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HERITAGE AREAS, RIGHTS OF LANDOWNERS

Matter of Public Interest

THE SPEAKER (Mr F. Riebeling): Today I received a letter from the member for Kingsley seeking to debate as a matter of public interest the following motion -

This House demands -

That the Minister for the Environment and Heritage and the Minister for Planning and Infrastructure recognise the rights of individual landowners and take action to ensure that local government councils do not take away these rights in the guise of protecting heritage areas of local significance.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

The SPEAKER: The matter shall proceed on the usual basis.

MRS C.L. EDWARDES (Kingsley) [2.53 pm]: I move the motion.

Local governments are infringing on the rights of property owners. They are extending their powers beyond good planning principles.

Mr J.N. Hyde interjected.

Mrs C.L. EDWARDES: By way of interjection, the member for Perth said that we are opposed to heritage principles. We are not; we support good planning principles. Some councils agree that they are infringing on the property rights of individual landowners through their implementation and interpretation of the Heritage Act, the town planning and development regulations, the model scheme texts and their municipal inventories. There is some concern that the Minister for the Environment and Heritage is promising to provide legislation to back up the way some councils use municipal inventories, and that she is prepared and will try to legislate for areas of local historical significance. In her ministerial statement on 14 August, which referred to a recent decision by the Town Planning Appeal Tribunal, the minister said -

Members can be assured that I will act quickly on the legal advice to ensure that all local councils are made aware of any impacts of the Town Planning Appeal Tribunal decision and the way in which municipal inventories are prepared. I will seek to legislate if this proves to be necessary.

What will the legislation do? There is some concern that the minister will try to introduce legislation to override good town planning principles in areas of local historical significance. Section 3 of the Heritage of Western Australia Act provides protection for places of cultural heritage significance. It states -

“**cultural heritage significance**” means, in relation to a place, the relative value which that place has in terms of its aesthetic, historic, scientific, or social significance, for the present community and future generations;

Section 47 of the Act refers to the criteria for entry in the Register of Heritage Places. However, it does not include factors that are not listed. Some of those factors, which are now being overtaken by the local councils, include the objectives or goals of a local government’s planning scheme. Local governments are trying to override the Act. Section 48 of the Act refers to a group of places that form a precinct of cultural heritage. Section 56 places a memorial on the title if it is entered on the register.

I now refer to decision No 1 of 2002 by the Western Australian Town Planning Appeals Tribunal. The decision is well drafted and is easy to read and understand. The tribunal chairman, Mr Les Stein, who was my former lecturer in property law, is a well-renowned and respected expert in property law. I will highlight the tribunal’s view of heritage considerations. It raised the fundamental issue of the weight that should be given to different matters when considering heritage matters. Paragraph 9 on page 3 of the decision states -

- (a) If a precinct or a building is not entered on the Register of Heritage Places under the *Heritage of Western Australia Act 1990* (‘Heritage Act’), historical considerations should not be elevated to the prime or sole determinant of a development application;

Ms A.J. MacTiernan: Can you read that again?

Mrs C.L. EDWARDES: No, the minister can get a copy. The decision further states -

- (b) If a precinct or building being is not entered on the Register of Heritage Places, the sole consideration is whether the new proposal, even if the design does not match historical

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elements, is appropriate having regard to the amenity and the orderly and proper planning of the locality;

- (c) If a precinct or area is considered by a local authority to contain buildings or have a streetscape of local significance, no requirement can be imposed that a new development must comply with the existing historical elements;

Point of Order

Mr A.D. McRAE: The member is quoting this document uninterrupted and at length. I would like to see this document and I ask that she be required to table it for the remainder of the sitting.

The SPEAKER: The standing orders do not require a member to produce a private document from which he or she has quoted.

Debate Resumed

Mrs C.L. EDWARDES: It is a public document and I am sure the minister can provide the member with a copy. The decision continues -

- (d) The placement of a property on the Municipal Inventory raises heritage values for consideration but such placement will carry little weight;
- (e) The placement of a property on a Heritage List under a town planning scheme will make the heritage values of the place relevant in the consideration of a development application but will be only one factor in the determination.

That is the critical issue. Under good town planning principles, heritage is only one factor unless it is listed on the register. That is the critical element about the power that now resides in local government.

On page 6, under the heading "Compliance with Existing Historical Elements", the tribunal's decision further states -

For precincts that are not on the Register of Heritage Places, the historical significance of the locality cannot become a fetter on the development of a building that fails to follow the historical elements.

That is a very important point. We are not against local governments finding areas of local significance. We support those municipal inventories. However, the councils are now converting those municipal inventories into town planning schemes. They are then placing the heritage value of those places on the municipal inventory, which are now placed on the town planning scheme, as a matter to be considered over and above good town planning principles. The chairman is clear in his decision. It states -

... there is no justification for allowing historical considerations for precincts to be the sole criterion of the amenity of the locality. Historical considerations should not dominate the planning agenda. To do so is an error that is not within the purview of proper planning principles.

Clearly, historical elements are but one aspect of the consideration of developmental applications by local councils. There are many other issues, including noise, the environment, traffic, safety and privacy. The residential design codes highlight a number of other issues that should be considered, as well as those that have been identified. Historical elements should not override town planning principles. The decision also states -

There is no provision in the Heritage Act -

The member for Perth should get a copy of this decision, as it is well written -

or the *Town Planning and Development Act* that imposes restrictions on a building or place with heritage qualities that fall below the standard for entry on the Register.

