and demographics.

The petitioners also noted that the railway reserve through Cottesloe - Claremont was a minimum of 36 metres wide. It was submitted that this was wide enough to accommodate a four lane highway as well as the railway line, if in the future the option of an important regional road through the district was required.

- 4.1.2 The petitioners stated in their submission that the Swanbourne shopping centre is the heart of the Swanbourne Village and is considered by the community to be unique and of historical significance. It provides both a convenience for the people in the district and a social meeting place. It was claimed that any road widening would destroy the quietness and the panorama enjoyed by the Swanbourne community.
- 4.1.3 The petitioners also stated that the reduction of the width of the reserve would have an adverse environmental impact which included decreased air quality as a result of increased exhaust emissions, visual pollution and noise pollution.
- 4.2 The petitioners provided a further submission to the Committee by way of a letter dated 26 February 1999. In that letter the petitioners expressed concern about the conduct of planning procedures with respect to the proposed amendment. Those concerns are outlined below.
- 4.2.1 The petitioners submitted that the WAPC should not be permitted to "prepare an amendment to the MRS, which includes a number of totally unrelated roads, in very diverse suburbs, in the one Amendment. This makes it very difficult for anyone to support or oppose any one particular street contained in the amendment." The petitioners claimed that there was no obvious logic in comparing Claremont Crescent/Shenton Road with other streets contained in the proposed amendment such as Albany Highway, Beaufort and William Streets, and Broun Avenue. The petitioners submitted that each amendment should only contain one road unless a number of adjoining or continuing roads needed to be considered as part of a single project.
- 4.2.2 The petitioners also claimed that "the Hearings process on Submissions is fundamentally flawed in that the Hearings Committee is comprised of "*Planning People*" who are assisted by technical officers from within the Planning Department and therefore not independent." The petitioners submitted that "if there is to be a "Hearing Process", then it should be conducted by a panel of completely independent persons, not Planning Ministry personnel."

5. The Town of Claremont's Submissions

- 5.1 The Town of Claremont submission stated that at a special meeting of electors held on 15 May 1997, a motion was adopted that the reservation applying to Claremont Crescent should be totally removed.
- 5.2 The Town of Claremont objected to the proposed amendment for the following reasons:
- the proposed reduction in the reservation is too restrictive and does not allow sufficient flexibility in designing any new road to minimise any adverse effects

on residents and the Swanbourne Shopping Centre. Notwithstanding the Ministry for Planning comments that the road design is indicative only and subject to Council design, the fact is that the width and configuration of the reservation virtually dictates the design of the carriageway. It was claimed that this design would be disastrous for the Swanbourne Shopping Centre as the loss of car parking would severely affect its viability. Further, the volume of traffic passing by in four lanes of traffic would result in the shopping centre no longer being pedestrian friendly;

- the public consultation has been inadequate and that which has occurred has been too late in the submission period to enable the Council and the residents to assess all the issues. The proposed amendment affected all of the residents of Swanbourne, however only the owners of property likely to be affected were advised in writing. Furthermore, the Town of Cottesloe was not formally advised of the proposal despite the reservation extending right up to its boundary;
- the proposal will severely affect access to the Swanbourne train station by placing four lanes of fast moving traffic between the residents of Swanbourne and the station. In addition, the loss of car parking around the station would result in minimal use being made of the railway line; and
- the recently created veloway (cycleway) running past the Claremont Agricultural Showgrounds Station is part of a plan to provide a veloway between Perth and Fremantle. No provision has been made in the reservation to continue this facility. Not to do so will jeopardise the whole project and will result in the section completed, at a cost of approximately \$1 million, being made virtually redundant.

5.3 The Town of Claremont Council requested that consideration of the proposed amendment, so far as it relates to Claremont Crescent, be deferred for at least 12 months to enable the Council and the community to examine all alternatives to minimise the effect on the Swanbourne Shopping Centre and the Swanbourne community.

6. The Town of Cottesloe's Submissions

6.1 In a detailed submission to the WAPC, the Town of Cottesloe expressed a number of concerns relating to the proposed amendment. The Town of Cottesloe objected to the proposed amendment for the following reasons:

- although the proposed amendment to the MRS for Claremont Crescent is located within the Town of Claremont, it abuts the border of the Town of

Cottesloe. The effect of any road proposals on Claremont Crescent, in particular the Claremont Crescent shops, will have a direct flow-on effect on commercial properties, residential properties and local residents within the Town of Cottesloe. Accordingly, the Town of Cottesloe expressed concern that copies of the proposal for the changes to Claremont Crescent were not referred to it at the commencement of the amendment process;

- rationalising the existing reservation would have a dramatic effect on the existing properties located on the Claremont side of the railway line and on the operations of the Swanbourne shopping centre. There would be implications for the viability of the shopping centre and the proposal would alter the role of the centre as a social gathering place;
- plans for the alignment of the future Perth-Fremantle veloway have not been properly considered. It was submitted that a comparison of the plans for the proposed veloway and the design for Claremont Crescent indicates that there would be a conflict between the two;
- the future realignment of the pedestrian access from the Swanbourne train station to Claremont Crescent will be affected by the proposed new road. In particular, the Cottesloe Town Council expressed concern in relation to how the realigned pedestrian and disabled access between the train station and the Swanbourne traffic bridge could be achieved within acceptable standards; and
- the proposal does not achieve the aims of the WAPC Policy No. 1.6 - Development Around Train Stations which, it was submitted, clearly identifies the benefits of development around train stations. The Town of Cottesloe expressed concern that the benefits that can be derived from a well planned development of land around a train station will not be achieved in this instance.

