

Guidelines for development of Heritage Protected Places

1. Introduction

1.1 Background

The conservation of heritage places is often described as a process of managing change to a place in such a way that retains its cultural heritage significance (*Burra Charter* (2013)). Heritage practice recognises the practical requirements of heritage places as homes and workplaces, and the benefits of ensuring that a heritage place is in active use.

Change to heritage places can often be achieved without negative impact on the heritage values of the place. This relies, however, on a process that requires the proper consideration of heritage values in the planning stages of a proposal, and allows for expert advice where needed. This is provided by the planning framework and the process it lays out for the responsible local government or decision-making authority.

1.2 Purpose of the guidelines

The basic provisions of the planning framework set out a sound process that could operate with little additional material. Decision makers could simply base heritage-related considerations for development assessment on the development control principles contained in *State Planning Policy 3.5 Historic Heritage Conservation* (SPP 3.5), with occasional reference to the *Burra Charter*.

It is intended, however, that local governments tailor local planning to fit the local conditions and to meet the requirements of their local planning strategy. One of the key mechanisms for this is the local planning policy, which can be used to guide both the formulation of applications and their subsequent assessment and determination.

These guidelines provide sample text for a local planning policy that may be adapted as required, accompanied by explanatory notes that outline some of the key ways in which the policy can be tailored for local need.

A local planning policy for heritage would intend to:

1. Build on the heritage conservation objectives in the Local Planning Strategy;
2. Extend the development control principles contained in *State Planning Policy 3.5 Historic Heritage Conservation*;
3. Identify how discretionary provisions of the local planning scheme will be applied in relation to conservation of heritage protected places;

4. Identify how applications for development of heritage protected places will be assessed.

1.3 When to use the guidelines

As noted, for some local governments the provisions of SPP3.5 will be sufficient guidance for heritage-related decisions under the local planning scheme. In these circumstances the principles of these guidelines may form a supplementary reference to planners and decision-makers in assisting determination of an application.

Where a local government chooses to adopt a local planning policy to assist in clarifying how their local planning scheme will be applied in relation to heritage places, these guidelines will assist in developing such a policy.

Each local government should ensure that any proposed LPP meets its requirements and is consistent with the local planning strategy, local planning scheme, the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*.

2. The Heritage Framework

A local planning policy for heritage will be most effective when integrated with a wider heritage framework that includes an overall heritage strategy for providing assistance and incentives towards heritage conservation, as well as the policy and procedures to ensure good advice and development controls. This recognises that retention and conservation of heritage places provides a community benefit, and that local government acts for the community when aiding owners to deliver this benefit.

Assistance measures, such as specialised services, grants, rates concessions and development incentives, are practical and accessible ways local governments can recognise owner contributions to the conservation of heritage places, and can encourage positive engagement with the heritage process.

Further information and assistance in development of a heritage framework is available from the Department of Planning, Lands and Heritage.

Resources include:

- Guidelines for assessment of local heritage places (in draft)
- Guidelines for local heritage surveys (July 2019)
- Guidelines for identifying and creating heritage areas (in draft)
- Guidelines for establishing a heritage list (March 2021)

Appendix 1. SAMPLE TEXT FOR A LOCAL PLANNING POLICY – DEVELOPMENT OF HERITAGE PROTECTED PLACES

Statutory Background

This policy is adopted under deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* which enables the [INSERT LOCAL GOVERNMENT] to prepare local planning policies for any matter related to the planning and development of the Scheme area. The local planning policy can only have effect where consistent with the deemed provisions and local planning scheme.

Purpose

To provide guidance on the assessment of development proposals which affect heritage protected places.

Use of terms

Unless otherwise noted, terms used in this policy have common meanings and include those defined in the *Planning and Development Act 2005*, *Planning and Development (Local Planning Schemes) Regulations 2015*, and the *Heritage Act 2018*.

EXPLANATORY NOTES

These notes do not form part of the policy and are intended to assist the local government in tailoring the policy text to meet its own needs. They may also assist in developing supporting material for heritage matters, but should be removed before publication of the LPP.