If areas of local significance are to be put on the register, they should go through the proper process. Submissions should be made. Therefore, if an area falls within the criteria established under the Heritage Act, councils should accept it. They should not just do a drive-by assessment and list in blocks areas to go on the municipal inventory, and then say that those historical elements that have not been properly assessed override good town planning principles. That would be an absurd situation. The tribunal's decision continues -

A finding that an area has local heritage significance and even contains some places that deserve listing in a planning scheme is part of the relevant planning process.

The area can be included and considered, but historical elements are not the only consideration. It continues -

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What is objectionable is to freeze or curtail development in that precinct on the basis of the perceived historical significance by requiring new development to adhere to the historical elements. The effect of this is to elevate a streetscape to the determining factor in a planning application.

That is what is wrong with how local councils are now determining historical elements. The tribunal clearly states that historical considerations should not take precedence over good planning principles. Accordingly, it has given notice that it will not give weight to a policy that requires adherence to historical elements as the sole basis for determining an appeal. The tribunal also refers to the municipal inventory and the local heritage list. It is not saying that councils cannot establish areas of local significance; they can and should put those areas in a municipal inventory if they feel so inclined. The areas also can be incorporated into a town planning scheme. However, historical elements are not the sole consideration. Councils are totally abusing that at the moment. People want the Government to protect the property rights of individual landowners and not allow local councils, through their municipal inventories and town planning schemes, to elevate heritage values over and above good planning principles. By doing so, councils are stopping ordinary people from being able to do with their own properties what they reasonably should be able to do with them. People want the protection of the Government.

MR J.P.D. EDWARDS (Greenough) [3.04 pm]: I support this Bill, but with a slightly different slant on heritage and planning. I will speak more on those issues as I understand heritage and the role of local government. As a brief background of my life before Parliament, I was a councillor in local government and I was involved to some degree with heritage associations, the Greenough Hamlet and municipal inventories. The situation that has arisen in the inner suburbs is somewhat different from the situation a rural shire has to address. There needs to be an appreciation of the role of local government in heritage matters. However, I stress that it needs to recognise that owners have a right to do what they wish with their own homes. That is the crux of this issue.

I will refer to a very good article in *The West Australian* last week written by Tony Rutherford. He referred to an English magazine called *Country Life*, which advertises houses. The magazine shows various houses, quite a lot of which have a heritage background. My family home is 300 years old, so I appreciate the point Tony Rutherford was making. Heritage-listed houses in the United Kingdom and Europe are largely proclaimed as such. It is slightly different in some cases in Western Australia. In the main, Fremantle is recognised as a heritage area. However, as he rightly says, what works in Fremantle does not necessarily work elsewhere. The controversy about listing houses has arisen again. The article states -

One immediate need is clear up the confusion which is all too evident in the debate. No one in this slightly unreal debate has spelt out clearly -

This is what it comes down to -

what, if anything, the requirements of the Heritage Act actually mean.

The essential problem with heritage listing is that, if it is indeed backed up with serious legal sanctions, it directly affects our property rights in our home. And of all the property rights we may have, that is the most tangible and the one we feel most strongly. "My home is my castle" may be a cliché, but it is one we hold dear.

If the legislators - that is, members in this Parliament - decide that they want to save old houses by the traditional means of prohibition and penalty, they will have to acknowledge that those property rights exist. Having said that, one must recognise what has happened, particularly in Subiaco. If I read between the lines, the council in Subiaco has endeavoured to do something that in its mind it had the right to do. However, that is not what many in the community thought. Although I do not believe they breached any legislation or any statutory requirements, obviously the consultation was not good enough to convince people they were going down the right track. There is a grey area, and it needs to be clarified. Municipal inventories, under which local governments have been operating, lack direction and strength. Certainly that is how it reads in section 45 of the Heritage Act 1990. It needs to be defined far better.

The other side of the argument is that if we are serious about heritage in this State, the Heritage Council, which is the government arm of heritage, needs to be properly funded. It needs some statutory financial obligations as well as statutory obligations on the level of staffing resources. That means a hard decision for any Government in Western Australia in prioritising where heritage sits in the scheme of things.

I have a background in local government and have taken part in heritage issues, and it was recognised in my time in local government that heritage needed some changes. At that time we started to work towards some changes and we worked very closely with the previous Government and the previous Minister for Planning and for Heritage, Hon Graham Kierath. Some good amendments were drafted and they were introduced in the Heritage

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Bill 2000. The local government heritage inventory provisions are strengthened and clarified. For the first time, the Heritage Council will have some power to ensure that all local governments compile and maintain inventories to an acceptable standard.

The Government has left this heritage legislation sitting on the table for over 12 months. On more than one occasion I have asked the minister to provide a date when it will be introduced into Parliament; as yet we have seen neither hide nor hair of it. I am aware that it has gone to Cabinet, so presumably it is moving slowly through myriad areas through which it has to go. However, I stress to the minister that perhaps the situation that currently exists in Subiaco and other places may have been avoided if this issue had been addressed a little earlier. What I fear now is that the minister will make a rash and hurried decision that will not suit anybody - neither the owners nor the heritage supporters in this State. I call on the minister to ensure that the heritage legislation comes into this place as quickly as possible and we are given the opportunity to debate it and address some of the issues that have been raised by my colleague, the member for Kingsley, who has outlined a lot of the planning issues involved, and two of my other colleagues who will speak on this subject and will probably raise other issues. I have touched on only the municipal inventory and the need to strengthen the Heritage Act to address the issues that are currently before the House. With those words, I support the amendment.

