



Hon Albert Jacob MLA
Minister for Environment; Heritage

Our ref: 50-15037

Hon Simon O'Brien MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Mr O'Brien

Petition No. 129 – Esperance Tanker Jetty

Thank you for your letter of 13 October 2016 requesting comment on the terms of Petition No. 129 Tanker Jetty Esperance and the submission from the principal petitioner, The Jetty Group (Inc).

The Esperance Tanker Jetty (the Jetty) was constructed in 1935 and is one of three predominantly timber jetty structures in Western Australia that remain substantially intact; the others being Busselton Jetty and Carnarvon One Mile Jetty. The Jetty was entered in the State Register of Heritage Places in August 2008 in recognition of its considerable size, scale and construction. Its visibility from the town and its strong presence in the seascape ensure its landmark status and contributes to the Esperance community's sense of place and is valued by the community.

The Shire of Esperance (the Shire) took over responsibility for the care and maintenance of the Jetty in 1991 under a Licence Agreement with the Minister for Transport for use as a community recreational asset.

Having completed engineering studies and community consultation on a proposal to demolish and replace the Jetty with a new structure, the Shire Council unanimously resolved in December 2015 to proceed with demolition due to its deteriorated and dangerous structural condition.

The Shire subsequently referred the proposed demolition to the Heritage Council for advice as required under section 11 of the *Heritage Act of Western Australia 1990* (the Act). Section 11(3) of the Act states that a decision-making authority¹ shall not take

¹ The decision-making authority for proposals affecting registered places is usually the relevant local government, the Western Australian Planning Commission, or such other statutory body specified by legislation that may cover the place. In this case, it is understood the place is subject to the Port Authorities Act 1999.

any action that might affect to a significant extent a registered place unless that action is consistent with the advice received from the Heritage Council, or there is no feasible and prudent alternative to the taking of that action. The Act requires the decision-making authority to use its best endeavours to ensure all measures which can reasonably be taken by any person involved in the proposal are taken so as to minimise any adverse effect.

The Heritage Council considered the Shire's referral at its meeting on 11 March 2016 and resolved to advise the Shire that it did not support the demolition of the Jetty. The Heritage Council's advice noted that in the event that the decision-making authority for the place considers that there is no feasible or prudent alternative except to demolish the Jetty, then a number of conditions would need to be satisfied to ensure the cultural heritage values of the place continue to be acknowledged and recognised.

The Shire notified to the Heritage Council in a letter of 9 May 2016 that it had decided to proceed with the demolition, and called tenders for the project. Three tenders were received.

In August 2016, The Jetty Group Inc. (the Group) lodged a request under section 9 of the Act for an urgent Conservation Order to be made under section 59 on the Jetty to prevent its demolition. The request was to "allow a period of time to further develop the Group's position to retain the Jetty".

I have met with the Group and the Shire to hear their reasons for retention and demolition respectively. The Shire was advised of the application for a Conservation Order and asked to defer making any decision that would activate the demolition of the Jetty until I have had the opportunity to receive the Heritage Council's advice and consider the matter in more detail. By a resolution taken on 23 August 2016 the Shire deferred consideration of tenders for demolition, and invited the Group to present its alternative by 31 October.

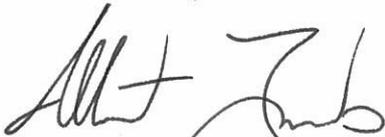
The Act empowers the Minister for Heritage to make a Conservation Order that prohibits specified actions – such as demolition – from being undertaken at a place. A Conservation Order cannot require an owner to repair or restore a place. It is not the role of the Heritage Council or the Minister to consider the engineering or economic viability of the Group's proposal as this is the role of the decision-making authority relevant to the property. The role of the Heritage Council in considering the Group's proposal is to advise the Minister for Heritage whether there is sufficient information and cause to recommend the Minister issue a Conservation Order to allow more time for the decision maker to consider alternatives to the proposed demolition to determine if any are viable and therefore a feasible and prudent alternative to demolition.

The Heritage Council met on 14 October 2016 to consider the submission for a Conservation Order and presentations were made by both the Group and Shire. The Group provided an alternative engineering solution as part of its submission that retains the alignment of the current jetty and a proportion of the original fabric. After seeking clarification on several matters, the Heritage Council resolved on 7 November 2016

that the Conservation Order, as requested by the Group, was no longer warranted as the Shire had deferred consideration of tenders for demolition and considered the Group's proposal. The Heritage Council also advised me that it remained open to me as the Minister for Heritage to place a Conservation Order over the place for other purposes that fall outside the remit of the original request by the Group, such as to prohibit demolition to provide time for the Shire to prepare a final design that incorporates partial retention of the Jetty and to secure funding for its construction.

On 8 November 2016, the Shire resolved, amongst other things, to reiterate its previous advice to demolish the Jetty and to select a preferred tender for the demolition works. In light of the decision made by the Shire on 8 November 2016, I chose to issue a Conservation Order on the place and will consider lifting the Conservation Order when I am satisfied that these matters have been adequately addressed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Albert Jacob', written in a cursive style.

Albert Jacob MLA
MINISTER FOR ENVIRONMENT; HERITAGE

16 NOV 2016