The LPP should take the format and approach developed by each local government and be adopted and maintained consistent with the local planning scheme.

General requirements for LPPs are contained within Part 2, Division 2 of the deemed provisions to the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Explanatory notes – Statutory Background

The statutory background should briefly explain the legal status of the LPP.

Significant fabric means fabric identified as contributing to the cultural heritage significance of the place.

Application

This policy applies to any heritage protected place, as defined in clause 1A, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Note that any heritage area adopted under the local planning scheme will have an associated local planning policy that should be read in conjunction with, and may prevail over, this policy.

Objectives

This policy seeks to:

- (a) conserve and protect places of cultural heritage significance;
- (b) ensure that development does not adversely affect the significance of heritage places;
- (c) ensure that heritage significance is given due weight in local planning decision making;
- (d) provide improved certainty to landowners and community about the planning processes for heritage identification and protection; and
- (e) clarify the format and content of accompanying material in accordance with clauses 63(1)(d) and 63(3), Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*

Explanatory notes – Application

The deemed provisions cl.67(k) require that the local government has due regard to the built heritage conservation of any place that is of cultural significance. The preferred approach to heritage and planning practice is to signal an intent to apply the heritage provisions of the planning framework through designation of heritage protected places.

It is therefore recommended that the stated target for this policy is heritage protected places.

A LPP for a heritage area may provide additional provisions to, or replace elements of, this policy. This should be made clear within the heritage area LPP.

Explanatory notes – Objectives

The suggested objectives are drawn from SPP3.5, but should be adapted to reflect any heritage-related outcomes identified in the local planning strategy.

Policy Provisions

1. Development control principles

- 1(a) In considering any planning applications in relation to a heritage place or within a heritage area, the [City/Town/Shire] will apply and have regard to the development control principles set out in State Planning Policy 3.5, Historic Heritage Conservation (SPP3.5).
- 1(b) Development within a heritage area will also be assessed against the local planning policy for that area, including any design guidelines associated with the policy.

2. Applications for development approval - accompanying material

- 2(a) This policy identifies accompanying material that is required for applications for development approval relating to a heritage place or area, in accordance with clauses 63(1) and 63(3), Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This may vary depending on the extent of the proposed work and its impact on a heritage place or area.
- 2(b) The Application information matrix, contained within Part 3 – Accompanying information of *State Planning Policy 7.3 Residential Design Codes Volume 1* details what information **shall** or **may** be required to support the application. In addition to the application information already detailed in the matrix as 'shall be provided to support the application', rows 1(m) to (p) for all application types shall also be provided for applications for development approval relating to a heritage place or area.

Explanatory notes – Development control principles

If there are design guidelines for heritage places that are to be applied across the scheme area, these should be referenced here. Design guidelines, however, generally relate to a specific style or period of architecture and are rarely relevant to all places within a district.

Explanatory notes – Accompanying material

Clause 63(3) of the deemed provisions allows the local government to require an application to be accompanied by specified material if it relates to a heritage place.

The same material may not be required in all cases, and accompanying material should only be required when it is of benefit in allowing the decision-making body to make an informed decision, and the local government has access to relevant skills to assess the material.

This policy should clearly guide applicants and staff on what accompanying material is required for any application.

2.3(c) An application that does not include the required accompanying material will be considered as incomplete and not progressed until the material is provided.

2.1 Standard requirements

2.1(a) Where an application relates to a heritage protected place, it must be accompanied by a detailed schedule of finishes, including materials and colours, of the proposed development. This schedule should identify existing finishes of relevant heritage fabric of the place, and how the nominated finishes respond to the heritage values of the place.

2.1(b) For an application that does not directly relate to a heritage protected place, the [City/Town/Shire] may request additional information where it is considered necessary in order to determine the impact of the proposed works on an adjacent or nearby heritage protected place. This may include, but is not limited to, a heritage impact statement as described in this policy.

