

# Legislative Council

Thursday, 29 May 2008

THE PRESIDENT (Hon Nick Griffiths) took the chair at 10.00 am, and read prayers.

## BILLS

*Assent*

Message from the Governor received and read notifying assent to the following bills —

1. Legal Profession Bill 2007.
2. Medical Practitioners Bill 2006.

## PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

### STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

*Thirty-first Report — “Road Traffic (Administration) Bill 2007; Road Traffic (Vehicles) Bill 2007; Road Traffic (Authorisation to Drive) Bill 2007; Road Traffic (Consequential Provisions) Bill 2007 and Road Traffic (Vehicle) (Taxing) Bill 2007”*

Hon Simon O’Brien presented the thirty-first report of the Standing Committee on Uniform Legislation and Statutes Review, in relation to the “Road Traffic (Administration) Bill 2007; Road Traffic (Vehicles) Bill 2007; Road Traffic (Authorisation to Drive) Bill 2007; Road Traffic (Consequential Provisions) Bill 2007 and Road Traffic (Vehicle) (Taxing) Bill 2007”, and on his motion it was resolved —

That the report do lie upon the table and be printed.

[See paper 4018.]

### STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

*Twelfth Report — “Balga Works Program”*

Hon Giz Watson presented the twelfth report of the Standing Committee on Estimates and Financial Operations in relation to “Balga Works Program”, and on her motion it was resolved —

That the report do lie upon the table and be printed.

[See paper 4019.]

### THE CLIFFE — REMOVAL FROM REGISTER OF HERITAGE PLACES

*Assembly’s Message*

Message from the Assembly notifying that it had agreed to a resolution that pursuant to section 54(7) of the Heritage of Western Australia Act 1990, the property known as The Cliffe, which was permanently entered into the Register of Heritage Places on 19 July 2005, notice of which appears in the *Government Gazette* of 29 July 2005 at page 3365, should be removed from the Register of Heritage Places, and requesting that the Council agree to a similar resolution, now considered.

*Motion*

HON PETER COLLIER (North Metropolitan) [10.04 am] — without notice: I move —

That in response to Legislative Assembly message 323 the following motion be agreed to —

That this house resolves pursuant to section 54(7) of the Heritage of Western Australia Act 1990 that the property known as The Cliffe, which was permanently entered into the Register of Heritage Places on 19 July 2005, notice of which appears in the *Government Gazette* of 29 July 2005 at page 3365, should be removed from the Register of Heritage Places.

Mr President, I do not move this motion lightly. I have given it a lot of consideration. I am familiar with the situation surrounding The Cliffe. As a former teacher of history, I am cognisant of the necessity to keep our links with the past, particularly of the role that the Heritage of Western Australia Act plays in the community. However, I urge members to support this motion, as I feel that in this instance it is entirely valid that the property, The Cliffe, be removed from the Register of Heritage Places. I would like to just spend —

Hon Kim Chance: Is the member going to seek a suspension?

**Hon PETER COLLIER:** No, I do not think I need to.

*Point of Order*

**The PRESIDENT:** Is the Leader of the House raising a point of order?

**Hon KIM CHANCE:** Yes. Mr President, we are apparently dealing with an order of the day. I believe the process for dealing with an order of the day at this stage requires a suspension of the temporary sessional order.

**The PRESIDENT:** No.

**Hon KIM CHANCE:** That is my point.

**The PRESIDENT:** I understand the point the Leader of the House is making. It is governed by temporary order 7(3), which, in part, states —

More than one matter may be listed for consideration including a motion without notice, a motion under SO 72, or an order of the day but excluding —

- (a) business in the name of a minister or parliamentary secretary;

I do not consider order of the day 623, headed in the notice paper as “Heritage of Western Australia Act 1990”, to be business in the name of a minister or a parliamentary secretary. My recollection is that the Leader of the House moved to have the matter made an order of the day, but that was a matter merely of facilitating the business of the house. This is not a matter that is in the name of a minister or a parliamentary secretary. In fact, without alluding to debates in another place, I am aware from other sources that it is very much a matter of opposition business, not government business.

