SIGNIFICANT ASPECTS OF LAND USE PLANNING LAW AND ORGANISATION IN WESTERN AUSTRALIA

> In spite of all the volumes of planning laws and the stacks of planning regulations, and in spite of careful thought and hard work, the planner often has the disappointment of achieving on the ground a pale shadow of the bright promise of the original concept. This has happened because the basic attitudes of our culture have blocked the way. A quiet revolution is needed. We shall have to encourage a general attitude in society that places a great value on the nature and quality of the city and the region as a living environment.
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> Metropolitan Region Planning Authority[1]

1. INTRODUCTION

For many Australian planners Perth seems to be a Mecca to which they repair at frequent intervals in order to discover what should be done on their home ground.[2] In many ways they are justified. Perth has been over the last two decades a living laboratory of experiment both in planning techniques and in the administrative organisation for planning without which such techniques could not find effective expression; the "quiet revolution" seems to be on course.

Western Australia has a number of planning "firsts" to its credit. It was the first State to introduce town planning law affecting private land, it was the first to create a statutory authority for its metropolitan region involving representatives of the State government, and it has been subject for the past decade to control over development through the medium of a statutory regional planning process.

These days lawyers are coming to recognise that they are practitioners of a social science just as much as members of other disciplines more usually so recognised. There is a good deal of interest to a lawyer in the Western Australian legislation and practice, but first of all some account must be given by way of charting the history and

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1 M.R.P.A. Annual Report, 1967, at p. 8.

2 For example, the 10th Congress of the Australian Planning Institute was held in Perth in 1968 with the central theme of "Perth, City and Region". Another example of a planners pilgrimage is documented in the Annual Report of the Town and Country Planning Board of Victoria, 1969-1970, at p. 11, showing that officers of the Board visited Perth to discuss problems of common interest and examine technical and administrative methods.

development of Western Australian planning laws and organisation before turning to more detailed consideration of some specific aspects. Clearly this latter operation must proceed on a basis of considerable abstraction and selectivity, however it is hoped that the areas examined display significances not only within Western Australia but for the rest of Australia also.

2. HISTORY

In 1928 the Western Australian legislature passed the Town Planning and Development Act to bring some semblance of order to undisciplined subdivision of land and additionally to give enabling powers to local authorities for them to make municipal planning schemes. It was the first legislation in Australia to give municipalities the power to make schemes relating to private land, although South Australia had eight years before brought down legislation for dealing with Crown land.[3] The 1928 statute set up a Town Planning Board chaired by a government appointee, the Town Planning Commissioner, whose function was to advise the Minister for Town Planning concerning the administration of the Act, and, subject to the Minister's control, to carry out the various duties set out in the statute relating to subdivision and town planning. In many ways the Act reflected provisions in New Zealand legislation of two years before[4] and this was itself the heir to planning concepts reflected in United Kingdom legislation of that time. Indeed, the 1928 Western Australian statute is unremarkable except for its chronological primacy and is typical of Australian planning legislation during the inter-war years. In its amended form it remains the vehicle for the expression of municipal land use planning in the State, and the innovation of centralised control of subdivisional applications through the Town Planning Board has endured to this day. South Australia and Tasmania also have this kind of centralised control and the three less populous States have found it a great boon. It is undeniably more efficient and co-ordinated than municipal scrutiny of subdivisional applications such as applies in Queensland, New South Wales and Victoria where widely differing standards are frequently imposed.

In itself the 1928 Act is not sufficient to create Perth as a laboratory of planning experiment and make it the cynosure of all planning eyes. This reputation was first commenced to be built in 1953 when the

3 Town-Planning and Development Act, 1920 (S.A.).

4 In fact the appropriate sections of the New Zealand Act are referred to in the sidenotes to the Western Australian legislation.

McLarty-Watts Government commissioned Professor Gordon Stephenson as a consultant to prepare a plan for the metropolitan region. Together with Mr. J. A. Hepburn, the then Town Planning Commissioner, Professor Stephenson submitted a comprehensive report to the State government in 1955. It is this report which first brought Perth not only to national but international attention, and its special quality was that it never set out to be the product of a few expert minds. One of the peculiar marks of planning in the Perth metropolitan region is the very careful and co-ordinated thought that has gone both into planning proposals themselves and into the procedures for ventilating those proposals through a thorough canvassing of public opinion. For example, the Stephenson/Hepburn Report was published for the "thought, approval and criticism" of the people in the region. This was long before the term public participation became a jargon phrase for planners and what the political scientists call the "veto groups" in the community. An all-Party parliamentary advisory committee studied the report eventually adopting it in principle; on the direction of the committee a considerable number of public exhibitions were made of the Advisory Plan (as it now came to be known) and its was given wide general pubilicity in the media.[5]

Subsequently the 1928 Act was amended[6] to permit the Minister, with the approval of the Governor, to make interim development orders to hold the planning position until a Region Scheme came into force. By this prompt action the main proposals for reservation of public lands were protected and the general form of metropolitan growth as recommended in the Stephenson/Hepburn Report was maintained. However, it was not until 1959 that the Metropolitan Region Town Planning Scheme Act came into effect and this set up the Metropolitan Region Planning Authority giving it the duty of formulating a Scheme paying "due and particular regard" to the recommendations contained in the Stephenson/Hepburn Report. It was also given the task of administering, carrying out and reviewing the eventual Scheme and in the same year the Metropolitan Region Improvement Tax Act was passed which gave the M.R.P.A. a source of annual income.

The M.R.P.A. got on with the job of making a Region Scheme very quickly and in 1962 it was formulated and submitted for the Minister's preliminary approval. In a report which accompanied the

5 For a fascinating account of the making of the Advisory Plan and the Region Scheme see the M.R.P.A. Annual Report, 1966, pp. 9-13.

6 By the Town Planning and Development Act Amendment Act, 1955.

submission the M.R.P.A. remarked that the growth and character of development during the preceding six years had pointed not only to the validity of the recommendations in the Stephenson/Hepburn Report but also to their acceptance as a basis for the planning and development of the Region. As a consequence of this general background, the changes that were made in translating the Advisory Plan into a statutory scheme were more matters of detail than anything else. After the Minister had delivered his preliminary approval, copies of the Scheme were deposited at various points within the 2,000 square miles of the region for convenient public inspection and as a consequence 162 objections were lodged. Following preliminary negotiation with persons who had lodged objections a number of committees of the M.R.P.A. were appointed each of which included the Town Planning Commissioner as Chairman and a member representing the relevant District Planning Committee for the area concerned. Other members were also appointed where appropriate and at the hearings objectors were given freedom to express themselves and discuss their cases with the committee in very informal circumstances. Only in seven cases were objectors represented by counsel and most felt sufficiently bold to speak for themselves. Eventually the M.R.P.A. considered the objections and the results of the hearings into them and in 1963 the Metropolitan Region Scheme was approved.[7] The nature of the Scheme needs to be reserved for further and more detailed comment, but it is quite obvious from the face of what has been described so far that the promulgation of the Scheme was based upon a very thorough programme of public participation which itself flowed from a widely publicised Advisory Plan.