2.1(c) Where the proposed development is within a heritage area, an application for works must be accompanied by material showing the proposed development and that of each adjacent lot. For minor works and those not substantially visible from the public domain, accompanying material may include photographs, sketches and other informal content sufficient to convey relevant information.

2.1(d) Works including new development within a heritage area, or that otherwise propose changes that will be substantially visible from the public domain, must be accompanied by street elevations drawn as one continuous elevation to a scale not smaller than 1:100 showing the proposed development and the whole of the existing development on each lot immediately adjoining the land the subject of the application. Corner lots may have additional requirements due to a larger potential impact on a heritage area.

Explanatory notes –Standard requirements

A schedule of materials and colours of both existing and proposed development is necessary to ensure that new work is sympathetic to the heritage place. It is recommended that this is a standard requirement where development includes works to the fabric of a heritage place, although this should not be taken as a requirement that new works have to match existing materials or colour.

While the specific requirements for accompanying material for heritage places relate to applications for works to that place, the deemed provisions also allow for an application to be accompanied by 'any other plan or information that the local government reasonably requires' (cl.63(1)(d)). To allow the local government to have due regard to the matters set out in the deemed provisions, and particularly those relating to cultural heritage (cl.67(k) and (l)) and the compatibility of the development with its setting (cl.67(m)), the policy allows additional material to be requested for development of a site that is not a heritage place, so that impact on heritage places nearby can be assessed.

In practice, this provision is most likely to apply only in relation to works that may affect a place on the State Register.

Street elevations and information on materials present in adjoining lots will be required for substantial new development within a heritage area.

2.1(e) Minor works will need to demonstrate that the development will not have an adverse effect on the cultural heritage significance of the place, but may not require submission of all accompanying material, at the discretion of the [City/Town/Shire].

2.1(f) Where accompanying material is not a requirement of this policy, but is considered necessary to make an informed decision, the [City/Town/Shire] may require that such material is provided by the applicant.

2.2 Heritage impact statement

2.2(a) If a proposal is for a major project or for works that will have a substantial impact on the fabric of a heritage place, the application for development approval must be accompanied by a heritage impact statement (HIS) consistent with the guidelines produced by the Heritage Council of Western Australia.

2.2(b) A determination as to whether a proposal is a major project or will have a substantial impact on the fabric of a heritage place lies with the [City/Town/Shire].

2.2(c) The [City/Town/Shire] may require that, at the applicant's cost, the HIS is provided by a heritage professional with relevant experience.

Explanatory notes - Heritage impact statement

Clause 63(1)(c) of the deemed provisions allows the local government to require that a specialist study is provided for specific matters, which include heritage. The standard study for such purposes is identified as a heritage impact statement (HIS). Further details and an interactive template for a HIS are available from the Department of Planning, Lands and Heritage.

This report is essential in assessing how new development will interact with a heritage place, and to determine whether there are mitigating factors that may allow approval of works that have an adverse impact. While not necessary for all applications, the Heritage Impact Statement (HIS) is a recommended inclusion for major development projects, and those that will have a substantial impact on heritage fabric. An applicant may also choose to submit a HIS to support their application, and this should be given due regard by the decision-maker.

For works affecting the heritage fabric of a State Registered place, the HIS should be prepared by a heritage professional.

2.3 Structural condition assessment in the case of demolition

- 2.3(a) If structural failure is cited as a justification for the demolition of significant fabric, the [City/Town/Shire] may require that a structural report by a registered structural engineer with relevant heritage experience be provided. The report must provide evidence that the structural integrity of the building has failed to the point where it cannot be rectified without removal of a majority of its significant fabric and/or incurring prohibitive costs.
- 2.3(b) If there is evidence that structural inadequacy is a result of long-term lack of maintenance (otherwise known as demolition by neglect), reconstruction to a known earlier state may be required.
- 2.3(c) Demolition will not be approved based primarily on the grounds that redevelopment is a more attractive proposition.