MS S.E. WALKER (Nedlands) [3.12 pm]: I hope the Minister for the Environment and Heritage pays attention to what I have to say on behalf of my constituents, because they have been most affected by this. One month after the February election last year, the Minister for Planning and Infrastructure signed off on the town planning scheme and gave the City of Subiaco the power to create and enforce a heritage list.

Two things have not been raised in this debate so far. The first is the powers of enforcement that apply to Subiaco under its town planning scheme No 4. I am not sure why those powers are there, but perhaps if I write or speak to the minister during the course of next week, she might tell me about the authorised power of entry onto property -

Dr J.M. Edwards: You might need to address that letter to the Minister for Planning and Infrastructure.

Ms S.E. WALKER: I am addressing this to the Minister for the Environment and Heritage at the moment, and also the Minister for Planning and Infrastructure if that is what is required. It is pretty obvious -

Mr J.N. Hyde interjected.

Ms S.E. WALKER: It is pretty obvious that many people here do not know what they are talking about, and one of those is the member for Perth. I do not want to waste too much more time on his drivel, but the minister will be aware that there were only 300 places on the municipal inventory before 2002. There are at least 3 000 more that we know of, but at the Subiaco council meeting it was indicated there were probably 5 000 lots. We do not know how many places are listed on the municipal inventory in Subiaco. I do not know whether the minister has seen this document, but I am sure she would be aware that the places that have not been covered by the City of Subiaco are those that are currently under the control of the Subiaco Redevelopment Authority, such as Subi Centro and places like that. Those places are coming off soon. The minister really cannot do this to people who are going out working all day to pay off a mortgage - they are not earning as much money as we are. Their dream is to get ahead, and they may wish to sell that property and move on. I impress on the minister that she is disheartening those people, because she is taking away their property rights. I am sure the minister would have read the second reading speech on this issue. She would have seen that the issue raised by the then shadow minister for heritage and planning, Richard Lewis, was the diminution of people's property rights. It was never envisaged during that second reading debate that there would be many people's properties on the heritage register.

Mr J.N. Hyde interjected.

Ms S.E. WALKER: I do not agree with Graham Kierath on this, so let us leave him out of it. I am putting my views; I am representing my electors. I feel very strongly about this issue, because it disheartens them.

Mr J.N. Hyde interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order! It is unparliamentary to keep interjecting.

Ms S.E. WALKER: It was never proposed to have this many homes affected by heritage listing, as indicated by this minister's own statement in budget paper No 2 for 2002-03 at page 734, which indicates that there are only 850 properties on the heritage register. The minister said that there was a queue and that now 20 000 places have been identified through the municipal inventory process. I do not think it is generally known that the municipal inventories are banked up to that extent. This has gone way too far.

Mr J.N. Hyde interjected.

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Ms S.E. WALKER: The member is distracting his own minister. I do wish he would be quiet. He is contributing nothing to this debate. He does not understand the plight of ordinary people.

The ACTING SPEAKER: Order, member for Perth!

Point of Order

Mr C.J. BARNETT: The member for Perth is deliberately trying to interfere with the speech being made by the member for Nedlands. She is not seeking interjections. The member is deliberately trying to put her off her speech. It is a form of intimidation that should not be tolerated.

Mr J.C. KOBELKE: The Leader of the Opposition is being a little touchy in defence of his members and their inability to engage in debate. The fact is that the member on her feet is taking interjections. If the member does not wish to take the interjections, she can address the Chair.

The ACTING SPEAKER: There is no point of order, but I point out that I have twice in the past five minutes asked the member for Perth to restrain himself.

Debate Resumed

Ms S.E. WALKER: Thank you, Mr Acting Speaker. I have only a short time. I intend to address this topic in my Address-in-Reply speech, but I will say this much: ratepayers in Subiaco received notification of listing on the municipal inventory following publication of an elaborate publication, which cost a lot. They eventually realised that they were not being properly consulted, as they are supposed to be under the Act. A memorial could be placed on their title and they would receive no compensation for loss of value. They are going out to work, coming home and finding that their house value is gone. There is nothing in the Act to address that, but I hope the minister does. The residents have no say. The planning controls are very restrictive, depending on the classification. The assessment on the outside of the house is done by students and other people who may not have been in that suburb before. Their homes will lose value and will be less attractive to buyers, who will have difficulty insuring the properties. That has been well publicised in the business news and by the Insurance Council of Australia Ltd. I hope the minister believes me when I say I have seen so many people who are worried about this issue and have come to see me. They should not have to do this every 10 years when Governments change; they should feel secure in their own homes. I sincerely hope the minister will listen to these concerns.

