



**Minister for Local Government; Heritage;
Citizenship and Multicultural Interests**

Our ref: 38-09498

Hon Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

PUBLIC

Dear Mr Ellis,

Petition No. 108 – Swanbourne Hospital Conservation Area – Requesting the Legislative Council to recommend to the Minister for Heritage that development guidelines for the land be preserved

Thank you for extending me the opportunity to provide information to the Standing Committee on Environment and Public Affairs regarding the petition submitted by Mr Simpson. I appreciate the depth of the petitioner's concern about this issue and his efforts to obtain so many signatures, and I share the petitioner's and the signatories' obvious affection for the cultural heritage significance of the old Swanbourne Hospital.

The place is recorded in the Heritage Council of Western Australia's database as *Swanbourne Hospital Conservation Area* (Database No. 3228). It was the sixth place to be entered in the State Register of Heritage Places, on an interim basis, on 6 March 1992. The entry was made permanent on 19 August 1994.

Because the place is on the State Register, any redevelopment or use of the place is subject to various provisions of the *Heritage of Western Australia Act 1990* (the Heritage Act). Section 4(3) of the Heritage Act states that

The objects of this Act, with due regard to the rights of property ownership, are —

- a) to identify, conserve and where appropriate enhance those places within Western Australia which are of significance to the cultural heritage;
- b) in relation to any area, to facilitate development that is in harmony with the cultural heritage values of that area; and
- c) to promote public awareness as to the cultural heritage, generally.

The petition objects to the proposed issuance of an Order under s. 38 of the Heritage Act in regard to the place. Stated briefly, Section 38 allows the Minister for Heritage, on the recommendation of the Heritage Council, to amend or suspend any written law (which includes Acts of Parliament, regulations, town planning schemes, etc.) in regard to a registered place if the conservation of the place is prohibited or impeded by the operation of that written law. Such an order is subject to disallowance by Parliament.

Section 40 of the Act requires that, before it may recommend that the Minister issue a Section 38 Order, the Heritage Council must publish a notice of the proposed order, including the actual text of the proposed order and various particulars set out in Section 40, inviting persons generally to make written submissions to the Heritage Council regarding the proposed order. The Act does not prescribe a minimum period within which submissions are to be accepted, but past practice indicates that a minimum two-week submission period is appropriate.

The proposed Order that is the subject of the petition was advertised by the Heritage Council on 17 December 2010 in the *Government Gazette* and the *West Australian*, and on 18 December 2010 in the weekly *Post* edition serving Nedlands. The advertisement explained the purpose of the proposed order and included the actual text of the proposed order.

I am advised that the Heritage Council proposed the order out of concern that the place would continue to deteriorate while the owner and the City were locked in an impasse over the City's Town Planning Scheme No 2 (TPS 2) requirements for redevelopment of the place. These requirements arise from the "recommended development guidelines" referred to in the petition. The owner contends that these requirements are much too constraining to allow any economically viable redevelopment of the place.

The place has been vacant since about 1980 and continues to suffer from deterioration due to vandalism, graffiti, weather, etc. The Heritage Council believes that the best way to conserve a place of heritage significance is to keep it in use, provided that any adaption and redevelopment for such use is "in harmony with the cultural heritage values" of the place, as stated in Section 3(4) of the Act. In this regard, the Heritage Council has a strong interest in the place being conserved and brought back into use through an appropriate redevelopment as soon as is practical. To unlock the impasse, I understand the order proposed by the Heritage Council would have suspended the City's Town Planning Scheme No 2 (TPS 2) from application to the place and also transferred planning authority over the site from the City to the Western Australian Planning Commission.

The advertisement stated that submissions on the proposal would be accepted through to the close of business on Friday, 18 February 2011, giving the public nine weeks in which to make submissions. The Office of Heritage received approximately 115 written submissions on the matter, most of which (about 90%) were opposed to the proposed order.

The petition states, incorrectly, "...the Minister for Heritage proposes to issue an Order..." At this stage, the order has only been proposed by the Heritage Council. Under s. 38, I have no authority to consider such a proposal, let alone issue it, until I receive a recommendation from the Heritage Council along with the particulars specified in s. 41 of the Heritage Act. To date, I have received no such recommendation.

In the meantime, I understand that the City of Nedlands and the Western Australian Planning Commission (WAPC) have been working toward the completion of an Outline Development Plan (ODP), which will ultimately govern redevelopment of the site. Depending on the outcome of that process, the Heritage Council may well conclude that there is no need for a s. 38 order, or they may recommend an order of narrower scope and effect than the one originally proposed.

Any comments I could make at this time on the substance of the petition would be conjectural because I have not been presented with a specific recommendation from the Heritage Council. Indeed, there is a real possibility that no such proposal will be made, following the determination of the WAPC.

Accordingly, because the petition asks the Legislative Council to formally recommend that I not issue the proposed Order, in the mistaken belief that I am currently in a position to issue it, I respectfully request the committee to defer consideration of the petition until such time as the WAPC has made a decision and the Heritage Council has, if not actually recommended that I issue a s. 38 Order, at least had an opportunity to consider the WAPC's decision on the ODP and indicate to me how it is likely to proceed.

If, following the WAPC's determination, the Heritage Council in fact presents me with a recommendation to issue a s. 38 Order, or advises me that it is inclined to do so and indicates in general the scope and reach of such an order, at that time I would be pleased to respond to the committee in detail on the substance of the petition.

Yours sincerely



G M (John) Castrilli MLA
**MINISTER FOR LOCAL GOVERNMENT; HERITAGE;
CITIZENSHIP AND MULTICULTURAL INTERESTS**

14 JUN 2011

PUBLIC