*Debate Resumed*

**Hon PETER COLLIER:** For the benefit of members I will spend a bit of time providing some information on the history of The Cliffe and how we have come to this point. The Cliffe is situated at 25 Bindaring Parade, Peppermint Grove. It is a rambling timber home that was built in two stages between 1894 and 1898 by engineer Neil McNeil. McNeil was an engineer and railway contractor who came to Western Australia from Victoria in 1872 to construct the Jarrahdale-Bunbury railway line. He was a successful businessman with several interests, including the Jarrahdale Timber Company, which exported to Britain. He used The Cliffe as a showpiece for his faith in timber as a building material. The architect was said to be J. Talbot Hobbs; however, there is no record to confirm that this is the case. Part of the property was subdivided in 1915 to create 20 lots for auction. The borders of the subdivision were McNeil Street and the Perth-Fremantle road, now known as Stirling Highway, which formed the northern part of Peppermint Grove. After McNeil’s death in 1927 his wife left The Cliffe and the property was sold to prominent industrialist Hugh Lance Brisbane. Brisbane moved to Johnston Street in 1933, making way for his brother David, a businessman and company chairman, to take over The Cliffe. He died in 1960, and in 1962 the property was subdivided into six lots by Cotswold Investments, which kept one lot, and the second lot was sold to the Brisbane family. The house lot sold at a record price of £8 900. It is these subdivisions that some locals say destroyed the original character and context of the property. It was later owned by plastic surgeon Dr Harold McComb until 1995, when it was bought by Sharon Creasy for \$2.7 million. She had intended to develop the property but has been unable to do so because of ongoing heritage issues. The Cliffe was advertised for sale by public auction in March 1995. No advertisement, brochure, other advertising material or inquiries by the Creasys made any reference to the possibility of it being conserved under the Heritage of Western Australia Act. It was not listed on any municipal inventory required by section 45 of the act and the Heritage Council had not commenced any step of any kind to enter the land on the register of heritage places at the time of purchase. Mrs Creasy had no reason to believe at the time she purchased the property that she would not be able to develop it as she intended. If the Heritage Council was so interested in conserving The Cliffe, why did it not purchase the property at auction, instead of persecuting private owners? Mrs Creasy incurred architectural and planning fees that she would not otherwise have incurred if she had been told that The Cliffe may be preserved for heritage reasons.

Mrs Creasy’s intention to develop the property, which required demolition of The Cliffe, came to the attention of the Heritage Council shortly thereafter. A conservation order was placed, and the council responded by entering The Cliffe on the Register of Heritage Places on an interim basis on 10 October 1995. While that interim registration remained on hold, Mrs Creasy could not develop the property. Finally, almost nine years after The Cliffe had been purchased, and eight and a half years after it had been placed on the Register of Heritage Places on an interim basis, Mrs Creasy requested by letter dated 18 February 2004 that the Heritage Council remove the entry from the register. Instead of removing the entry from the register, the Heritage Council changed the entry for The Cliffe to a permanent registration on 27 February 2004. When Mr McCusker, QC, on behalf of Mrs Creasy, argued that the permanent registration was invalid, the Heritage Council responded by removing the permanent registration on 6 July 2004, entering a fresh registration on an interim basis on 20 July 2004, and issuing a conservation order on 13 May 2005.

No adequate justification nor, indeed, any justification at all, was given for the lengthy delay in assessing the heritage value of The Cliffe. No explanation or justification was given for any failure to offer a heritage agreement over that time. No explanation has been given for the failure to even enter The Cliffe on a municipal inventory prepared by the local authority. When the Heritage Council refused to remove the entry from the register, Mrs Creasy instructed solicitors to file a writ of summons in the Supreme Court to challenge the registration, which was initiated on 24 December 2004. The Heritage Council responded through the State Solicitor's Office by, among other things, asking the Supreme Court to retrospectively authorise any procedural irregularity on the part of the Heritage Council in its second permanent registration.