The Region Scheme was never conceived as being a finite document, and a review of it was commenced by the M.R.P.A. in 1966. It was a convenient and propitious time to start a review of the original proposals since vast mineral resources were being discovered both in the North-West and in the Kambalda area, and the effects of these mineral strikes were being felt both economically and socially in the Perth Region. Quite shortly the recommendation made by the M.R.P.A. in 1969 was that the extension of development in the Region should be in corridor form, and in the next year the preparation of the Corridor Plan was begun being completed at the end of 1970.[8] This corridor notion of development for Perth has undergone

7 A fuller account is found in the M.R.P.A. Annual Report, 1966, supra note 5.
8 Published by the M.R.P.A. as *The Corridor Plan for Perth* in March 1971. See also M.R.P.A. *Report on the Corridor Plan for Perth,* July 1972.

a considerable amount of criticism and discussion within the Region. It is symptomatic of the flexible approach to planning carried on in Perth that Councillor Paul Ritter was invited by the State government to produce his own comments on the Corridor Plan. His report has now been issued[9] and the comments of the M.R.P.A. upon it are also available.[10] As yet, however, the dispute between the M.R.P.A. and its principal and most vociferous critic have yet to be settled and the Corridor Plan has not finally achieved the sanction of governmental approval; at present an Honorary Royal Commission is inquiring into the proposals.

The foregoing is a very simplified background chronological account of the development of planning in Western Australia. Inevitably in any such precis emphasis must be placed upon the activities of the M.R.P.A. Not only is this organisation its own best publicist but by dint of a strenuous and sustained campaign to persuade the Western Australian public of the value of planning ideas as crystallised and implemented by the M.R.P.A. it has become virtually the official organ for views on land use in the State. However, for the lawyer, there are other issues apart from the M.R.P.A.'s evangelical fervour.

3. THE NATURE OF THE REGION SCHEME

The form of the Metropolitan Region Scheme is of particular interest and Bunker has described it as being more general, more binding and less dynamic than the Advisory Plan.[11] Of course, this is to be expected where proposals are translated into legislative form. The Scheme itself is a fundamentally simple and straightforward document, unlike many of its blood relatives which operate in many other capital cities in Australia. It consists of an atlas of maps in colour and a surprisingly short text of forty-two clauses. In broad terms the Scheme establishes a general zoning basis for local planning schemes to be made by the local authorities within the boundaries of the Metropolitan Region. In Part II land is reserved for a number of

9 Ritter, AN ANALYTICAL STUDY OF THE PROPOSED CORRIDOR PLAN FOR PERTH AND POSSIBLE ALTERNATIVE APPROACH TO A REGIONAL PLAN FOR THE METROPOLITAN AREA.

10 M.R.P.A., REPORT ON AN ANALYTICAL STUDY OF THE PROPOSED CORRIDOR PLAN FOR PERTH AND POSSIBLE ALTERNATE APPROACH TO A REGIONAL PLAN FOR THE METROPOLITAN AREA, July, 1972. A succinct summary of the official proposals and Councillor Ritter's counter suggestions is to be found in M.R.P.A. Annual Report, 1971, pp. 11-15.

11 Bunker, TOWN AND COUNTRY OR CITY AND REGION (Melbourne University Press 1971) at p. 113.

purposes ranging from parks to significant regional roads. Part III deals with zoning and is very broad in its scope. Only seven zones are laid down: Urban Deferred, Central City Area, Industrial, Special Industrial, Rural and Private Recreation. Development is generously defined and with certain exceptions no development may be carried out within the region without the approval of the responsible authority. This is the M.R.P.A. unless the power has been delegated to any other authority under section 19 of the Metropolitan Region Town Planning Scheme Act, and the M.R.P.A. has in fact carried out a delegation of these powers to the constituent 26 local authorities the districts of which lie within the Region.

Not only is development control under the Region Scheme delegated to local authorities but they also have the obligation by law to make their own local schemes which are intended to fill in the detail of the broad framework laid down at the Regional level.[12] The Minister is prohibited from approving a scheme unless it is in accordance with and consistent with the Region Scheme[13] although clause 21 of the Region Scheme very strangely seems to provide that if there is any conflict between a local scheme and the Region Scheme the former is to prevail. Processing of local authority schemes within the Region has been a comparatively slow business, but at 30th June 1972 the state of play was as follows:—[14]

Schemes approved	11	(Cities of Fremantle, Melville, Nedlands and South Perth; Towns of Claremont, Cottesloe, Mosman Park; Shires of Gosnells, Kwinana, Peppermint Grove, Serpentine-Jarrahdale.)
In final stage after Hon. Minister has determined objections. Scheme to be modified by Council	3	(Town of Canning; Shires of Mundaring, Wanneroo)
Before Hon. Minister for determination of objections	1	(Shire of Armadale-Kelmscott)
Awaiting submission or under examination of objections for final approval following public exhibition	2	(Shires of Bayswater, Belmont)

12 Metropolitan Region Town Planning Scheme Act 1959-1970, s. 35 (1).
13 Section 34.
14 M.R.P.A., Annual Report, 1972, at p. 54.

Granted preliminary approval but awaiting modification before public exhibition	1	(Shire of Rockingham)
Before Hon. Minister for preliminary approval	1	(Shire of Swan)
Before Town Planning Board and Hon. Minister and referred back to Council for revision or modification	3	(Cities of Stirling, Subiaco; Town of East Fremantle)
Revision of scheme to be processed	1	(Shire of Kalamunda)
Schemes not yet submitted	3	(City of Perth; Town of Cockburn; Shire of Bassendean)
Total Schemes	26	

Clause 30 of the Region Scheme is a powerful and flexible instrument of development control. In *Begley v. Shire of Wanneroo*[15] Virtue S.P.J. had to consider the validity of the clause which empowered the responsible authority "having regard to the orderly and proper planning of the locality and the preservation of its amenities" to refuse consent to an application. A planning scheme was in the process of being made for the Wanneroo Shire and it was held that the council was entitled to take into account the provisions of the proposed scheme to the extent that such scheme was an indication of what would be required for the purposes and criteria set out in clause 30. Consequently it is clear that clause 30 allows a local authority to prevent a development which otherwise complies in every respect with the existing law because of the overruling importance of the clause 30 criteria to the exercise of a discretion.

