

JULY 2024 – VERSION 1.0

1. PURPOSE

To provide guidance on Part 7 of the *Heritage Act 2018*.

2. OVERVIEW

The *Heritage Act 2018* (the Act) provides that an owner of a property may enter into a heritage agreement with the Heritage Council of Western Australia (the Council) to formalise commitments made by the owner, and the obligations of the owner as identified by the Council, regarding the heritage conservation of the property.

The Act further states that, in giving its statutory advice in relation to a referred proposal, the Council may advise that a decision to approve the proposal must be conditional on the owner entering into a heritage agreement on such terms as the Council advises. If such advice is given, the decision-making authority is obliged to implement this condition within its own determination, should it approve the proposal.

In relation to a proposal referred under section 73 of the Act, a heritage agreement may only be a condition of approval by the decision-maker if the Council has made this recommendation in its advice provided under section 74.

3. SCOPE

This Policy only applies to advice issued under section 74 of the Act in response to section 73 referrals affecting places included in the State Register of Heritage Places (the State Register).

4. OBJECTIVE

This Policy is intended to meet the following objectives:

- To provide consistency and transparency in the provision of statutory advice recommending the use of a heritage agreement as a condition of approval.
- To provide consistency in the requirements for interpretation and the maintenance of interpretive elements.

5. POLICY REQUIREMENTS

A requirement for a heritage agreement should be limited to the following situations:

- A proposal, if implemented, would create identifiable risk to the conservation of the place and where the risk can clearly be mitigated by a heritage agreement.
- A decision-maker has requested the Council include a requirement for a heritage agreement in its advice, and provided reasonable and relevant grounds for the use of such an agreement.
- The applicant has made a commitment, either stated or implied, for the conservation of the place to gain a preferential outcome.

A heritage agreement is a reasonable condition to ensure cultural heritage significance is maintained and conserved, and conservation is understood to be required as an early outcome of the project.

5.1 IDENTIFICATION AND MITIGATION OF RISK TO CULTURAL HERITAGE SIGNIFICANCE

The following activities are common referrals for which a heritage agreement may be appropriate.

5.1.1 SUBDIVISION

A proposed subdivision can increase the amount of building work in the vicinity of a registered place. Subdivision projects can result in heritage properties being unoccupied and unused for significant periods, with a temptation for new development to be completed and sold before attention is given to conservation works. A heritage agreement can include requirements for security and monitoring of the heritage place.

At proposed subdivision stage, there is often little detail of associated development. A heritage agreement can include requirement for agreed design guidelines to identify principles to guide design and appropriate areas for future development.

5.1.2 DEVELOPMENT WITH MAJOR ADVERSE IMPACT ON CULTURAL HERITAGE SIGNIFICANCE

Proposals that include demolition may pose risks to the conservation of the place in the loss of heritage fabric and/or the potential for unintended physical consequences of demolition works. A heritage agreement can specify requirements for protection and monitoring of the place during works, ongoing conservation and maintenance of the retained elements and heritage interpretation to ensure positive outcomes.

5.1.3 DEVELOPMENT WITH ADVERSE IMPACTS ON SETTING AND LIMITING DEVELOPMENT POTENTIAL/USE OPTIONS FOR THE PLACE

The assessment of a proposal may identify inherent risks to a place, including adverse impact on the cultural heritage values, due to the nature of the proposal and/or the place. A common example is a major adaptive reuse project that proposes reactivation of a place through conservation and development works. A heritage agreement can identify

opportunities and constraints of development and ongoing responsibilities for care of the place, including landscaping, archaeological potential or known sites within the place.

5.2 INTERPRETATION

Interpretation is a useful tool that can ensure good heritage outcomes. A heritage agreement should include clauses for interpretation when the proposal results in adverse impacts on the cultural heritage significance of a place. These clauses can assist in ensuring the implementation and maintenance of interpretative elements.

5.3 REQUEST BY DECISION-MAKER

A decision-maker can request that the Council include a heritage agreement as a condition of its support for the proposal in its advice provided under section 74 of the Act. Such a request should be made in writing to the Council at the time of referring the proposal. The decision-maker's request must outline:

- the decision-maker's particular interest in the subject place;
- what the heritage agreement would be seeking to achieve and why, including justification that demonstrates the proposed objectives are proportionate, reasonable, and applicable in relation to the development proposal; and
- the need for a heritage agreement in the context of the development proposal, in particular, the identifiable risk to a place arising from the proposal and how this can be mitigated by a heritage agreement.