DR J.M. EDWARDS (Maylands - Minister for the Environment and Heritage) [3.19 pm]: This is an interesting debate, and what fascinates me in some ways is the amount of common ground, but I want to make a few points in reply to what has been said by the member for Nedlands. We came to government with a policy that is strong in the heritage area, and we make no apologies for that. The first thing we did was separate heritage from the planning portfolio, which is why I have it, and it is why I work closely with my colleague the Minister for Planning and Infrastructure. We also had a raft of election commitments for heritage, and virtually all related to regional areas, because we recognised that the major task with heritage was in regional areas. I am informed that 70 per cent of the remaining task is in the regions.

I have dealt very carefully with the issues that have come to my desk. Early in the piece, this Government heritage listed the Raffles Hotel. That listing had been presented to the previous minister, but he rejected it. This Government had it listed. It also advertised for new Heritage Council members. I believe it is the first time that has happened. The former member for Vasse, who was then a member of the council, came to see me and told me what a good move that was. He declined to nominate, but he gave me some very good advice, which I appreciated. This Government has a very strong heritage policy, but members on the other side of the House are also interested in the issue, particularly the member for Greenough, who has had as much hands-on experience in this area as anyone.

The current issue relates to municipal inventories. As the member for Kingsley clearly pointed out, section 45 of the Act provides that local governments are obliged to compile a municipal inventory and to review it. They must also undertake adequate consultation. Over time, the municipal inventory process has moved beyond what is in the Act. As the members for Nedlands and Kingsley have pointed out, the 138 councils in this State have approached the municipal inventory process in different ways and have to varying degrees attached their inventories to their local town planning schemes.

As a result, I asked representatives of the Western Australian Local Government Association to meet with me earlier this week. I met at the same time with a number of mayors. We decided at that meeting to form a working party comprising me and my officers, representatives of WALGA and its nominees, and members of the Heritage Council. I have also requested representation from the Minister for Planning and Infrastructure's area so that we can get all those people who should be working on the issue together to arrive at a more workable

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solution. That working party will look first at the municipal inventories and develop a more standardised process. We will look at what is listed and why, the assessment process and how it is carried out, and the extent to which municipal inventories can and should be linked to town planning schemes.

Ms S.E. Walker: Which mayors are on this working party?

Dr J.M. EDWARDS: That depends on WALGA.

Ms S.E. Walker: Have you invited any mayors to be on that working party?

Mr J.N. Hyde interjected.

Ms S.E. Walker: You are not the minister! Are you inviting any mayors to be on that working party?

Dr J.M. EDWARDS: No, WALGA will nominate representatives.

Ms S.E. Walker: Are you going to allow the Mayors of Subiaco and Cottesloe to be on that working party?

Dr J.M. EDWARDS: Quite possibly. It will depend on WALGA's nominations. I will not censor WALGA's nominees. It is important -

Ms S.E. Walker: Who will be representing the people on your working party?

Dr J.M. EDWARDS: The member for Nedlands complained about members interrupting her. Does she want to hear me or not?

The ACTING SPEAKER (Mr A.J. Dean): The member for Nedlands will come to order!

Dr J.M. EDWARDS: I will speak to you, Mr Acting Speaker. I will answer the question anyway, because I was just getting to that point. One of the issues that we acknowledged at the meeting will come as no surprise to anyone who has an ounce of commonsense; that is, people in the community have a range of views, as do the members of WALGA. A range of views was expressed at my meeting with WALGA and the mayors. In accordance with the Act, 138 councils have compiled municipal inventories, reviewed them and, in varying degrees, attached them to town planning schemes in different ways. We need more uniformity.

The meeting also discussed a number of other issues that we will follow up in the working group. One is the need to provide for better community education and consultation to explain what inventory listing means and, depending on what steps are taken, whether that is attached to a town planning scheme. Listing on a municipal inventory of itself has no legislative basis; it does not prevent people doing what they want to do. However, if the inventory is attached to a town planning scheme other considerations are taken into account. That is the source of some of the complaints.

I am a bit surprised to note that we are seeing a wind back in the Opposition's approach to heritage. It is true that Hon Graham Kierath, the former Minister for Planning, introduced legislation in 1999 designed to strengthen municipal inventories and so on. However, the legislation dealt with so many other issues that virtually every group in the community objected to something and the legislation was thrown out. The minister did introduce further legislation, but in November 2000. Guess what happened? We had an election. Yes, this Government will look to see what must be done to the Heritage Act. However, I am still awaiting the Crown Solicitor's advice on the Town Planning Appeal Tribunal's decision, and I will not make decisions before I receive that advice. I would like that advice quickly, but, clearly, the Crown Solicitor needs the appropriate time to produce it.

It is important to say that this Government is determined to have a very good working relationship with local government on this issue. It will not do what Hon Graham Kierath did.

Several members interjected.

Dr J.M. EDWARDS: He had the City of Fremantle take him to court about his decision on the Fremantle silos. Interestingly, the city won and he appealed that decision. The Labor Party stopped the wasteful use of taxpayers' money on that appeal. After tens of thousands of dollars had been spent, members on this side stopped that nonsense.

The municipal inventory is a very valuable tool for identifying local and community heritage. It is also valuable in enabling communities to see what is in their area and what they want to cherish, value and protect. I recognise that we need to do more to help communities do that properly. That is why I have set up this working party.

Mr M.F. Board: Since the advent of municipal inventories, the councils are listing every house rather than prime examples.