The Region Scheme gained a number of plaudits when it first emerged ten years ago. It is certainly the kind of vehicle that planners feel they need to operate under at the regional level, but on the other hand the lack of detail in the Scheme is notable when compared with other local authority schemes in Western Australia or elsewhere, or indeed with the Melbourne and Metropolitan Board of Works regional scheme for Melbourne. However, this generality is gradually being filled in as local authority schemes come forward for approval. Secondly, flexibility can of course cause difficulty where zoning in the Scheme has to be married in to the practicability of providing

15 [1970] W.A.R. 91.

major services. To accommodate this difficulty Collins has commented:—[16]

> It has been accepted that the mere inclusion in the Scheme of land zoned for urban use does not confer a right for the land to be subdivided or developed at any particular time. It simply provides an opportunity for development to take place if the developers can ensure that services will be available and planning requirements met.

Both the Town Planning Board in relation to subdivisions and the M.R.P.A. in relation to zoning under the Scheme have co-operated in putting this precept into effect in relation to particular applications.

4. THE METROPOLITAN REGION PLANNING AUTHORITY

The M.R.P.A.[17] consists of twelve members, of whom one, the Chairman, is a private individual appointed by the Governor on the advice of State Cabinet. Perth City Council has its own representative and one member is appointed from each of the four District Planning Committees which were formed by dividing into four geographically homogeneous groups the then 27 other local authorities comprising the area of the Region. Private enterprise has its representative from the Chamber of Commerce and the Real Estate Institute, while the other five members are heads of State government departments and instrumentalities: the Commissioner of Main Roads, the Chief Engineer of the Metropolitan Water Board, the Director-General of Transport, the Co-Ordinator of Development from the Department of Development and Decentralisation, and the Town Planning Commissioner.

Composition of the membership of the M.R.P.A. is a triumph of compromise and effective co-ordination between State and local governments and the private sector. It was the first such experiment in Australia although Brisbane has had for fifty years a unified city government responsible for planning. However, a Town Plan was not approved for Brisbane until 1965. Metropolitan regional planning in Australia has had a chequered career; for example, in Tasmania there are provisions allowing for local authorities to unite for metropolitan planning purposes but as yet the Greater Hobart authority has not produced a plan that has gained approval. It is a tribute to the

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16 Collins, Legislation for and organisation of regional planning 1955-1967 in Perth, City and Region: Proceedings of the 10th Congress of the Australian Planning Institute 1968, pp. 17-30. The passage cited is found in Bunker, op. cit., at p. 118.

17 Metropolitan Region Town Planning Scheme Act 1959-1970, s. 7.

systematic approach in Perth that the Advisory Plan preceded the setting up of the Authority so that the M.R.P.A. had a firm basis upon which to proceed in making its statutory Scheme. The co-ordinative aspects of regional organisation also ensured that when it did speak out loud on matters of public importance in planning the voice was listened to. An example of this was the problem of spiralling land prices in Perth which will be dealt with later.

One important aspect of finance must be mentioned in connection with the M.R.P.A. The 1959 legislation created a Metropolitan Region Improvement Fund to help pay for the implementation of the Region Scheme and provided that payments into the fund would come from borrowings and from a tax on the unimproved capital value of all land in the Region other than land used for agricultural purposes and certain exempt land. This tax was struck under the Metropolitan Region Improvement Tax Act of 1959 originally at the rate of one halfpenny in the pound. The M.R.P.A. has consistently complained[18] that its financial basis is inadequate for the implementation of its planned programme of acquisition of land for road and public reserve purposes. It is not unique in this complaint and there is hardly a statutory authority responsible for land use planning in the entire country that does not feel its financial resources are inadequate. However, as the M.R.P.A. has said,[19] it has found practically all its resources absorbed by the demands imposed by statutory compensation responsibilities in cases of hardship. These demands are naturally spread widely throughout the Region and bear little relationship to an orderly programme of acquisition.

5. LAND PRICES

One of the M.R.P.A.'s most ardent and co-ordinated campaigns has been against the rise in land prices in the Metropolitan Region. Excessive land prices are a persistent social and political problem throughout all the States in Australia but manifest themselves particularly and continuingly in Melbourne and Sydney. Nevertheless, between 1966 and 1969 Perth itself suffered a quite extraordinary land boom which caused an immediate and positive reaction from the M.R.P.A.[20]

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18 Just one of many examples is M.R.P.A. Annual Report, 1969, at p. 16.

19 Ibid.

20 Most of the M.R.P.A. Annual Report, 1969 is devoted to the problem of speculation in land and what to do about it, see particularly pp. 7-14.

The following figures will show something of the situation in Perth during this period.[21] Between 1956 and 1967 the average price of building lots in four different areas of Perth increased by 351% (15% p.a. compound), 360% (15%), 443% (17%) and 402% (16%) respectively. In the same period, the minimum weekly rates for adult males increased by only 40% (3%). This increase continued in 1968-69 and at the peak of the land boom the raw-land ingredient in a serviced lot selling for $7000 was as high as $5000. Quite clearly this situation provoked public concern. Land is a basic but limited human commodity; the speculators reap where they do not sow.

In February 1967 the State government took the lead in Australia by appointing a Premier's Committee to look into the taxation of unimproved land and land prices.[22] This committee is more generally known by the name of its chairman, Mr. McCarrey, and reported in January 1968. After a lengthy and careful analysis of the background and causes of rises in land prices, the McCarrey Committee made a number of recommendations of which the following four are the more trenchant and important:—[23]

1. The M.R.P.A. should be requested to release immediately considerable areas of urban-deferred land capable of early development. Consideration should be given to making it a condition of release that the vendors adopt measures to exclude speculators from sales.
2. A statutory authority should be set up with a function of acquiring land for urban development and subdivision. An Urban Land Commission with appropriate powers could assemble land, subdivide according to an approved planning scheme and make it available by auction or private treaty to individuals, speculative builders, project developers and the State Housing Commission on the condition that it would have to be improved within a specified period.
3. Much of the very large areas of vacant land still held within the present urban area should be forced onto the market. Consequently holding costs should be increased by the introduction of a progressive scale of land-tax surcharge on unimproved land. Where the land was improved within four years of purchase the greater part of the surcharge should be rebated.

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21 These figures are abstracted from the Australian Institute of Urban Studies publication, THE FIRST REPORT OF THE TASK FORCE ON LAND PRICES, 1971, at p. 13.

22 Land Taxation and Land Prices in Western Australia, Report of the Committee appointed by the Premier of Western Australia on the Taxation of Unimproved Land and on Land Prices, (January 1968).

23 Ibid., at 49-59.

4. Some part of the unearned increment in vacant land values should be returned to the community to ensure an adequate supply of serviced building-lots and to assist the purchase of land for public planning proposals. Consequently a levy should be charged on all unimproved land at the time of sale. The proposed levy should be a proportion of the increase in value of the land while held by that owner.

The M.R.P.A. has released considerable areas of land to fulfil the first recommendation, and by 1970 a penalty tax on undeveloped land had been instituted by the State government. However, the recommendations as to an Urban Land Commission and a betterment levy have not been accepted at government level and remain to be implemented.

Nevertheless despite the fact that the McCarrey Committee's recommendations were not fully accepted by the State government, the committee is still remarkable as being the first official co-ordinated investigation into land prices in Australia. In fact it was the local precursor of a nation-wide investigation by the Australian Institute of Urban Studies into the same problem, and the 1971 report of the M.R.P.A. shows[24] that in this field at least what Perth does today the rest of Australia considers doing tomorrow. Out of eleven items set out as a "Programme of Action" in the First Report of the A.I.U.S. Task Force on Land Prices, all but one are either being implemented by the M.R.P.A. or are in accord with its policies or those of the Town Planning Board. These items include: the need for a comprehensive plan providing more than adequate supplies of zoned urban land; publicity on the supplies of land available; full servicing; review of subdivision procedures and standards; time-limit for completion of subdivision; charges on unsubdivided urban land and lots not built on within a certain period; advance acquisition of large areas of rural land; and development of new centres. Sydney has its development contribution and Melbourne is considering ways of at least stabilising land prices in that city. However, the Perth approach antedates these and has been perhaps more comprehensive than any other in the country. The M.R.P.A. is now able to state that the abundance of serviced lots and the state of the economy is exerting a strong depressant effect on the price of land, and modestly claims only the probability that some of its measures have contributed to this decline.[25]

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[24] pp. 17-18.
[25] M.R.P.A. Annual Report, 1971, at p. 17.

6. DEVELOPMENT CONTROL APPEAL SYSTEMS

Western Australia shows its individuality in planning approach in relation to development control appeals just as much as the items already discussed.[25a] However, the solutions in force at the present time may not be so praiseworthy as the matters so far canvassed. The idiosyncrasy of the Western Australian approach is that it is the sole State to retain a Ministerial system of appeal against development decisions, and, secondly, has operating alongside this system a judicialised arrangement whereby an appeal may alternatively be launched in a specialised court. This runs counter to the present trend in Australia which inclines towards the tribunal system now found in South Australia, Tasmania, Victoria and New South Wales. Queensland is the only State to have completely judicialised appeal arrangements through the medium of the Local Government Court.

Before going on to the intrinsic merits or otherwise of the Western Australian appeal systems some canvassing must be done of the particular heads of appeal that can arise under legislation. Examination of the Western Australian statute book reveals an extraordinary situation with regard to planning appeals. On the one hand most appeals go, and always have gone, to the Minister for Town Planning, although there is little consistency or logicality of approach exhibited by the various provisions for appeal. The general impression of the untidy system obtaining until late in 1970 is of appeal rights accruing in an "ad hoc" way over the years with little regard for sensible logical arrangement and without any conceptual organisation as to differing areas of public and private responsibility and intervention. For example, similar procedures do not apply to all appeals of a development control character nor is the Minister always the person charged with the duty of taking an appeal decision. On the other hand, the Town Planning and Development Act Amendment Act 1970 introduced the notion of a Town Planning Court, the President of which is a Judge appointed by the Chief Justice of Western Australia. The really odd characteristic of this amending legislation is that it is not intended to supplant the Minister's existing appellate jurisdiction but rather to supplement it so that, on paper at least, Western Australian statute law provides two alternative methods of appeal against a development control decision.

25a A general and most useful source for students of both Western Australian development control appeal systems and those in other Australian States is a document produced by the Town Planning Department in W.A. entitled Report on Appellate Tribunal (1969).

First of all, the arrangements that may generally be described as a Ministerial appeal system. In Western Australia the general practice of land use planning is governed by the Town Planning and Development Act which has a State-wide application. The other major piece of planning legislation is the Metropolitan Region Town Planning Scheme Act which concerns itself exclusively and additionally with the two thousand square miles of the Perth Metropolitan Region.

Both these statutes contain provisions that confer various rights of appeal on persons who are directly affected by and dissatisfied with planning decisions. These rights do not form a coherent whole, although the main bases for appeal found in other States are repeated, with some embellishments, in Western Australia. By the Town Planning and Development Act a refusal or conditional approval by a council administering an interim development order may be appealed to the Minister within sixty days, and the Minister may hear the appeal himself or appoint someone to hear it and report to him. The decision, which is expressed to be final, rests with the Minister who must communicate it to the applicant.[26] If a council fails to decide an interim application within sixty days then a similar appeal lies against a deemed refusal within a further thirty days.[27]

Appeals also lie to the Minister in relation to proceedings by a council to enforce an approved scheme, and the Minister's decision as arbitrator is final and conclusive in any dispute about the removal by a responsible authority at the cost of a defaulting individual of buildings or works that contravene a scheme or about the execution by the authority at the cost of a defaulter of works required by the scheme.[28] Section 18(1) is an odd provision that appears on the face of it to confer powers on individuals to request the Minister to direct a local authority to submit, adopt or amend a scheme. This is at least akin to private rezoning applications and appeal such as exist in Queensland, although the insertion of the Minister as the person to take the effective executive action is an important point of differentiation.

Subdivision too attracts its quota of remedies by way of appeal, and section 23 provides that a subdivider of land in an irrigation or drainage district shall enter into a contract with the drainage or irriga-

26 See Town Planning and Development Act 1928-1972 s. 7B (6) (a). This section can only have application outside the Perth Metropolitan Region since interim development orders are no longer competent with that Region.

27 Section 7B (6) (b).

28 Section 10 (3).

tion board for the carrying out of certain works. This contract must be concluded before the Town Planning Board can consider an application for subdivision. Nevertheless there can be a reference to the Magistrate of the Local Court of a dispute between the applicant and the irrigation or drainage board about the need for the works or the cost of them. The Magistrate's decision is final and conclusive.[29] This appeal right is clearly of subsidiary importance when compared to the more frequently used procedures of section 26. By this section any person may appeal to the Minister from the refusal of the Board to approve any plan of subdivision or any transfer, conveyance, lease or licence that does not comprise the whole of one or more lots. There is also an appeal to the Minister against the conditions imposed on an approval. The Minister may allow the appeal with or without conditions, affix further conditions or reject the appeal in whole or in part. His decision is expressed to be final and he is empowered to award such costs and expenses as he may consider just and equitable. One further minor right of appeal is given in subdivisional matters. By section 28A(6) appeal may be made to the Minister against a demand from a municipality for payment by a new subdivider of a share of the costs of roads already constructed at another's expense. The Minister is to hear the appeal in such manner as he may determine and may dismiss it or cancel or vary the demand. His decision is final.

The range of appeal rights so far discussed is clearly wide, but a considerable number of additional rights arise under the Metropolitan Region Town Planning Scheme Act and subordinate legislation made under it. These are very significant provisions because the majority of appeals emanate from within the populous Metropolitan Region, and among the more important is section 33(1a)(c) giving rights of appeal against amendments of the Metropolitan Scheme. The M.R.P.A. may decide that a contemplated variation of the Region Scheme is of such small importance that the usual extensive procedures for amendment are not necessary, and in these circumstances a shortened procedure becomes applicable.[30] The proposed amendment must be advertised any any person who feels aggrieved by it may appeal to the Minister, and the Minister must hear the appeal in accordance with regulations. Parts of the Metropolitan Region

29 Section 23(e).

30 Metropolitan Region Town Planning Scheme Act 1959-1970, ss. 33(1a)(a) and (b).

Scheme (Appeals) Regulations 1964 relate at some length to the procedure to be followed and merit setting out in full:—

> 5. The Minister shall consider the matter or matters referred to in the notice of appeal and determine whether he shall hear the appellant in person or by submission in writing supported by statutory declaration or affidavit.
> 6. If the appellant is to be heard in person, the Minister shall fix a time and place for the hearing of the appeal and cause not less than fourteen days' notice thereof to be given to the appellant and to the Authority.
> 7. In the hearing and determination of any appeal under these regulations the Minister shall act without regard to technicalities or legal forms and shall not be bound by rules of evidence but may inform his mind on any matter in such a way as he regards just but at the hearing of an appeal at which the appellant is to be heard in person the appellant and the Authority may be represented by counsel, or agent.
> 8. All oral evidence given on an appeal shall be given upon oath, and in relation to witnesses and their examination and the production of documents, the Minister may exercise and enforce the like powers as by law in force at the time may be exercised or enforced by justices in the course of exercising summary jurisdiction.

When the hearing is completed the Minister may dismiss or uphold the appeal, and if he upholds it must order that the amendment be cancelled or modified. There is no statement to the effect that the Minister's decision is final.

Where the full procedure for amendment is used,[31] different considerations come into play. Here any person who is aggrieved by a proposed amendment is treated as an objector and not an appellant. Clearly the legislature has drawn a sharp dividing line between the full and the shortened procedures of amendment, and in the former the operation acquires sufficient of the characteristics of a legislative act to preclude rights of appeal accruing to individuals. Although the distinction is sound in principle the line drawn here seems an execessively artificial one, but in view of the language of sections 31 and 33(1) the procedures set out in those sections will not be further investigated here since involvement as an objector does not characterise the same processes as development control or "ad hoc" rezoning appeals. The only remaining right of appeal arising under the Metropolitan Region Scheme Act is where a responsible authority directs an owner to remove a building or work that contravenes the Region

[31] See ss. 31 and 33(1).

Scheme, and if the owner defaults the authority itself may do the work. The owner may, however, appeal to the Minister against such a direction and he may confirm, vary or cancel the direction.[32]

In addition to the appeal provisions contained in the Region Scheme Act, others arise under subordinate legislation like the Region Scheme itself. By clause 33 the refusal of an application for the approval of development on land, or the approval of it subject to conditions that are unacceptable to the applicant, may, except where the refusal or conditional approval is in accordance with the provisions of a municipal town planning scheme, give rise to appeal to the Minister. The Minister may hear the appeal or appoint a person or persons to hear it and report to him; he then must take what is described as a "final decision" and communicate it to the applicant. Limited rezoning appeal rights are created by clause 34 whereby any person may appeal to the Minister against the zoning by the M.R.P.A. of land released from a reservation. The procedure on appeal is the same as for one arising under clause 33. Similarly any person may appeal to the Minister against a decision of the M.R.P.A. not to transfer land from the urban-deferred zone to the urban zone.[33]

These examples complete the main provisions for appeal found in Western Australian legislation prior to December 1970. By way of brief comment at this stage, it is obvious that they display small consistency one with another. For instance decisions concerning private rights are generally finally decided by the Minister whereas in disputes between municipalities there is an appeal to the Supreme Court from the Minister's decision. Another example is of appeal to a Judge from the Minister's order to a municipality to enforce the observance of a town planning scheme.[34] Secondly there is considerable variation in the form of words that are used either in the statutes, the Region Scheme or in regulations to express the manner in which appeals are to be dealt with. Some provisions state simply that the Minister shall determine an appeal and are silent as to how he is to go about it[35]

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32 Section 41 (3).

33 Metropolitan Region Town Planning Scheme, cl. 35.

34 Town Planning and Development Act 1928-1972, s. 17 (3). A similar case is found in s. 18 (3) where there is appeal to a Judge against the Minister's order to a municipality to enforce the observance of a town planning scheme.

35 See for example Town Planning and Development Act 1928-1972, s. 26, when coupled together with regulation 12 of the Town Planning Board Regulations 1962.

while others assert that he shall hear the parties with consequent formalities.[36]

The general impression of pre-1970 legislation providing appeal rights is of untidiness and inconsistency. But to this already confused situation the amending Act of 1970 has added a completely fresh dimension offering further complications. Its main effect is to establish a Town Planning Court[37] consisting of a President who is to be a Judge appointed by the Chief Justice of Western Australia, plus two members, one to be appointed by each of the two parties to the appeal, although the President must be satisfied that each of these two additional members is an appropriate person by reason of qualifications or experience to participate in the hearing and determination of the appeal.[38] Each party has also the opportunity to object to the other's appointee on the Court, and a reappointment must be made within ten days.[39] Notice of the first sitting on an appeal must be given by the President not less than twenty-one days beforehand to the other members of the Court and the parties,[40] and where the formalities of notice have been observed and a party neglects to appear, the Court may proceed to hear and determine the appeal in his absence.[41] Representation by counsel or a solicitor is expressly allowed and a party may also appear for himself, but there appears to be no provision for any other kind of representative than a legally qualified one.[42]

The Court has power to summon witnesses, to examine them on oath, to require the production of plans and other papers, and generally has all the powers of the Supreme Court until it has made its determination.[43] Appeals are decided by a majority although the President alone can determine any questions of law.[44] The quorum is two including the President, but if the two disagree on a question

36 See for example clause 32 of the Metropolitan Region Scheme and the Metropolitan Region Scheme (Appeals) Regulations 1964.