The Council will consider the merit of the request in respect to the points above, with its own assessment of the proposal. Support by the Council with respect to such a request will be confirmed in its section 74 advice to the decision-maker.

Should the Council determine a heritage agreement is not warranted, it will not include such a condition in its advice.

5.4 FORMALISING A COMMITMENT WHERE THERE ARE ASSOCIATED FINANCIAL BENEFITS

An agreed or perceived financial benefit arising from a commitment to retain and conserve and/or interpret a heritage place is sufficient basis for requiring a heritage agreement. The obligations of the heritage agreement should not be disproportionate to the benefits derived by the owner.

5.4.1 VARIATION OF SCHEME PROVISIONS

The planning framework provides opportunities for an applicant to gain concessions, benefits or variations to normal requirements by identifying a commitment to heritage conservation within their proposal. In most cases, this commitment would be part of a negotiated outcome with the decision-maker and stated within the application documentation, and the application may already include a request for a heritage agreement by the decision maker.

In these instances, the Council may advise one of the following options:

- a) that a decision to approve the proposal must be conditional on the owner entering into a heritage agreement on such terms as the Council advises.
- b) that a heritage agreement is required if it considers that an applicant has gained benefits or concessions on the grounds of a commitment to heritage conservation. The heritage agreement will formalise this commitment and outline the details of the conservation requirements for the place.

5.4.2 SUBDIVISION OF RURAL LAND DEVELOPMENT CONTROL POLICY 3.4

A proposal to subdivide a rural lot may use an exemption for conservation of heritage buildings and places to allow creation of a second residential lot. This creates a saleable asset that is permitted under DCP3.4 only on

the understanding that the heritage building will be conserved. A heritage agreement identifies a requirement on the owner to maintain the heritage fabric and, where relevant, undertake necessary conservation works.

5.5 CASE-BY-CASE ASSESSMENT

There are few instances of an absolute requirement for a heritage agreement. This policy requires the exercise of judgement and assessment of the specific circumstances to determine whether a heritage agreement is appropriate and what it should require.

5.6 PARTIES TO HERITAGE AGREEMENTS

The Council is typically a party to all heritage agreements for places on the State Register. On occasion, where it is desirable for the purposes of the Act, the Council may specify one or more other public authorities as parties to a heritage agreement.

5.7 VARIATIONS TO HERITAGE AGREEMENTS

Any party of a heritage agreement can request modification or variation to a certified heritage agreement. Such requests could include the reduction of area that the heritage agreement applies to, timeframe extensions, or variations to the scope of works. All requests must be put before the Council for its approval; and, if approved, a Deed of Variation will be drafted by the Department to be executed by all parties and certified by the Minister.

5.8 TERMINATION OF HERITAGE AGREEMENTS

The Act does not provide for the termination of a heritage agreement.

6. COMPLIANCE TO HERITAGE AGREEMENTS

The main objective of a heritage agreement is to provide for the continued maintenance and conservation of a heritage place. Compliance with the terms of the agreement is important and is an expectation of the Council. The Council will be guided by its Compliance Strategy when undertaking compliance actions.

7. RELATED DOCUMENTS

The following documents support this Policy:

- Heritage Agreement Guidance Note (Heritage Council of Western Australia, 2019).

Acknowledgement of Country

The Heritage Council of Western Australia acknowledges the Aboriginal people as the traditional custodians of Western Australia. We pay our respects to the Ancestors and Elders, both past and present, and the ongoing connection between people, land, waters and community. We acknowledge those who continue to share knowledge, their traditions and culture to support our journey for reconciliation. In particular, we recognise land and cultural heritage as places that hold great significance for Aboriginal people.

Disclaimer

This document has been produced by the Department of Planning, Lands and Heritage on behalf of the Heritage Council of Western Australia. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Government, its employees and agents are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be, in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

© State of Western Australia

Published by the
Department of Planning, Lands and Heritage
Gordon Stephenson House
140 William Street
Perth WA 6000

Locked Bag 2506
Perth WA 6001

Published date: July 2024
Approval date: 8 December 2023
Effective date: 5 April 2024

website: www.wa.gov.au/dplh
email: info@dplh.wa.gov.au

tel: 08 6551 8002
fax: 08 6551 9001
National Relay Service: 13 36 77

This document is available in alternative formats on application to the Department of Planning, Lands and Heritage Communications Branch.