



**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

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**

In my letter of 14 June 2011 to the committee, I proposed to make a substantive response to the committee regarding the issues raised in Petition No. 108 at such time as I received a formal recommendation from the Heritage Council of Western Australia (the Council) to issue an order under s. 38 of the *Heritage of Western Australia Act 1990* (the Act)

I have recently received a recommendation from the Council to issue an order under s. 38, along with relevant supporting information and other particulars as required by the Act. I can now offer the Committee the following comments on the terms of the petition, based on information provided to me by the Council and the Office of Heritage.

**Section 38 Orders**

Stated briefly, s. 38 of the Act authorises the Minister for Heritage, on the recommendation of the Council, to amend or suspend any written law (which includes Acts of Parliament, regulations, local 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.

Section 39 requires any Order so issued to be laid before both houses of Parliament within six sitting days of the making of the Order. Either house may disallow the Order.

Section 40 requires that, before it may recommend that the Minister issue a s. 38 Order, the Council must publish a notice of the proposed order, including the actual text of the proposed order and various other particulars set out in that section, inviting persons generally to make written submissions to the Council regarding the proposed order. The Council published such a notice in December 2010. Petition No. 108 appears to be in response to that notice.

**PUBLIC**

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 notice published in December 2010 invited written submissions for a period of nine weeks.

Section 41 requires the Council, when recommending a s. 38 Order to the Minister, to also report to the Minister on the general purport of the submissions received, along with the Council's advice in regard to the content of submissions. The Council received over 100 submissions and has provided the required report to me, along with the Council's advice in regard to the content of the submissions, and copies of the submissions.

### **The December proposal**

The order proposed in December 2010 was quite broad. It would have suspended the City of Nedlands ("Nedlands") Town Planning Scheme No 2 ("TPS2") in its entirety from application to the place. I am informed that this approach was taken out of a concern that, had the proposed order only addressed specific provisions of TPS2, other provisions or clauses could have nullified the intended effect of the order. Rather than attempting to identify and amend every possible clause that may have been relevant to the place, the Council felt that a more certain result would be achieved by dis-applying the entire planning scheme.

The December 2010 proposal was to remove planning authority over the site from Nedlands and vest it with the WAPC. The owner argued to the Council that Nedlands had become antagonistic toward the owner and that further efforts by the owner to work with Nedlands would result in more delay. The WAPC indicated its willingness to handle planning approvals for the site under the Metropolitan Region Scheme.

### **Subsequent developments**

On 1 July, the State's new Development Assessment Panels (DAPs) came into operation. Any new planning application to redevelop the existing hospital buildings into strata units will be determined by the Metropolitan West DAP rather than Nedlands. The provision of the s. 38 Order proposed in December 2010 that would transfer planning authority over the site from Nedlands to the WAPC is no longer relevant.

As I noted in my letter to the Committee of 14 June, Nedlands and the WAPC were at that time working to complete an Outline Development Plan (ODP) to govern redevelopment of the site. Preparation of an ODP for the site is a requirement of TPS2. That process has now been completed. On 26 July, the WAPC's Statutory Planning Committee, acting under delegated authority, approved a final ODP for the site. Some provisions of the ODP are inconsistent with various provisions of TPS2 that apply specific development constraints to the site.

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At its meeting of 12 August 2011, the Heritage Council resolved to recommend that I issue a much narrower s. 38 Order than the one proposed in December 2010.

### **Conclusion**

This is obviously a very complex matter and will require further investigation by myself and discussions with other parties before I am in a position to make a decision. There may even be a need for a further public comment period. I expect that it will be several months before I make a decision on the Order.

I will then inform the Committee of my decision and my reasons for it.

Yours sincerely



G M (John) Castrilli MLA

**MINISTER FOR LOCAL GOVERNMENT; HERITAGE;  
CITIZENSHIP AND MULTICULTURAL INTERESTS**

29 SEP 2011

**PUBLIC**