2.4 Assessment documentation

- 2.4(a) The cultural heritage significance of a place will generally be taken from the relevant entry in the local heritage survey, or for places included in the State Register, its register entry.
- 2.4(b) Where the cultural heritage significance of a place cannot be adequately determined from an existing assessment, the applicant may be required to provide a heritage assessment for the place, or to allow access to enable the [City/Town/Shire] to conduct an assessment.
- 2.4(c) A heritage assessment must be carried out by a heritage professional with relevant experience in heritage assessments, and be consistent with guidelines provided by the Heritage Council of Western Australia.

This may also be appropriate for major development or complex sites relating to local heritage places.

Explanatory notes – Structural assessment

It is open to the local government to determine other standards or requirements where demolition is proposed.

Explanatory notes – Assessment Documentation

Cl. 11 of the deemed provisions allows the local government to require a heritage assessment to be carried out before approval of a development application, whether or not there is already an assessment in place. This option can incur substantial costs, and could be considered to deliver work that is the responsibility of local government.

A requirement for the applicant to provide a heritage assessment should therefore be used cautiously, perhaps in circumstances where the normal process has not been possible. This could include, for example, a property that has been recently nominated as a heritage place, or where assessment of the subject site has not been completed because access has not been granted.

3 Conditions of approval

- 3(a) Where a development application for a heritage place is approved with conditions, those conditions may be used to secure positive heritage outcomes, in addition to any standard condition.
- 3(b) Any condition of approval must have planning purpose, and be relevant and reasonable, and may include an archival record or entry into a heritage agreement.

3.1 Archival recording in the case of demolition

- 3.1(a) If a proposal is for the demolition of a place entered in the heritage list, the [City/Town/Shire] will require the applicant as a condition of approval to submit an archival record of the place, prior to the commencement of development.
- 3.1(b) Where a proposal includes partial demolition, an archival record will be conditioned only if the demolition includes significant fabric, and only to the extent required to record the fabric being demolished.
- 3.1(c) An archival record may also be requested by the [Shire/Town/City] for any proposed works that result in the substantial alteration or masking of the existing original appearance, features or elements of the place.

Ideally the local government should undertake its own assessment based on information commissioned from a heritage practitioner.

Explanatory notes – Archival records

Removal of heritage fabric is an irreversible change that is likely to have a negative impact on a heritage place. While change cannot always be avoided, there is the option to require an archival record, which ensures that future understanding and interpretation of the place will be informed by a high level of information.

The Heritage Council publication ‘Guide to Preparing an Archival Record’ offers guidelines on creation of an archival record, which can vary in complexity depending on the heritage significance of the site and the extent of demolition proposed.

Archival records are only of value if they are accessible and available for future study. The model policy identifies the

<p>3.1(d) The archival record is to be in accordance with relevant guidelines published by the Heritage Council of Western Australia.</p> <p>3.1(e) The level of survey required for general demolition will be a photographic record, as defined in the Heritage Council guidelines. For complex sites or places of exceptional local significance a standard record may be required. A detailed record may be required if identified by the Heritage Council as a condition of approval relating to a State Registered place.</p> <p>3.1(f) Completed archival records are to be submitted to the [City/Town/Shire] in electronic format and will form part of the local government historical records.</p>	<p>appropriate resource for this as the local government. Alternative locations may be substituted where they are better suited for storage of, and access to, archived reports.</p>
<p>3.2 Heritage agreements</p> <p>3.2(a) A heritage agreement may be a condition of approval where a positive heritage outcome has been used to obtain planning incentives, concessions or allowances, and the heritage outcome is either an ongoing or future event, such that it cannot be readily achieved through a direct condition of approval.</p> <p>3.2(b) The condition will specify the intended heritage outcome, and any specific action required under a heritage agreement. Requirements will be proportionate to the planning benefits or concessions achieved, and relate to the stated heritage outcome. This may include, but is not limited to:</p> <ol style="list-style-type: none"> I. completion of specified conservation works within a stated timeframe; II. adherence to an identified routine for the ongoing care and maintenance of the place; and/or III. creation of design guidelines for development within or around a heritage place. <p>3.2(c) A heritage agreement will generally require the applicant to commission, at their expense, a Conservation Management Strategy from a competent heritage professional.</p>	<p>Explanatory notes – Heritage agreements</p> <p>Heritage agreements are enabled under the <i>Heritage Act 2018</i>, and identified in the deemed provisions as a mechanism for local government to employ in the conservation of heritage places. They are stated in the deemed provisions (cl. 10(2)) as being the only legal agreement available to local governments in relation to heritage matters.</p> <p>A heritage agreement is a substantial undertaking and binds the current and future owners of a place into certain actions. It should only be conditioned where an applicant has received, or will receive, an identifiable benefit or concession, and where there is an identifiable heritage outcome that can be practically managed only through such an agreement.</p> <p>For example, redevelopment of a site that includes conservation works can be conditioned such that the works are completed and assessed prior to occupation, which would be the preferred approach. A rural subdivision based on the ongoing care and conservation of a heritage place should, however be managed through a heritage agreement.</p>