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Dr J.M. EDWARDS: They are not. The issue is that 138 local government bodies in this State have gone through the municipal inventory process, but in quite different ways. The working party, which will have a broad range of representatives, will arrive at a better, standardised process. It will look at a number of other issues, such as how we better educate the community, how we ensure that we are responding and how we distribute good information about the impact of listing on the various levels of the various registers.

Several members interjected.

The ACTING SPEAKER: The member for Nedlands will come to order!

Dr J.M. EDWARDS: This is a very serious issue, but it must be tackled properly. It needs thought and a cooperative process that will produce proper solutions. It does not need what the Opposition is suggesting: a simple knee-jerk reaction.

MS A.J. MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [3.29 pm]: It is interesting that the debate was led today by the opposition spokesperson on planning. When she was Minister for the Environment she often attracted the wrath of the development industry, which called her the de facto planning minister. It appears that as the opposition spokesperson for planning she wants to be the de facto opposition spokesperson on heritage. Her views seem to be taking precedence -

Mrs C.L. Edwardes interjected.

Ms A.J. MacTIERNAN: There is a clear reason that this Government has distinguished between heritage and planning. It has made it very clear that there must be a separation of those portfolios. It is not appropriate for the minister responsible for planning also to be the advocate for heritage. The Government is very amused and entertained by the fact that the spokesperson for planning is leading this issue.

The opposition heritage spokesperson, the member for Greenough, has a very distinguished record in this area. We acknowledge his positive input. He is a great supporter of Geraldton and the Geraldton port enhancement and of stronger heritage legislation. We are in the process of sending him an application form to join the Labor Party because we believe he would be better placed on this side. He is a good guy.

Ms S.E. Walker interjected.

Ms A.J. MacTIERNAN: I realise that the member for Nedlands needs protection when she is on her feet. I think the rest of us might need some protection when she is on her seat! We are making these comments because, as the Minister for Environment and Heritage has acknowledged, a serious issue must be decided about the lengths to which we go in the preservation of heritage. The debate has been crafted in a very -

Ms S.E. Walker interjected.

The ACTING SPEAKER (Mr Dean): Member for Nedlands!

Ms A.J. MacTIERNAN: The level of debate has been highly populist and headline seeking. It is not in any sense designed to engage in a serious debate on how we draw the line. Heritage listing will always be a difficult issue.

Ms S.E. Walker interjected.

Ms A.J. MacTIERNAN: Mr Acting Speaker, can we have a little bit of control. I want to make a couple of comments if I may. I did not interject on the member for Nedlands.

Ms M.M. Quirk interjected.

Ms A.J. MacTIERNAN: I do know how my good friend Senator Ross Lightfoot feels!

Mr C.J. Barnett: That was ordinary.

Ms A.J. MacTIERNAN: I apologise for that comment.

I note that the position of the member for Nedlands is somewhat variable. Today she argued strongly against the intervention of private property rights. Interestingly, I have a piece of correspondence written by her late last year in which she referred to the appalling and devastating effect that a development approval had had on the value of the property and the lifestyle of two of her constituents. She was referring to a decision as appalling.

Ms S.E. Walker interjected.

The ACTING SPEAKER: I call the member for Nedlands to order for the first time!

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Ms A.J. MacTIERNAN: She was referring to a decision as appalling that had resulted in a residence being bulldozed and replaced by a gorgeous post-modern number! We agreed with the member for Nedlands on that rare occasion. It was an appalling decision and it has had a devastating effect on the property values of the surrounding community and on its heritage precinct. However, unfortunately it was a decision of Mr Graham Kierath, the former Minister for Planning and for Heritage. Alas we could do very little but fiddle around at the edges to create a small improvement in the amenity for the neighbours. There is an important issue here. When someone buys into a historic precinct and suddenly the home is bowled down and a property developed, as the member for Nedlands said in her correspondence to me, it causes a diminution in property values for people in the surrounding areas. It is like all planning issues. Unfortunately, none of the members opposite sought to engage in this issue.

Ms S.E. Walker interjected.

Ms A.J. MacTIERNAN: I am not taking the interjection of the member for Nedlands.

The ACTING SPEAKER: Member for Nedlands, thank you!

Ms A.J. MacTIERNAN: Important issues surround planning and heritage and the degree to which freedom to deal with our properties is affected for the benefit of the broader community. We are not entitled to set up a panel beater's shop in our backyard. That restriction is a fetter on our private property rights. We say that that should be so because we want to ensure that the rights of the people around us are protected. How far we go in placing fetters on one person's rights to provide enhancements for the benefit of others is always an issue.

That is precisely what this heritage issue is about, but it was not discussed here today. It was done in a very populist and shallow manner, which is not to say there is not a problem. However, we will not make progress unless we are prepared to talk frankly about these aspects.

I notice a failure by members opposite to make any reference to the model scheme text introduced by the former Minister for Planning and for Heritage in 1999.

Ms S.E. Walker: I mentioned it.

Ms A.J. MacTIERNAN: I would like to know what members opposite thought -

Dr G.I. Gallop interjected.

Ms A.J. MacTIERNAN: It depends on whom we talk to. Some people refer to the Liberal Government and others refer to the coalition Government, although I notice that both are trying to airbrush each other out of the past. Mr Kierath, the minister at the time, quite properly and sensibly, introduced these heritage elements into the model scheme text.

Ms S.E. Walker: Will you take an interjection?

Ms A.J. MacTIERNAN: If it is intelligent.