6.2 The Town of Cottesloe objected to the proposals for Claremont Crescent and requested that they be deleted from the proposed amendment pending further review.

7. The Ministry for Planning's Submissions

7.1 In a letter to the Committee from the Ministry for Planning dated 23 December 1997, it was noted that signatures for the petition were being collected during the public submission period for the proposed amendment and that many of the submissions received reflected the contents of the petition. Those issues were therefore taken into consideration by the WAPC in reaching its decision to proceed with the proposed amendment.

7.2 The letter also noted that the petition raised issues such as the need for an environmental impact study prior to any road construction. Prior to the advertising of the proposed amendment it was evaluated by the EPA which confirmed that environmental assessment of the proposed amendment was not required. Accordingly, the need for any such assessment of a future construction proposal could be determined if and when the Town of Claremont decided to upgrade the road.

7.3 The Committee subsequently made enquiries with the Ministry for Planning with respect to the claim by the Town of Cottesloe that it did not receive formal notification of the relevant planning proposal at the time when it was made available for public comment.

7.3.1 The Ministry for Planning responded in a letter to the Committee dated 10 February 1999. The letter advised that:

- in accordance with established practice, the WAPC wrote to all affected landowners and advised them of the proposals. The letter to landowners gave advice of the three month submission period from 17 February 1997 to 23 May 1997. Notices were also published in local newspapers and material was placed on display in local government offices and other locations across the metropolitan region. Notices and display material were placed at the offices of, *inter alia*, the Town of Claremont. The Town of Cottesloe was not a display location;
- on 14 May 1997 the Town of Cottesloe requested that the public submission period be extended. The Ministry for Planning considered that this action was neither necessary nor appropriate, and advised the Town of Cottesloe accordingly by letter dated 19 May 1997;
- a representative from the Town of Cottesloe attended a hearing on 27 June 1997 to present verbal submissions on the proposed amendment; and
- the WAPC considered all the submissions made to it, both written and verbal, and then prepared a *Report on Submissions*. This report was provided to the Minister for Planning for his consideration and referral to the Governor. On 7 October 1997 the Governor approved the proposed amendment in the form presented. At the conclusion of due process through Parliament the proposed amendment became law in the MRS on 9 April 1998.

7.3.2 The Ministry for Planning noted that the complaint by the Town of Cottesloe related to Claremont Crescent which is within the Town of Claremont. The Town of Cottesloe was not directly affected by the proposed amendment. Further, under the MRTPS Act there was no formal requirement to notify the Town of Cottesloe when the proposed

amendment was advertised for public submissions. All local governments that were directly affected were informed including the Town of Claremont. The Ministry for Planning stated that had the Town of Cottesloe been directly affected by the proposed amendment, established practise by the WAPC would have ensured that it was formally notified at the commencement of the period for public submissions.

- 7.3.3 The Ministry for Planning concluded by stating that the WAPC acknowledges that it did not write directly to the Town of Cottesloe in respect of the proposed amendment, but that there was no legal or procedural requirement for it to do so. The Town of Cottesloe was aware of the proposed amendment, it made a submission and it was not disadvantaged. There was no basis for suggesting that the WAPC acted incorrectly or that proper procedure had not been followed.
- 7.4 The Committee also made enquiries with the Ministry for Planning with respect to the concerns expressed by the petitioners, set out at paragraphs 4.2.1 and 4.2.2 of this report, about the conduct of planning procedures for the proposed amendment.
- 7.4.1 The Ministry for Planning advised the Committee that the WAPC is charged under the MRTPS Act to manage the operation of the MRS. The MRTPS Act is silent on the form and content to be followed in formulating amendments to the MRS, except to say that the WAPC is specifically required to formulate such amendments.

The Committee was advised that for the last five years the WAPC has grouped similar issues into so called 'omnibus' amendments. This practice was usual at the time the proposed amendment was initiated and was the third of this type.

The Committee was advised that in respect of regional roads it is not inappropriate to group roads of like classification - such as "Important Regional Road" - into one amendment. The WAPC can, and did, present arguments for the general reduction in road reserves for a series of regional roads to which the same rationale applied. The WAPC's position for the reduction of road reserves applied equally to the routes the subject of the proposed amendment and the ability of the Parliament to question the validity of argument for one road would hold true for all the roads.

- 7.4.2 The Ministry for Planning advised the Committee that the Hearings Committee for the proposed amendment was formally constituted and comprised the Deputy Chairperson of the WAPC, a local government member of the Perth Region Planning Committee and a person independent of those who had resolved to progress the proposed amendment. There were no Ministry for Planning personnel on the Hearings Committee.

8. Conclusions

- 8.1 It should be noted that the Committee considers that its role is not to replace existing planning approval or appeal bodies, but is limited to investigating issues concerning the proper conduct of such procedures.
- 8.2 The Committee has considered the evidence presented by the petitioners, the Towns of Claremont and Cottesloe and the Ministry for Planning with respect to Metropolitan Regional Scheme Amendment No. 982/33 Regional Roads (Part 3). The Committee believes that in this instance, the statutory requirements and the established procedures for administering amendments to the MRS were met.
- 8.3 The Committee concludes that contrary to the petitioners' concerns that a "Western Suburbs Highway" may be constructed through the Swanbourne Village, there is no proposal to that effect at this time. It is not a construction proposal, but rather is a proposal to reduce and rationalise an existing reservation. To that extent, there is no current threat to the Swanbourne Village.

Hon Murray Nixon JP MLC

Date: