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MINISTER FOR HERITAGE

THE CLIFFE, PEPPERMINT GROVE

ISSUE:

To advise the Minister as to the recommendation of Council in relation to removal of the place known as The Cliffe from the Register of Heritage Places.

RECOMMENDATION:

Having advertised the Minister's request under Section 54(2) of the *Heritage of Western Australia Act 1990* ("the Act"), and after due consideration of all the submissions received and in accordance with its responsibilities under the Act, the Heritage Council resolved to recommend that the Minister for Heritage:

1. maintains the entry of *The Cliffe* which is the parcel of land comprising of Lots 28 and 29 on Diagram 8903 and Lots 25, 26 and 27 on Plan 3783 being the whole of the land contained in Certificate of Title Volume 1265 Folio 334 on the State Register of Heritage Places; and,
2. urge the owner to discuss subdivision and/or development options with the Heritage Council.

THE SIGNIFICANCE OF THE PLACE

The Cliffe is a rare example of the use of weatherboard in a substantial 'gentleman's residence in Perth which has, intact, the subsidiary building of coachhouse, stables, summerhouse, servants cottages, and part of the original gardens. The place has historical associations with the prominent McNeil and Brisbane families (owners) and with J. Talbot Hobbs (architect), and is a representative example of a turn of the century gentleman's residence, with its quality period detailing intact.

It is one of the first houses built in Peppermint Grove, and has a close association with the subdivision and development of the suburb. (Attachment A)

CURRENT STATUS

1. On 3 September the Minister for Heritage wrote to the Director of the Heritage Council requesting that the Council advise the Minister within 28 days on the removal of the place known as *The Cliffe* (Palace No. 4094) from the Register of Heritage Places.

2. On 14 September the Heritage Council considered the Ministers request and advised the Minister that:
Section 54(2) of the Act requires HCWA to advertise the proposed removal and solicit public comment for a period of 6 weeks;
The Council will fully advise the Minister on the removal of The Cliffe from the register after the Council has had an opportunity to consider submissions received from the public in response to the advertisement;
Council requests Officers to contact/liaise with other appropriate stakeholders.
3. HCWA officers placed notices in the Gazette and in the West Australian for 7 September 2007, describing the place proposed for removal and the reasons for the proposal, as advised by Dr Bill Leadbetter on behalf of the Minister for Heritage and invited submissions by 4:00 pm on Friday, 19 October 2007 (Attachment B – Notice of proposal removal advertised in the Government Gazette on 7 September 2007).
4. Thirty submissions were received.
5. The Heritage Council considered the Minister's request for advice on removing the Cliffe from the Register at its meeting on 9 November 2007.
6. In addition to the recommendation at the beginning of this briefing note, the Council agreed that the package to the Minister should:
 - i) list the reports and documents the Heritage Council considered at its meeting
 - ii) provide a chronology of events that outlines HCWA's negotiations with the owner, including informal discussions regarding subdivision, development and relocation
 - iii) highlight that the current condition does not alter the cultural significance of the place, but may be an issue for consideration in a development proposal
 - iv) highlight the formal development applications that have been forwarded to the Heritage Council for consideration and its responses.
7. The following section covers the information the Council requested be included in the briefing note:

Public Submissions

8. The Council considered the 30 submissions received. Of these, 25 support the removal of *The Cliffe* from the State Register, three submissions indicated they were against the removal and two submissions did not indicate a position.
9. Hotchkin Hanly Lawyers [*sic*] submitted a letter supporting removal on behalf of the owner, Mrs Sharon Creasy. (Attachment C)