After Mrs Creasy had spent well over \$225 000 in legal costs and experts' fees in just trying to make the property free for development as she had originally wished, she sought a second legal opinion from Hotchkin Hanly. That opinion was to the effect that her claim had merit, but that the pleadings of both parties would require amendment in order for the issues to be properly joined at trial and that, even if she were successful, the Heritage Council may not necessarily be prevented from reinstating the entire process again, including the issue of a fresh conservation order. Mrs Creasy was advised, in an effort to try to resolve the matter once and for all, to ask the minister to intervene or, in the event that the minister was unable or unwilling to intervene, to request the State Administrative Tribunal to rule on whether the state should acquire the property at its market value. Accordingly, Hotchkin Hanly, on behalf of Mrs Creasy, invited the Heritage Council to consider a heritage agreement whereby The Cliffe would be relocated to a public location and restored under the authority and direction of the state or, alternatively, for the state to acquire the property at market value so that it could restore The Cliffe and make it available to the public where it currently stands. Those offers were made in August 2006, but were rejected, and the minister was requested by letter dated 28 August 2006 to refer both matters to the State Administrative Tribunal.

During the Supreme Court proceedings, various experts' reports had been obtained. The state retained Mr Colgan, an expert builder with long experience in remediation of heritage-value buildings, and Mrs Creasy retained Mr Faigen, a respected architect. Both experts identified many areas requiring immediate attention. The state's expert, Mr Colgan, said that The Cliffe was uninhabitable and estimated that it would cost at least \$2.8 million—it could be much more, and certainly would be much more in today's values—just to make The Cliffe habitable. If The Cliffe were to be renovated for the purpose of modern living, it would cost very much more, and he was not prepared to put any sort of estimate of costs on that basis because of the uncertainty as to the extent to which that would be required. The Cliffe is not observable by any member of the public from the road or adjoining properties and it will never be made available to the public while it remains in private ownership. Two ceilings inside the house have imploded. It is unliveable and substantial capital works are required just to make it liveable at a standard equal to that enjoyed by residents approximately one century ago.

It is now more than 12 years since Mrs Creasy purchased The Cliffe and, after having incurred well over \$225 000 in legal and consultants' fees challenging the state's view about its heritage value, the issue remains unresolved and Mrs Creasy can neither sell the property at its true market value nor develop it as she wishes. The Heritage Council and its experts have failed to exercise commonsense in anticipating the reduced heritage value of a property in private ownership that is not visible to any member of the public, and which is severely dilapidated and hedged in by new developments. The state has implicitly acknowledged that the benefit to members of the public cannot be justified, by refusing to even negotiate with Mrs Creasy on the prospective purchase price of property. Mrs Creasy's lawyers have requested a meeting to negotiate either terms of a prospective heritage agreement or the terms of the purchase and the Heritage Council has refused to even commence negotiations. The Heritage Council will not even entertain relocating The Cliffe to a more public place, claiming that the heritage value of a dilapidated building not otherwise visible or accessible to any member of the public would be undermined by its being relocated.

In summary, the house was placed on the list after it was purchased by the current owner. The local council had not placed it on the municipal inventory, and this has seriously affected the owner's property rights. The house is in extremely poor condition, requiring more than \$3 million to make it safe and habitable. The state is not willing to purchase the property. As a private house, it is not open to the public, and it is not clearly visible from the street. The public gets no benefit from the heritage listing. It is not worth the millions of dollars involved in either relocation or restoration. The Minister for Heritage, Hon Michelle Roberts, has visited the site and has indicated her support for the removal of the property from the heritage register.

Having given that precis of the circumstances surrounding The Cliffe from the original purchase by Mrs Creasy to the present day, as I said in my initial comments, I am very familiar with the circumstances surrounding this property. I coached tennis very close to The Cliffe for 15 years, and I went past the property virtually every day. It was five years before I even found out where The Cliffe was. The house cannot actually be seen or accessed from Bindaring Parade; it is necessary to go down a laneway. When the situation arose originally, and got a lot of press in the local media, particularly the *Mosman Cottesloe Post*, as a history teacher I took the time to go and have a look at the property. It is completely uninhabitable, and is deficient in so many ways. It is a rambling

house that is falling down, and has no public access whatsoever. I came to that conclusion before I had anything to do with the property in a formal sense. Two years ago, I held the position of shadow Minister for Heritage, and I was contacted by Mark and Sharon Creasy to come and have a look at the house. My previous concerns were reinforced when I was given the opportunity to have a close-up look at The Cliffe. It was blatantly evident to me that the only thing that could really be done with the house was to remove it. It really has no heritage value. The issues of the legal implications in the stand-off between the Creasys and the Heritage Council are redundant, in my view. I really feel that The Cliffe is not worthy of a heritage listing—it is a rambling, dilapidated building with no prospect of recovery. I urge members to support this motion.