37 Town Planning and Development Act 1928-1972, s. 43. For subordinate rules of procedure relating to appeals see the Town Planning and Development Act (Appeal) Regulations 1971.

38 Section 43 (2).

39 Section 43 (3). However the President is not obliged to discharge the person objected, and, if the objection appears frivolous or unnecessary, would seem to have no power to do so.

40 Section 45.

41 Section 46 (1).

42 Section 46 (2).

43 Section 47.

44 Section 48 (1).

of fact, the hearing must be adjourned until all three members are present.[45] The Court is empowered to award such costs as it thinks fit,[46] and any question of law may be the subject of a stated case to the Full Court of the Supreme Court.[47] Apart from this latter circumstance the determination of the Town Planning Court is final and conclusive and section 52 emphatically declares that it "shall not be subject to question or review in any other court and no proceedings by, or before the Court shall be restrained by injunction, prohibition, or other process or proceedings in any other court, or by removal or certiorari or otherwise into any other court".

In addition to constituting the Court, the amending Act also creates a Town Planning Appeal Committee[48] consisting of persons appointed by the Governor.[49] The Minister may require any person on the Committee to consider any planning appeal and to report with recommendations to him, although there is no obligation upon the Minister either so to consult or indeed, to accept recommendations so made.[50] The Minister is also, for the first time specifically empowered to award such costs on an appeal as he thinks fit.[51]

"Appeal" is defined in the new legislation[52] to include appeals from the exercise of discretionary powers under schemes, subdivisional appeals, appeals under section 28A(6) against demands for payment of road costs, appeals to the Minister as arbitrator in relation to contraventions of schemes, and appeals under clause 33 of the Region Scheme. All these appeals may be made to the Court instead of to the Minister at the option of the appellant. Not all the appeal rights previously discussed are included within the Court's jurisdiction, but most of the important ones are there.

Nevertheless the Court's jurisdiction is not comprehensive since a number of appeals may still only be made to the Minister,[53] and, more importantly, the inherent difficulties of two different and alternative appeal bodies operating in relation to the same subject

45 Section 48 (2).
46 Section 51.
47 Section 50. The President may state the case either on his own motion or on the application of any party.
48 Section 40 (1).
49 Section 40 (2).
50 Section 40 (3).
51 Section 41.
52 Section 37.
53 See for example the appeal right arising from the shortened procedure for amending the Region Scheme, Metropolitan Region Town Planning Scheme Act 1959-1970, s. 33 (1a).

matter has not been satisfactorily resolved in the legislation. Indeed it is difficult to see how it could properly be resolved. The solution adopted in the Act has been to insist that an appeal to one body extinguishes the right of appeal to the other;[54] but this only avoids a preliminary hurdle by ensuring that two appeals on the same facts and issues do not run side by side. To ensure that important planning policy matters are decided by a Minister responsible to Parliament section 42 insists that the Minister is given notice of the commencement of an appeal to the Court and upon this event a moratorium of fourteen days is imposed during which time the Minister may decide to object to the Court hearing the appeal on the grounds that upholding the appeal would be contrary to town planning principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest. Obviously it is open to the Minister to so interpret these bases for intervention as to cover all appeals that the statute attempts to vest in the Court as the alternative appellate body, and the Minister is also called upon to make a snap judgment within a few days upon a matter not previously before him and at a stage prior to the arguments of the parties being presented at a formal hearing. This power of veto is a formidable one that bids fair to emasculate the Town Planning Court. True, the Minister must go further and persuade the Governor to declare that the appeal should not go to the Court; this at least circumscribes the veto power but it remains a powerful executive weapon. If the Governor confirms the Minister's action then the appellant may elect to proceed with his appeal to the Minister in place of his original selection, the Court.[55] In view of the Minister's objection an appellant who so elected would be exceedingly optimistic.

A highly complicated situation is theoretically possible. If the Ministerial veto is widely used, then the Town Planning Court will be virtually neutered. If it is too sparingly used then the Minister may find the Court has built up an impermeable series of precedents that directly affect important areas of government land use policy. The Court may then be itself creating and dictating planning policy instead of those executive organs of government directly vested with that responsibility by Parliament, and since the only permanent member of the Court is the President, this means, in effect, that a Supreme Court Judge will be doing so.

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54 Town Planning and Development Act 1928-1972, s. 39 (1).
55 Section 42 (4).

In 1972 nearly 400 appeals had gone to the Minister and only one to the Town Planning Court. Even this solitary example was the subject of a Ministerial veto which was upheld by the Governor.[56] One suspects that the following quotation from Griffith is apt and has considerable application to the local situation in Western Australia:[57]

> The truth is that only a certain type of lawyer, politician and constitutionalist dearly loves our system of established courts. The man of the Clapham omnibus and the man in the company's Rolls are alike in this, they would prefer to be driven in their respective vehicles to any arbitrator or tribunal rather than to the courts.

There is no suggestion that the Minister in exercising his appellate jurisdiction acts as an arbitrator or as a tribunal since he is explicitly vested with the function of exercising a policy role under existing planning legislation. However, perhaps the informality, cheapness and expediency of appeals to him have persuaded appellants to choose this course of action rather than an appeal to the Court.

There are of course considerable and weighty arguments in favour of any one of the three major alternatives available as a basis for the development control appeal systems. Firstly, it is said in relation to a court that planning appeals frequently involve more important issues than are involved in many other forms of litigation, and the financial stakes are higher. Official planning bodies are subject to the usual pressure of competing interests and there is a very strong case to be made for requiring such important disputes between the citizen and the planning authority to be determined by a completely independent court with its long history of impartiality. Secondly, the contention in favour of tribunals is that a court solution is too expensive and bedevilled by the inherent delays of litigation. A tribunal is said to provide a middle course whereby cheapness, speed and expert knowledge are to the forefront. The third approach is that of Ministerial decision, usually, but not inevitably, based upon the result of a public inquiry into the proposed development. The argument here is that very often planning appeal decisions go to the very roots of the economy and consequently can only be decided by a governmental policy decision. All such systems have their merits, but what can be said now in relation to Western Australia is that never should any two of these bodies be given a co-ordinate scope and jurisdiction.

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56 See Hiller, *Town Planning Appeals* 10 West. Aust. L. Rev. 144.
57 Griffith, *Tribunals and Inquiries* 22 M.L.R. 125, at 133.

7. CASE LAW

Since Western Australia has for many years been subject to a Ministerial system of appeals with wide discretions vested in local authorities and subsequently the Minister on appeal, it is not surprising to find that reported cases are few and far between. Nevertheless some mention must be made of at least three very significant decisions originating in Western Australia which have had an impact beyond the boundaries of the State. In these three cases the decisions have an importance which transcends a purely local significance and establish principles of general application.