10. In summary, those who support the removal of *The Cliffe* from the State Register base their view on the following, i.e. that the place is in a dilapidated state, beyond reasonable repair and there is no public utility in maintaining the heritage listing. Many believe that the partial subdivision and development of the original land has reduced *The Cliffe's* heritage value. (Attachment D)
11. The Heritage Council considered the argument relating to condition and subdivision and concluded that the current condition does not alter the cultural significance of the place. It was acknowledged, however, that the condition may be an issue for consideration in a development proposal.
12. The Heritage Council considered the argument relating to subdivision, and concluded that rather than significantly devaluing the cultural heritage of the place, there is scope for further subdivision of the land to be explored. The presence of subdivision and development is not a sustainable argument for not registering places or removing them from the Register.
13. In summary, those who do not support the removal of *The Cliffe* from the State Heritage Register believe that the place is an outstanding example of important heritage, a rare example of a sumptuous tribute to the great timbers of Western Australia and despite a lack of conservation maintenance in recent times is readily capable of repair. (Attachment E)
14. Those who are undecided note that the *Heritage of Western Australia Act 1990* does not adequately deal with the impact of owner inaction on heritage values. They also suggest that better integration of the management of heritage values within the normal processes of local and regional planning and through development approvals could be given consideration. Similarly greater emphasis should be placed on incentive based schemes so that the importance of ongoing stewardship can play a role in proactively and positively engaging private property owners. (Attachment F)

Condition Reports

15. The Council considered the following four confidential condition reports on *The Cliffe* compiled in response to the pending Supreme Court case on the 2004 interim registration (Attachment G):
 - i) 2007 report by Ian Hocking (for the Heritage Council)
 - ii) 2007 Report by Martin Colgan (for the Heritage Council)
 - iii) 2006 Report by Ronald Bodycoat (for Sharon Creasy)
 - iv) 2006 Report by Philip Faigen (for Sharon Creasy)
16. The Council also considered the 1995 condition report by Ian Hocking that supported the initial interim registration, which formed part of 15(i) above.
17. As noted above at point 11, the Council concluded that the current condition has not altered the cultural significance of the place.

Formal Development/Subdivision Applications

18. Only two formal development applications have been referred to the Heritage Council in relation to *The Cliffe* since it was registered:
 - i) 2001 – amalgamation of The Cliffe with the adjacent property at 35 McNeil Street, demolition of the house at 35 McNeil Street, demolition of the north wing of *The Cliffe* and construction of a new north wing, demolition of the stables and the water tower, relocation of the Greenhouse – supported with conditions (Attachment H)
 - ii) 2004 – demolition of the existing building and associated outbuildings – not supported (Attachment I)
19. No formal application has been lodged since registration for either subdivision or relocation of *The Cliffe*.

Informal Discussions regarding Development/Subdivision

20. As the Heritage Council's files are currently held in the Supreme Court pending the matter of the 2004 registration being heard, it is not possible to provide the Minister with all the details of informal discussions between the agency and the owner regarding the possible options for the site. However the following can be confirmed:
 - i) On 27 June 1995, lawyers acting for Mr Creasy wrote to the Heritage Council inviting "any proposal from your Council to acquire the building", noting that they had already approached the Shire of Peppermint Grove with this proposal, and had lodged a demolition licence application to effect removal. (Attachment J) As the Heritage Council were in the process of considering the place for the State Register, the Minister agreed to place a Conservation Order on *The Cliffe* to prevent demolition occurring. The Heritage Council's response of 28 July 1995 noted that the background to the matter of demolition would be presented to the Council.
 - ii) After Interim Registration in September 1995, the Heritage Council engaged in discussions with the Ministry for Planning regarding possibly options for subdivision. (Attachment K)
 - iii) On 20 November 1995, lawyers acting for Mr Creasy sent a detailed submission in response to the Interim Registration of *The Cliffe*, which reiterated the suggestion to relocate the main building, this time specifically to Manners Hill Park in Peppermint Grove. The Heritage Council responded on 18 December 1995, noting that the Minister would be prepared to meet Mr Creasy on site to inspect the building. (Attachment L)
 - iv) In January 1996, the Heritage Council commissioned a report from the Valuer General's Office on the impact of heritage registration on the value of the property. The report of 6 February 1996 noted that the unimproved value of the property could be reduced to \$1,500,000 if the owner entered into a heritage agreement, resulting in

a reduction in land tax and MRIT of \$7,375 (Attachment M)

v) On 22 February 1996, the Minister met with Mrs Creasy, together with the Chair and Acting Director of the Heritage Council at *The Cliffe* to discuss her concerns. As a consequence of that meeting, the Director of the Heritage Council agreed to defer consideration of permanent registration to allow for options to be explored. (Attachment N)

vi) On 7 March 1996, the Director wrote to the Creasys outlining the agency's findings on subdivision and development options at that point, noting that the best return while conserving the building was re-subdivision which would result in the removal of some less significant portions of the structure, and that this could be undertaken in conjunction with a remission of rates and taxes as part of a conservation package/agreement. (Attachment O)

vii) During May and June 1996, the Director and other Heritage Council staff had meeting and discussions with the Creasys, their planning representative Paul Clune from Joseph Charles Learmonth Duffy. The Heritage Council agreed to approach the Shire of Peppermint Grove regarding their planning requirements and scope for flexibility in terms of planning outcomes. (Attachment P)

viii) On 28 June 1995 the Heritage Council wrote to Mr Creasy summarising their findings and stating that they would be prepared to support a subdivision proposal. (Attachment Q) No subdivision application was lodged.

ix) On 19 September 1996, the Minister wrote to Mr Creasy noting that the Heritage Council had offered to assist in progressing a subdivision option if the owner wanted to pursue this option. (Attachment R) No application for subdivision was lodged.

x) By November 1996, Mr Clune was pursuing potential purchasers for *The Cliffe* on behalf of the Creasys. And on 11 November 1996, the Director met with Mr Peter Bacich to discuss his development proposal for the site. (Attachment S)

xi) On 28 July 2001, Stephen Carrick and another Heritage Council officer met the Creasys' representative on site to discuss outline development plans for the site prior to the formal lodging of a development application in September 1996 [*sic*] as noted above. (Attachment T)

xii) On January 2005, the Director and Chair of the Heritage Council met with the Creasys at *The Cliffe* to discuss Mr Creasy's proposals for the property which included relocation of the building to Manners Hill at the Heritage Council's expense, and subdivision of the property to construct two ten-storey tower blocks. Mr Creasy noted that the Shire of Peppermint Grove had not formally considered the issue of relocation of the building. (Attachment U)

xiii) On 11 August 2006, Hotchkin Hanly Lawyers wrote to the Heritage

Council on behalf of the owner offering to sell *The Cliffe* to the Heritage Council for \$20,000,000, or enter into a Heritage Agreement with the owner and the Shire of Peppermint Grove whereby the owner would gift all structures at *The Cliffe* to HCWA, which would relocate them to Manners Hill Park. (They subsequently also wrote to the Minister on the 28th August 2006). The offer was declined by the Heritage Council's Executive Committee on 23 August 2006 on the basis that the cultural significance of the place relates to its location, that the negotiation of a Heritage Agreement predicated on relocation was inappropriate, and that the property is capable of beneficial use. (Attachment V)

Summary

There have been several attempts to engage with the owners over the last 12 years with little effect. The Council has endeavoured to negotiate an outcome that conserves the place in situ whilst enabling further development of the land via subdivision. There would appear to have been little or no maintenance carried out on the structures over this time resulting in the current level of deterioration. Notwithstanding the current condition of the place there have been numerous examples where properties have been restored by a sympathetic owner that are in far worse condition.

The Council is concerned that removing a place from the Register on the grounds of the deterioration caused by neglect could result in a number of other requests for removal on the same grounds, resulting in a loss of significant places. The fact that the place is not accessible to the public is an argument that applies to numerous places on the state register. If this principle is adopted as a reason for not registering a place then some owners may request removal on the same grounds resulting in an inability to both recognise and protect places of state significance in the future.

(signed)
Ian Baxter
DIRECTOR

20th November 2007