3.2(d) A heritage agreement will not be requested where the required outcome can be readily achieved through an alternative condition.

The cost of meeting the requirements of the heritage agreement should be assessed against the monetary value of the benefits gained. This does not need a detailed financial analysis, but the local government should be generally aware of the balance when making its decision.

The condition should state that the heritage agreement is to be informed by a conservation report commissioned by the applicant. Such a plan may be specified as a Conservation Management Plan (CMP) or Conservation Management Strategy (CMS), and meet the relevant standards as established by the Heritage Council of Western Australia. A CMS is a simpler document and is generally suitable for management of local heritage places.

Where a heritage agreement is proposed as a condition of approval, the local government should contact the Department of Planning, Lands and Heritage prior to determining the application.

4 Planning-based incentives

4.1 Variation of scheme requirements

4.1(a) The local planning scheme allows for the variation of any site or development requirement, where that variation facilitates the conservation of a heritage place or enhances the values of a heritage area.

4.1(b) The extent of variation that will be approved will be proportionate to the conservation benefit produced by the proposed works and the cost of achieving that benefit. The [City/Town/Shire] may request further information to support the assessment of these costs and benefits.

Explanatory notes – Variations

It may be relevant to identify a broader heritage strategy that may include other heritage incentives that sit outside the planning framework.

The deemed provisions allow the local government to vary 'any site or development requirement specified' in the local planning scheme, in order to facilitate the conservation of a heritage place or area (cl.12). There are limits to matters that can be varied within the provisions of the scheme, which should be understood by the relevant planners.

4.1(c) The maximum variations that will normally be approved are:

[Each local government is to determine the extent of variations that are acceptable, and whether any site or development requirements will be excluded. Common variations include maximum height, plot ratio, side and rear setbacks, and parking requirements.]

For residential development. *State Planning Policy 7.3 Residential Design Codes* allows the decision-maker to exercise its judgement to consider the merits of proposals having regard to objectives and balancing out these with the consideration of design principles.

Some local governments have added specific bonuses that can be accessed through conservation outcomes, or provisions such as the capacity to transfer development potential from a heritage to a non-heritage site.

Because variations are discretionary it is useful to identify whether there are any site or development requirements for which variation will not be approved, and the degree to which variation may be acceptable.

In general, there should be an identifiable correlation between the heritage outcomes delivered by the development proposal

4.2 Supplementary provisions

4.2(a) [Each local government is to note any supplementary provisions that offer incentives for the conservation of heritage places and give any further information that may assist in consistent application of the incentive.]

Explanatory notes – Supplementary provisions

Other planning incentives inserted into the local planning scheme will generally be included as supplementary provisions. These incentives and any further information should be noted here. Local Governments must ensure there is no conflict with other provisions of the local planning scheme. For example, if proposing increased density as an incentive, the local planning scheme must have the power to allow density to be varied.

5. Reference documents

Heritage Act 2018

Planning and Development (Local Planning Schemes) Regulations 2015

State Planning Policy 3.5 Historic Heritage Conservation

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