The first deals with the scope of subdivision control in Western Australia. The relationship between subdivision and town planning has perplexed both lawyers and planners for many years. The machinery for obtaining a subdivisional approval offers no problems and equally the bases for the control are quite simply existing systems of land registration. The Registrar of Titles (or his equivalent) is forbidden to register any instruments dealing with land in proposed subdivision until a plan of subdivision bearing the approval of the appropriate planning authority has been supplied. This is far from the common law situation. Under the common law a land owner who wished to subdivide his land or open a new public road through it had complete liberty to do so. No consent was required and he split his land up by transferring different parcels to purchasers and the subdivision was as effective as his legal title to convey. Today these proprietary uses of land may still be carried out by individuals but, although the initiative still remains with the owner, no subdivision of land is effective until certain statutory requirements have been filled. Western Australia has provided litigation leading to a definitive approach to the nature of subdivision and the conditions that may be imposed upon an approval in the High Court case of *Lloyd v. Robinson*[58] which firmly establishes the characteristic feature of subdivision control as a permitted statutory invasion of private proprietary interests in the general welfare.

In *Lloyd's* Case the subdivisional sections of the Western Australian Town Planning and Development Act were under scrutiny. An application for approval of a proposed subdivision of land goes to the Town Planning Board, and by s. 24(3) the Board is entitled to annex conditions on any such approval. The plaintiff applied for consent to subdivide certain land into 270 lots and received an approval from

58 (1962) 107 C.L.R. 142.

the Board subject to certain conditions including a requirement that more than 15 per cent of the plaintiff's land be set aside for public purposes including road widening, foreshore and other reserves. An appeal was lodged to the Minister against these conditions and in substance he upheld the Board's requirements. Subsequently the owners were successful in obtaining a declaration in the Supreme Court of Western Australia[59] where Virtue J. found the open space condition to be invalid since in the absence of provision for compensation the statute should not, without an unequivocal expression of legislative intention to the contrary, be construed as intending to authorise a demand amounting to confiscation of private property. Had this view prevailed then the town planning authorities in Western Australia, and indeed in other States of the Commonwealth, would have had to change many years of regular practice of demanding such transfers. In fact an appeal against this decision found the High Court of Australia unanimous in its disagreement with Virtue J. As the Court said, if this argument was correct:—[60]

> [T]he Board could never give an approval of a subdivision conditionally upon the applicant's giving up land for any purpose, for roads, for public recreational areas, for foreshore reservation purposes, or for anything else, however relevant the conditions might be to the observance of proper standards in local development. Given the necessary relevance of the conditions to the particular step which the Board is asked to approve, there is no foothold for any argument based on the general principle against construing statutes as enabling private property to be expropriated without compensation. The Act at its commencement took away the proprietary right to subdivide without approval, and it gave no compensation for the loss.

This High Court decision is of crucial importance to developers and to local authorities alike since what is true about the Western Australian legislation is also true of comparable legislation in the other States. The conclusions of the High Court in *Lloyd's* Case have been adopted and implemented in Victoria where in the *Shire of Mornington v. Ramsay*[61] it was pointed out that a developer's scheme of subdivision must not run counter to the public interest, and if "the public interest requires that in his subdivision reserves be set aside for the

59 Robinson v. Lloyd [1962] W.A.R. 168.

60 (1962) 107 C.L.R. 142 at 154.

61 [1964] V.R. 169. Shire of Mornington v. Ramsay was considered to be a correct decision by the Full Court of the Supreme Court of Victoria in Grishen v. City of Broadmeadows [1966] V.R. 83.

use of purchasers, that is a proper price for him to pay for the privilege of subdividing".[62]

Crucial as the decision in *Lloyd's* Case undoubtedly is the decision of the Western Australian Supreme Court in *Folkestone v. Metropolitan Region Planning Authority*[63] is of equally pervasive significance. All States bar South Australia make provision in their legislation for compensation to be paid to persons injuriously affected by town planning schemes. This right to compensation for injurious affection to an estate or interest in land is sharply to be distinguished from a situation where a planning authority completely extinguishes the ownership interest by compulsorily acquiring title to the land whereupon the claim for compensation is bound up with the transfer of whatever title may be held in the land from private to public hands. Where land is injuriously affected this is not so, and a claim may be made for monetary recompense without the entries on the titles register being disturbed.

Morling has suggested that many valid injurious affection claims never see the light of day in court because of lack of familiarity by the legal profession with the details of planning legislation and inability to distinguish the compensable injurious affection claim from non-compensable "disappointed expectation".[64] In this event, the decision in *Folkestone's* Case should be of benefit not only to practitioners in Western Australia but also in other States in the Commonwealth in view of the comparability of statutory provisions relating to this subject. The plaintiffs owned land contiguous to land which had been reserved for a highway in the Metropolitan Region Scheme. A claim was made against the M.R.P.A. on the ground that the land had been injuriously affected by reason of all the horrors such as noise, fumes, dust, access and the like that are consequent upon any road passing by property. It was alleged that these potential drawbacks would diminish the attractiveness and value of the land. However, the Scheme did not include any taking of the plaintiffs' land or impose any restriction in the user or the development of that land, and the court held that there exists no right to compensation under the legislation which is unrelated to restriction in the enjoyment or development of the land concerned. As Virtue J. pointed out, if the plaintiff's argument was accepted by any owner of land the value of

62 Id. at 172.

63 [1968] W.A.R. 164.

64 Morling, *Conflict of Planning Legislation with Private Interests* (1969-1970) 9 West. Aust. L. Rev., 303, at 311.

which could be affected in the slightest degree by the making of the Scheme or by the possible effect on his land of the implementation of the Scheme would be entitled to recover compensation irrespective of whether the Scheme imposed any impediment on the use, enjoyment or development of his land or not. Consequently, His Honour rejected this proposition on the basis that the right to claim compensation is limited to a case where an owner's land is directly and expressly affected by the Scheme in the sense that his rights over the land have been diminished either by restriction of user through the reservation or zoning of the land or restriction of the development of the land or in some other way. This process of reasoning behind the central conclusion in *Folkestone's* Case is surely transportable to other Australian States, although litigation upon compensation for injurious affection seems to be sparse.[65] No doubt, however, with the accelerating prescription of increasing numbers of local schemes throughout the country the compensation issue is likely to receive further airings in the courts.