**HON LJILJANNA RAVLICH (East Metropolitan — Minister for Local Government)** [10.19 am]: The government will support this motion. The honourable member has given a very extensive overview of the history of The Cliffe, providing significant information to members. This has been a controversial issue over a long period, including when I was Minister for Heritage. There is no doubt that, over time, this building has become increasingly difficult to restore to its former grandeur. There is no doubt that it would be totally cost prohibitive to undertake that restoration work. The Minister for Heritage has rightly made a decision on this issue, which she is quite entitled to do under the act. She is satisfied that it is not practical in the circumstances and on balance to continue to have this building on the Register of Heritage Places; indeed, she has made the decision that it be removed from the register. As a result of forming this view last year, the Minister for Heritage caused a notice to be published in the *Government Gazette* on Friday, 7 September 2007, which I know the member for Cottesloe is aware of. It outlines the reason that the Minister for Heritage has proposed its removal and states —

“Given: that the Hon. Member for Cottesloe, the Hon. Colin Barnett has raised with me in the Legislative Assembly the protracted dispute with respect to this property;

that this property is dilapidated beyond reasonable repair, compromising its heritage value; and

that there is no perceived public utility in maintaining the heritage listing;

I propose to remove this property from the State Register of Heritage Places.”

The Heritage of Western Australia Act requires that a motion be passed in both houses of Parliament. The government supports the motion. The Cliffe is a private property that most people have not had the opportunity to see; however, many people will understand that this move is a sensible and practical heritage decision. Quite clearly, we must determine the priorities of heritage matters in order to protect and preserve priority buildings, not all of which will necessarily be grand buildings. Some of the buildings that need protection will be of value for an assortment of reasons and some, no doubt, will be quite humble buildings or places. I think that the decision has been made after much consideration and deliberation by the Minister for Heritage. We are naturally happy to support this motion.

**HON GIZ WATSON (North Metropolitan)** [10.22 am]: The Greens (WA) oppose this motion for a number of reasons. It has the potential to set a very bad precedent, and I will explain why. My first problem is that this motion was brought on for debate fairly rapidly. I realise that a lot of things have been happening this week, but the only capacity the Greens had to take advice on this matter was overnight. I thank my research staff for their ability to research this issue at such short notice.

I understand that the Legislative Assembly has passed a motion to remove The Cliffe from the Register of Heritage Places pursuant to section 54(7) of the Heritage of Western Australia Act 1990. Obviously, we are now dealing with the approval that is required from the Legislative Council to finalise that removal. My understanding is that this is the first time that such a motion has been presented to both houses of Parliament. I understand that both the government and opposition support this resolution to remove the property from the register. Although there are some arguments for the delisting, at this point I will advise of our concerns. Our principle concern is that we have not seen—I am sure that no-one else has either—the Heritage Council’s advice to the minister. I noted with interest that Hon Ljiljanna Ravlich said that she was sure that the minister had considered this matter very thoroughly. She might have, but we are the Parliament and we have a right to understand what advice has been given to the minister by the Heritage Council. I have just had communication with the minister’s office and it has been reaffirmed that this information will not be made public. I wonder why we even have a Heritage Council to provide advice on heritage matters. Quite frankly, this government’s record on heritage is pretty abysmal.

**Hon Kim Chance:** Oh!

**Hon GIZ WATSON:** No, it is true. Members need look only at the Sunset hospital site languishing because the government will not put any money into conserving it in the way that heritage places in this state deserve when it has money coming out of its ears. It is extraordinary. The only propositions that we have heard compromise the various heritage sites that we are supposedly preserving. It is exceedingly unsatisfactory that this house has been asked to pass this resolution today without the benefit of seeing the advice from the Heritage Council. For the interest of members, I asked for a copy of the advice from the Heritage Council about the removal of The Cliffe from the Register of Heritage Places, but I have not been provided with it. I have also been advised that I will not

be provided with that advice. It is worth noting that the removal of this property from the heritage register was advertised in *The West Australian* and *The Australian*. Twenty-eight submissions were received. It is worth noting that 23 submissions favoured removal, two were neutral and three favoured retention. As I have not seen the advice or the report, I do not know who said what, but I would be interested to know who were the three who favoured the retention of the property on the heritage register.