Ms S.E. Walker: It is, so you may not understand it.

Ms A.J. MacTIERNAN: You would not be capable of doing that, deary!

Ms S.E. Walker: I would be, seriously. You signed off on the City of Subiaco town planning scheme No 4.

Ms A.J. MacTIERNAN: Is this a question or a speech?

Ms S.E. Walker: I am asking you why you signed off on it.

Ms A.J. MacTIERNAN: Well, get on with it.

Ms S.E. Walker: No, you listen to me -

Ms A.J. MacTIERNAN: I was going to take an interjection, but I am not prepared to listen to a diatribe from a self-opinionated person who has a view of her own merit that is well beyond the assessment of anyone else in this place or anywhere else.

Mrs C.L. Edwardes: I am amazed at the powers of entry that have been allowed to remain in that town planning scheme. Can you remember why? They are far in excess of police powers.

Ms A.J. MacTIERNAN: I imagine it is the same town planning scheme for which permission to advertise was given by the previous Minister for Planning. At the end of the day, the approval to advertise was given by the previous minister and signed off by our Government. We give some credence to local government.

Mrs C.L. Edwardes: Will you go back and check on the powers of entry that have been incorporated?

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Ms A.J. MacTIERNAN: I am quite happy to do that. As I say, a balance can be achieved in these heritage issues. However, in the debate today members have not been honest about the issues. This article I have is an example of a diminution of property values. Which of those planning approvals has caused a diminution in property values?

Dr G.I. Gallop: Can I look at that?

Ms A.J. MacTIERNAN: The Premier might care to read the letter from the member for Nedlands.

The model scheme text, quite properly introduced by the previous Government, envisages that town planning schemes can give effect to heritage protection. It envisages that councils can indeed make a heritage list of properties that they believe are significant enough to warrant a special level of protection. This is not exactly the same thing as the municipal inventory. I am not sure that the member for Nedlands understands that the heritage list under the model scheme text is a separate matter altogether. The model scheme text contains provisions for the protection of precincts. I am concerned that the whole purpose of the previous Government introducing model scheme texts was not given sufficient weight in the decision of the Town Planning Appeal Tribunal. It does not recognise what was effectively the decision of Parliament. These model scheme texts are part of the regulations, and are the delegated legislation of this Parliament.

As part of this heritage and planning review group that has been set up by the Minister for the Environment and Heritage, in which our people are willing participants, we have to review what the impact of this might be. There must be a balance between, and proper recognition of the need for, development and growth and heritage. However, there also must be some real capacity for local government to give effect to the heritage guidelines, plans and lists that they set up under the model scheme text, otherwise this is a complete and utter waste of time. I do not believe that either the former Government or this Government wanted that.

MR J.N. HYDE (Perth) [3.41 pm]: We have a number of areas of agreement. What is missing is an understanding of how these systems work in the real world. Of the 144 councils, 138 have it absolutely right; they listen to their communities and they have an approach to heritage and town planning that is in keeping with the people of their districts. We need a system that not only caters for the variations in those 144 different council areas, but also gives some protection to the rights of an individual and a community. The Opposition must be clear whether it is in favour of an individual having the right to demolish and erect anything. Some of the speakers appear to be saying that an individual should have the right to demolish anything. I do not support that situation. The history in WA and in the eastern States is that the community has a right to comment when determination is made of heritage properties in a local area.

There is a lot of difference between the Register of State Heritage Places and a municipal inventory. The MI has always been a signpost. People are not prevented from applying for a demolition because their property is listed on an MI. It did not stop me as a mayor, or as a councillor, from approving a demolition. In council meetings all over the State, dwellings that are listed on MIs are approved for demolition on the condition that proper records and photographs must be kept of the dwelling. The community may have deemed that it is of some local heritage significance; not enough to stop the dwelling from being demolished, but enough that its existence and cultural attachments to the community should be recorded. In many ways, the MI has made for a much stronger and fairer community. In the current brouhaha that is occurring in a very small area, we must not lose sight of those aspects.

Already property owners cannot exceed noise limits, burn pig fat or do certain other things. Property owners do not have an unfettered right to do anything on their property. We are keen to ensure that the Western Australian Local Government Association, as a representative group of local government, has some autonomy. The current member for Greenough and I, in our former roles, were very much part of that. We both took umbrage if the State Government told local government what to do. I took a lot of umbrage when the member for Ballajura and I were nominated by the Western Australian Municipal Association to a state heritage group - I think I was the first preference and the member for Ballajura might have been the second - and the State Government ignored the independent will of local government. I applaud the minister for not nominating the members for Greenough and Perth for this committee, and saying that she wants WALGA to nominate representatives who will reflect all the views of local government today.

A furphy has been raised that heritage listing suddenly decreases property values. I suggest that a couple of members from the western suburbs, who have decided to jump ship and support totally an anti-heritage lobby, should talk to some of their local businesses, and particularly some of the local realtors who advertise gladly, openly and fully that they are selling a heritage property and it is worth X number of dollars because it is in a heritage precinct. People in my area and in the western suburbs know that a good heritage property increases in value. In a street of intact heritage properties - 1890s and federation-style - if a council allows someone to build

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something that does not adhere to setbacks, height limits and other things, the property values in the rest of the street will decrease. It cannot be said that heritage listing devalues property; that is wrong.