Finally, mention must be made of the contribution made by Western Australian litigants to the clarification of issues concerning the protection of existing uses under town planning schemes. *O'Keefe v. Shire of Perth*[66] is another case which proceeded from the State Supreme Court to the High Court. Land was being used for a pottery at the time of the introduction of the planning scheme for the shire which classified the land as being in a "residential and flat zone". At a later time the land was used for the manufacture of office cabinets and other similar products, and the particular by-law in question allowed land to be continued to be used for the purpose or in the manner it was being used at the time of the publication of the by-law. In the Western Australian Supreme Court,[67] Jackson J. con-

65 There are three cases in New South Wales; all, for different reasons, failed. They are Bingham v. Cumberland County Council (1954) 20 L.G.R. (N.S.W.) 1; Whittle v. Cumberland County Council (1955) 20 L.G.R. (N.S.W.) 272; Baker v. Cumberland County Coucil (1956) 1 L.G.R.A. 321. Queensland has produced two: Walton Properties Pty. Ltdfl v. Brisbane City Council [1968] 62 Q.J.P.R. 15; 14 L.G.R.A. 379 (where the claim was unsuccessful) and Albert House Ltd. (In Voluntary Liquidation) v. Brisbane City Council [No. 2] (1968) 21 L.G.R.A. 94 (where the plaintiffs successfully obtained $15,000 by way of compensation for injurious affection). None of the other States would seem to have enjoyed litigation of this sort although it is always possible that planning authorities have settled a number of claims to the satisfaction of the claimants thereby rendering litigation unnecessary.

66 [1964] W.A.R. 89.

67 Ibid.

sidered that the purpose for which the land might continue to be used was not restricted to use as a pottery, and in support of this conclusion he referred to the listing in the by-laws of "light industry" as a "purpose". If it had been maintained this decision would have provided a generous interpretation of the law for property owners falling within existing use classifications in schemes since it is usual for schemes throughout the country to list numerous activities in the category of light industrial purposes. However, on appeal to the High Court in *O'Keefe's* Case[68] a more restrictive attitude was adopted so far as land owners were concerned and it was held that the land might continue to be lawfully used for pottery making alone and not for the purposes of any other activity found in the category of "light industry". Welcome clarity has been given to the law as a result of the High Court decision and practitioners are now able to advise their clients with more conviction as to what they may or may not do under clauses protective of existing uses in schemes.

There are of course a number of other decisions in relation to planning law in Western Australia.[69] However, those cited above are probably the most significant and are a very considerable contribution to town planning jurisprudence. Problems concerning the nature of subdivision and the validity of conditions attached to approvals, the scope of legislation relating to injurious affection and the extent of protection afforded by existing use clauses are all of enormous importance to planning authorities and the owners of private interests in land alike.

8. CONCLUSIONS

The foregoing analysis has pointed out some structural significances in the law and practice of planning in Western Australia. Praise has been given where it has been thought due, but there are of course some warts. The existence of two major Acts dealing with planning and development is a nuisance, and the marrying of the two when dealing with both local and regional matters seems an unnecessary irritation. Many of the provisions of the 1928 Act seem redundant or little used, and Western Australia would profit enormously from a consolidation of the law relating to subdivision together with regional

68 Shire of Perth v. O'Keefe (1964) 110 C.L.R. 529.

69 E.g. Reid Murray Developments (W.A.) Pty. Ltd. v. Hall (1967) 21 L.G.R.A. 126 (concerning the meaning of s. 20(1), Town Planning and Development Act) and City of Perth v. M.R.P.A. (1968) 18 L.G.R.A. 330 (concerning s. 25, Metropolitan Region Town Planning Scheme Act).

and local planning in one statute.[70] However, this is a comparatively small point particularly when parallels are drawn between Western Australian and other States in the Commonwealth. In New South Wales for example the law is in a state of confusing uncertainty and only in South Australia can it be said that there has been a recent comprehensive enactment of all the relevant provisions in this area.

Inevitably when talking about Western Australian town planning the focus and centre of attention is the Metropolitan Region. It is here that another flaw demonstrates itself. The 26 local government authorities within the Region have not been prompt to accept their responsibilities for making local schemes providing the detail to implement the Region Scheme and dovetail in with it. Cartwright has acknowledged that the current municipal organisation of the bulit-up parts of the Perth Metropolitan Region is imperfect,[71] but this criticism can apply to all the Australian capital cities with the solitary exception of the unified city structure in Brisbane. However, Brisbane itself has provided an awkward solution to the problems of the metropolis and has for the past fifty years rested in uneasy relationship with the Queensland government. The comparative weakness of local authorities is far from being exclusively a Perth problem.

But at least in Perth there seems to exist some vision as to how the regional concept can foster and encourage genuine and effective local government activity. Cartwright has put forward ideas of how the use of land could be arranged by planners to offer a foundation for a worthwhile municipal structure.[72] He considers that the constitution structure and working of the M.R.P.A. could form a precedent for an attempt at a Perth-wide municipal institution. Already in the planning field the M.R.P.A. has jumped a substantial hurdle, namely the considerable reluctance of most State governments in Australia to surrender significant powers over the capital cities that socially and economically dominate all States. In view of the general acceptance of work done by the M.R.P.A., Cartwright's notion is that it could possibly present something more than a mere precedent for the staged

70 As long ago as 1953 Professor G. Stephenson and Mr. J. A. Hepburn commented in the Advisory Plan (at p. 244): "It is desirable that all town planning powers should be incorporated in one Statute and also that the procedure for making town planning schemes under the Town Planning and Development Act should be reviewed and simplified."

71 Cartwright, Supplementary Paper 1, in The Future of Local Government in the Perth Metropolitan Region (Australian Frontier, Consultation Report), 17.

72 Ibid.

and painless achievement of metropolitan government; conceivably it could offer a kernel for it.

However, observers from other States look with interest to see how Western Australia deals with the new challenges that advance upon us in the planning field. The present proposals of the M.R.P.A. are for a corridor plan such as has been adopted in Canberra and Melbourne already, and this should ensure that Perth "will not ooze over the land like a thin and patchy porridge, smearing over the countryside, scattering the sewers and water pipes expensively, increasing our self-defeating reliance on private cars and postponing indefinitely any real chance of a fast, frequent and economical system of public transport".[73] These are high sounding words, and the benevolent effects of the Corridor Plan are strongly disputed by opponents of M.R.P.A. intentions. Nevertheless, it is indicative of the open texture of policy and decision making by the M.R.P.A. that the State government should have invited a vehement opponent of current proposals to comment in an official document written by him.

The dichotomy between vision and reality highlighted in the quotation at the beginning of this article is one which affects planners, administrators, lawyers everywhere concerned with the subject of planning. Perhaps it is in Perth more than anywhere else in Australia that the most concentrated and coherent efforts have been extended to make this beneficent reality more likely to be achieved.

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[73] Id., at 18.

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