On the issue of whether the property was purchased prior to the interim listing, I have an indication from the minister's office that it was around the same time but the current owners did not have knowledge of it. They bought the property almost immediately and after that they discovered that it had been heritage listed. The former owners were aware that the property was being considered for heritage listing, but did not advise the current owners. My concern is that we have not seen the advice. This sets a very dangerous precedent of delisting properties on the Register of Heritage Places without that full advice being made available to Parliament. Members are meant to represent the public of Western Australia, but we, the decision makers, have not been provided with that information. I think it is a serious transgression that that information has not been made available to us before we must make a decision. We are simply relying on the minister's view. Perhaps it is a little late to get a response from the minister—I should have stood earlier—but I would be interested to know whether part of the reason for the timing and the imperative to deal with this matter at this time is that, as I understand it, there is a threat of legal action against the government. That ups the ante quite considerably in my view.

**Hon Peter Collier** interjected.

**Hon GIZ WATSON:** Okay; that might be misinformation. I understand the point about the amount of funds that will be required to restore this building. The argument is the same for the Sunset hospital site. Heritage buildings cost money to maintain and restore; that goes with the territory, basically. It is not right to argue that there are no alternatives for a heritage property that is on private property; there are ways of resolving that. I have had conversations with the National Trust of Australia about its view on this. It opposes the delisting and has suggested an alternative; that is, that the owner donate the property to the trust for restoration and obtain at the same time a full tax deduction equal to the current value of the property. In that way, the property could be maintained in the public realm and the owner would not be out of pocket. There are ways of dealing with significant heritage buildings that are on private property. Obviously, the state has considered—rightly, it could be argued, on economic grounds—that that is not the way to go or is too expensive. I stress that my main point is that the Greens (WA) will oppose this motion because it has not heard what the Heritage Council of Western Australia thinks about it. We have heard only the government's and minister's view. The Heritage Council is supposed to be an independent body that is able to provide advice to not only the public, but also the Parliament to assist it in forming its decisions. On that basis, we oppose this motion.

**HON NORMAN MOORE (Mining and Pastoral — Leader of the Opposition)** [10.30 am]: I will quickly indicate that Hon Peter Collier and the minister have given to the house very good reasons that this motion should be agreed to. I indicate to Hon Giz Watson that I regret that she did not have more notice to allow her to consider this motion. This motion has come on for debate during private members' time. On Tuesday Liberal members discussed whether this matter could be dealt with in private members' business. It was only yesterday that we worked out whether we could. Indeed, the advice on how it could be done changed again this morning.

The Greens' research officer rang me yesterday morning to find out what we had planned for private members' time. I advised him that we would debate this motion. I gave him as much notice as I could, albeit he phoned me rather than me phoning him. I apologise for that. On the basis that there is broad support from the major parties, at least, for this motion, we decided to proceed with it today. I think Hon Giz Watson has demonstrated that she has a very good research officer, albeit he has come to the wrong conclusion in the short time available to him to research this matter.

Question put and a division taken with the following result —

Ayes (25)

Hon Ken Baston  
Hon Matt Benson-Lidholm  
Hon George Cash  
Hon Kim Chance  
Hon Peter Collier  
Hon Wendy Duncan  
Hon Sue Ellery

Hon Brian Ellis  
Hon Donna Faragher  
Hon Adele Farina  
Hon Jon Ford  
Hon Nigel Hallett  
Hon Ray Halligan  
Hon Barry House

Hon Robyn McSweeney  
Hon Sheila Mills  
Hon Norman Moore  
Hon Helen Morton  
Hon Simon O'Brien  
Hon Batong Pham  
Hon Ljiljanna Ravlich

Hon Barbara Scott  
Hon Sally Talbot  
Hon Ken Travers  
Hon Ed Dermer (*Teller*)

Noes (3)

Hon Shelley Archer

Hon Paul Llewellyn

Hon Giz Watson (*Teller*)

Question thus passed.