We must also look at those people who have raised the issue and have called some people heritage Nazis. The myth is that once these poor people obtain approval for demolition in a particular area they are forced to build a neo-Tuscan, nouveau-Georgian, faux-federation or post-modern dwelling. The preferred modern heritage practice today - particularly in my area of Vincent - is that when a dwelling is demolished, a stunning modern design is built in its place, not a fake heritage dwelling. I can take members to areas in the metropolitan area where heritage is enhanced because a good council has allowed a stunning modern design next to a heritage house. People are confusing heritage with good planning. Being able to demolish does not mean people suddenly do not have to adhere to a five-metre setback. This is what some of the developers and people who do not live in an area believe. They think that if they can demolish a heritage building, they can build more than the maximum allowed on the site. It is the setbacks and the other amenities of the area that are important in planning decisions.

This decision of the appeal tribunal gives more weight to heritage than perhaps many people are acknowledging. It says categorically that heritage is an aspect of planning. In local government, I always erred on the side of caution. If the council refused a demolition, we never said it was just because of heritage value, but rather because of the amenity of the area, the setback, and feedback from public consultation. These are good planning grounds to reject demolition. It is important that we, as a Parliament and a Government, do not create wedge politics. We should not create a situation of us against them or attempt to make out that this is something to do with 1066, the Magna Carta and the inalienable rights of human beings; this is a community issue.

Dr G.I. Gallop: They had that wrong. It was the rights of freeborn Englishmen.

Mr J.N. HYDE: There we go. It is very important to realise that if heritage and the rights of the individual are to be appreciated, it must be done through consultation with the local community. As a State Government, we must ensure - as I think the last Parliament would have if it had dealt with the amendments - that the local community not only is consulted fully and informed, but also its wishes are listened to.

MR P.G. PENDAL (South Perth) [3.50 pm]: I cannot support the motion. I will therefore be voting against it. I do understand some of the concerns raised by some of the opposition speakers, particularly the concerns of those speaking for householders who have recently been the subject of the controversy in Subiaco. I would suggest that there are other ways around the problem. I want quickly to canvass those in the combined five minutes that are left for Independents.

The motion talks about recognising the rights of individual landowners. The rights of a landowner have never been absolute; in fact, this Parliament spends a good part of its time every year interfering with the rights of landowners. I shall do no more than say that one of the Government's Bills to be debated in the next few weeks - that is, the Railway (Jandakot to Perth) Bill 2002 - is a good example of a Bill that will affect my area. When a local authority creates a town plan, for example, that affects the rights of individuals in its local municipality.

Dr G.I. Gallop: There is no better example than the area of Kensington, which I used to represent and which you now represent. There was a great controversy about the town planning scheme and what it implied for the nature of that area and the rights of the landowners.

Mr P.G. PENDAL: I agree. I appeal to society to not do to Subiaco what was allowed to be done to my electorate of South Perth 25 or so years ago before there was any legislation in Western Australia to protect heritage buildings and sites. Developers and others could see what was happening. The result was that South Perth lost a huge number of its heritage buildings, particularly in the older part of South Perth and in the Mill Point area. For Subiaco and other inner city areas to go the same way would lay the place bare.

The motion talks about ensuring that local councils do not take away landowners' rights. We do that, probably with reluctance in many cases, but we do it for the greater public good when it comes to town planning schemes. We do not have to reinvent the wheel. In 1994 this Parliament had the Select Committee on Heritage Laws.

Mrs C.L. Edwardes: It made some very good recommendations.

Mr P.G. PENDAL: It did, and it had an excellent chairman they tell me. Page 40 of "The Select Committee on Heritage Laws Report" reads -

Under the present legislation, the effect of entry of a building on a Municipal Inventory by a local government authority is not explained.

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In other words, there was a deficiency in the legislation. I am the first to admit that when the Bill was being put through the upper House in 1990, the then Opposition put in the provision for municipal inventories. It was put in, admittedly at the last minute, with the intent of demonstrating that local authorities had a part to play in the retention of heritage buildings and sites in Western Australia. I do no more than to draw the Government's and the minister's attention to the report of the Select Committee on Heritage Laws. It should be something they consult.

I come to the question of the adverse impact on local property values. I mentioned to the minister privately - the member for Perth touched on this and the member for Nedlands expressed concern about it - that only one authoritative survey has been carried out in Australia of which I am aware, and that was in the Victorian town of Maldon. I say that from memory. It was the only authoritative study to determine the impact of heritage listing on local property values. In every single case residential property values were enhanced as a result of heritage listing. The one question that people never really managed to get around was that of central business districts. Even our town planning laws, and I think our heritage laws, now accommodate that, because we are able to give all sorts of concessions to persuade people to respect heritage in the central business district of Perth. For those reasons I oppose the motion.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [3.55 pm]: Some people in the community have always valued places of historical significance or buildings of heritage value. There is nothing new in that. It is true that over the past 20 years a broader part of the community has come to value heritage and wishes to see places of genuine heritage preserved. Indeed, local governments, particularly in the western suburbs, have played a very positive role in raising heritage awareness. However, the problem that we are talking about today is that some of the more recent actions by local councils have taken away or restricted people's property rights. We should never forget that for Australians their home is their castle.

