

HERITAGE AGREEMENTS AS A CONDITION OF HERITAGE COUNCIL SUPPORT

The Heritage Council of Western Australia may require an owner of property to enter into a heritage agreement with the Heritage Council as a condition of support for certain activities proposed for the property.

OBJECTIVE

The objective of this policy is to clearly define those situations in which it may be appropriate and legally valid for the Heritage Council to require an owner of property to enter into a heritage agreement with the Heritage Council in regard to that property as a condition of support for certain activities proposed for the property.

SCOPE

This policy applies to any matter before the Heritage Council that meets the criteria stated herein.

RESPONSIBILITY

The Council, its Committees and the Executive Director and the Solicitor of the Department of the State Heritage Office (the Department) have the responsibility for ensuring compliance to this Policy.

LEGISLATIVE AND REGULATORY CONTEXT

Section 29 of the *Heritage of Western Australia Act 1990* (the Heritage Act) allows the Heritage Council to enter into heritage agreements on behalf of the Crown with property owners. A property owner, to the extent of his or her legal interest in the property, may bind the property to the obligations imposed by a heritage agreement.

A heritage agreement typically imposes certain obligations on the property owner.

These obligations often include:

- maintaining the property
- insuring the property against damage or loss
- reporting to the Heritage Council on the condition of the property
- carrying out specified conservation or restoration works
- creating and installing interpretive features at the property
- adhering to specified design guidelines when undertaking new construction at the property.

The obligations imposed by a heritage agreement remain binding on successive owners of the property, so long as a memorial for the heritage agreement is lodged with Landgate before the owner who enters into the heritage agreement transfers the property to another party.

Any place entered in the State Register may be made the subject of a heritage agreement. An unregistered place may be made the subject of a heritage agreement with the consent of the Heritage Minister under section 29(2)(c) of the Heritage Act. The Minister delegated the consent powers under section 29(2)(c) this power to the Executive Director of the Department on 4 August 2014. The instrument of delegation was published in the *Gazette* on 14 August 2014.

Section 11(2) of the Heritage Act requires the Heritage Council to render advice on any proposal referred to the Heritage Council that may affect a registered place. The Heritage Council's advice may include a requirement that the relevant property owner enter into a heritage agreement with the Heritage Council as a condition of support for the proposal.

SITUATIONS IN WHICH IT MAY BE APPROPRIATE TO REQUIRE A HERITAGE AGREEMENT AS A CONDITION OF SUPPORT

Requiring a property owner to enter into a heritage agreement with the Heritage Council should be limited to situations where there is an identifiable risk to the place arising from a proposed development or other activity where the risk can clearly be mitigated by a heritage agreement. The specific obligations imposed on the owner by the agreement should be tailored to those considerations.

The following activities proposed for a place may warrant heritage agreements:

Subdivision referred to the Heritage Council under s. 11

A proposed subdivision that will increase the available building lots in the vicinity of a registered place is likely to increase the risk of damage to the place (for example, accidents, vandalism, graffiti, further neglect, etc.). A heritage agreement is a reasonable condition to ensure that significant fabric is maintained and conserved.

Partial demolition referred to the Heritage Council under s. 11

Where an owner seeks approval to demolish a portion of a registered place, requiring a heritage agreement is appropriate to ensure the long-term conservation and maintenance of the remaining fabric, or to provide permanent interpretation of the site in the absence of the demolished fabric.

Developments referred to the Heritage Council under s. 11 that pose risks

Some proposals inherently create risks to a place's significant fabric. For example, a major project that includes both large-scale new construction as well as restoration of registered buildings may subject those buildings to significant risk. A heritage agreement would be an appropriate condition of approval.

Past conduct of an owner

Where an owner seeking planning or other approval has previously demonstrated carelessness or indifference to Heritage Council conditions or heritage concerns generally, a heritage agreement may be an appropriate condition of support for the proposal, particularly if the proposal seeks to demolish or alter significant fabric.

None of the foregoing situations present an absolute requirement for a heritage agreement. It is always necessary to exercise judgment and decide on a case-by-case basis whether a proposal presents a genuine risk to significant fabric such that a heritage agreement is warranted.

RELATED DOCUMENTS

Heritage of Western Australia Act 1990 Sections 11 and 29.