The broad principles and structure of the Heritage of Western Australia Act 1990 is supported. The Act was passed with bipartisan support when it went through this Parliament. However, in not all respects has it operated as it was originally intended. Let us first distinguish between places of high or significant heritage status. Those places should be formally listed. If they are found to be of significant heritage status, they need to be protected and preserved through a listing on the state heritage list.

It is interesting that, after some 12 years since the passage of the Heritage of Western Australia Act, around 880 properties are listed on the heritage list, of which around 200 are listed as private residences, of which the vast majority still remain in private ownership. However, literally thousands more homes are of historic and heritage value. They are owned and preserved by individuals simply because they enjoy them. I happen to live in a house that fits that category. It is not heritage listed but I enjoy it and have spent a lot of money preserving and protecting its characteristics. Thousands of people share those values.

The Heritage of Western Australia Act, as members are aware, requires local councils to prepare and maintain a municipal inventory of local heritage. The reality is that councils have done this to varying degrees and according to varying criteria. There has been no consistency at all. Some councils have taken it very seriously; others, as members have said today, have simply employed students to drive past blocks and houses and tick them off on a map. That is a very amateurish and casual way of going about it.

Many councils have treated the municipal inventory as a fairly informal process and have not undertaken a detailed assessment of individual properties. That was perhaps the original intention, and that is the way the process has been conducted. However, a change in the debate has occurred since the change of government. Local councils, particularly those in the western suburbs, are now placing large numbers of properties on the municipal inventory; for example, Subiaco has 2 800 properties, or 35 per cent of all dwellings in its inventory; Claremont 800 properties, or 19 per cent, and so it goes on.

People who are affected shared a number of sentiments. They believe that they have not been properly consulted; they believe that if their house is to be listed, it should be done voluntarily or by agreement; they believe that their property rights have been restricted; they believe that the process has been ad hoc and inconsistent; they believe that their house will lose value and that it will certainly be more difficult to alter, demolish or even sell. The issue has become far more acute because of the simple fact that from constructing municipal inventories, local authorities have now taken the further step of placing those municipal inventories on top of their town planning scheme by way of memorials. That change has affected people's rights to alter and demolish their properties, and it will reduce the value of those properties. I do not believe that the Heritage of Western Australia Act or this Parliament ever intended that municipal inventories should allow local governments to take that further step from developing a local historic record to placing the information on town planning schemes. That is where the problem has arisen.

Extract from *Hansard*
[ASSEMBLY - Thursday, 22 August 2002]
p518b-529a

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There is a way forward. No-one in this House is arguing to do away with the Heritage of Western Australia Act or in any way to undermine the principles of that legislation. However, the Parliament needs to clarify the arrangements for municipal inventories as they relate to private residences. If a local council believes a particular residence is deserving of preservation, that local council, as any other group or individual can, should take that property through a formal assessment. If it is of merit, the local council should have it listed on the state list. That is what should happen. If a local council identifies a particular house as being of such status and takes it through a formal assessment, if it is good enough and deserving enough, it should make it onto the state heritage list. However, if a local council is more interested in preserving the character and amenity of its area, it should deal with that, as the member for Kingsley has said, by making use of precinct plans, local building codes and planning guidelines. All those things are available. We do not require rocket science to resolve this issue.

We should look at the Heritage of Western Australia Act to make sure the state heritage list is operating as it should operate. If councils wish to preserve the amenity of their area, we should make them use the appropriate planning processes. They should not threaten people's livelihoods. People who have bought a house that may have some character or be historic - federation, prewar, Art Deco or whatever - and want to live in it or renovate it should be allowed to do so. They do not expect their major investment and principal form of saving to be undermined and placed at risk by an arbitrary, ad hoc, casual and informal process by local government. This problem has arisen, and it is not the fault of any person or party in this House. However, it is up to the Parliament to clarify and fix the situation.

Question put and a division taken with the following result -

Ayes (16)

Mr C.J. Barnett	Mrs C.L. Edwardes	Mr W.J. McNee	Mr D.F. Barron-Sullivan
Mr M.J. Birney	Mr J.P.D. Edwards	Mr A.D. Marshall	Mr M.W. Trenorden
Mr M.F. Board	Ms K. Hodson-Thomas	Mr B.K. Masters	Ms S.E. Walker
Mr J.H.D. Day	Mr R.F. Johnson	Mr P.D. Omodei	Mr J.L. Bradshaw (<i>Teller</i>)

Noes (26)

Mr P.W. Andrews	Mr J.N. Hyde	Mr N.R. Marlborough	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Ms C.A. Martin	Mrs M.H. Roberts
Mr J.B. D'Orazio	Mr R.C. Kucera	Mr M.P. Murray	Mr P.B. Watson
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr A.P. O'Gorman	Mr M.P. Whitely
Dr G.I. Gallop	Mr J.A. McGinty	Mr P.G. Pandal	Ms M.M. Quirk (<i>Teller</i>)
Mrs D.J. Guise	Mr M. McGowan	Mr J.R. Quigley	
Mr S.R. Hill	Mr A.D. McRae	Ms J.A. Radisich	

Pairs

Mr M.G. House	Mr A.J. Carpenter
Mr B.J. Grylls	Mr F.M. Logan
Mr T.K. Waldron	Ms S.M. McHale
Mr R.A. Ainsworth	Mr D.A. Templeman

Independent Pair

Dr J.M. Woollard

Question thus negatived.