



HERITAGE COUNCIL
STATE HERITAGE OFFICE

TITLE

Heritage Agreement Assistance for Local Governments

DOCUMENT CONTROL

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Officer responsible	State Heritage Office Solicitor

POLICY STATEMENT

It is the policy of the Heritage Council of Western Australia (the Council) to encourage local governments and owners of places that are, or may be, of local heritage significance to enter into heritage agreements under section 29 of the *Heritage of Western Australia Act 1990* (the Heritage Act) to ensure the long-term conservation and maintenance of those places where it is appropriate to do so. To that end, the Heritage Council of Western Australia (the Heritage Council), through the Department of the State Heritage Office (the Department), provides assistance to local governments and owners with the preparation of heritage agreements in regard to local heritage places that are not entered in the state Register of Heritage Places under the Heritage Act.

OBJECTIVE

The objective of this policy is to ensure that local governments and owners are provided with assistance to create valid and relevant heritage agreements in appropriate circumstances to ensure the long-term conservation and maintenance of unregistered local heritage places while at the same time not interfering with any local government's existing relationships with legal practitioners.

SCOPE

This policy applies to any local government or owner that seeks assistance with the preparation of a heritage agreement in respect of a place that is not entered in the State Register.

RESPONSIBILITY

The Department's Executive Director, Manager for Local Government Services and Solicitor all have responsibility for ensuring compliance with this Policy.

LEGISLATIVE AND REGULATORY CONTEXT

Section 29 of the Heritage Act allows any public authority, which includes local governments, to enter into heritage agreements on behalf of the Crown.

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, and the Heritage Council, through the employees of the Department, may assist any person in preparing and negotiating a heritage agreement, also with the consent of the Minister, under section 7(1)(c) of the Heritage Act. The Minister delegated the consent powers under both sections 7(1)(c) and 29(2)(c) to the Executive Director of the Department on 4 August 2014. The instrument of delegation was published in the *Gazette* on 14 August 2014.

In 2010, the Department began to provide support to local governments in the preparation of heritage agreements to which the Heritage Council is not a party in respect of unregistered places.

In October 2015, *Planning and Development (Local Planning Schemes) Regulations 2015* were issued. Schedule 2 Clause 10 of the regulations reaffirms that a local government may enter into a heritage agreement with respect to a local heritage place, and further provides that no other type of agreement may be made with regard to heritage conservation issues.

POLICY REQUIREMENTS

1. Places that may be made subject to heritage agreements under this Policy

Subject to the discretion of the Department's Executive Director –

- (a) Any unregistered place that is included in a municipal inventory maintained under section 45 of the Heritage Act may be made subject to a heritage agreement under this policy.
- (b) Any unregistered place that is included in a heritage list or conservation area identified under a local planning scheme may be made subject to a heritage agreement under this policy.
- (c) Any other unregistered place may be made subject to a heritage agreement under this policy if the Executive Director is satisfied that the place has or may have some degree of cultural heritage significance.

Notwithstanding the foregoing, the Executive Director retains discretion to determine whether or not a heritage agreement is appropriate under the circumstances for any unregistered place, and may refuse to authorise the preparation of heritage agreement under this policy if the Executive Director determines that a heritage agreement would be inappropriate under the circumstances.

2. Content of Heritage Agreements made under this Policy

The Department maintains a template for local government heritage agreements, containing standard terms and conditions. The terms and conditions normally require the owner to insure the place that is subject to the heritage agreement and to maintain it to a reasonable standard. The template also allows for the heritage agreement to stipulate particular conservation works and routine maintenance activities to be carried out by the owner.

Although final acceptance of a draft heritage agreement is at the discretion of the local government and the owner, the Department has the ultimate discretion over the content of heritage agreements prepared under this policy. This is to ensure that any heritage agreements prepared with the assistance of the State Heritage Office conform to the

Heritage Council's view of best practices for heritage agreements.

3. Requests for preparing a Heritage Agreement under this Policy

An owner or a local government may request the Department to assist with the preparation of a heritage agreement in respect of an unregistered place.

3.1 Request by an owner

An owner may request assistance by any means. The request should state, in general terms, the reason for the request (i.e., as a condition of planning approval, etc.) and should include the requestor's contact details.

The request should also include:

- (a) A recent copy of the certificate(s) of title to the land to be made subject to the heritage agreement;
- (b) A copy of the local government resolution or Western Australian Planning Commission decision requiring the owner to enter into a heritage agreement;
- (c) A statement of the place's local heritage significance. This may be the place's entry in the local government's Municipal Inventory or Local Planning Scheme Heritage List or Heritage Area; and
- (d) If the owner has retained a heritage consultant, surveyor or other specialist to deal with the project, their contact details.

3.2 Request by a local government

If the request is made by a local government, the local government must submit a written request on its stationary signed by its Chief Executive Officer. The request may be delivered by post, by courier or scanned and attached to an email message.

The letter should also state, in general terms, the reason for the request (i.e., as a condition of planning approval, etc.) and should state the name, title and contact details of the local government officer who is to be the point of contact for all matters relevant to the preparation of the heritage agreement.

The local government should also provide:

- (a) A recent copy of the certificate(s) of title to the land to be made subject to the heritage agreement;

- (b) A copy of the local government resolution or Western Australian Planning Commission decision requiring the owner to enter into a heritage agreement;
- (c) A statement of the place's local heritage significance. This may be the place's entry in the local government's Municipal Inventory or Local Planning Scheme Heritage List or Heritage Area; and
- (d) Any other document or information the local government believes is relevant to the heritage agreement.

4. Drafting process under this Policy

The heritage agreement is between the local government and the owner. The Department's role is primarily that of a scribe and it will take instructions from the parties. However, the Department may refuse to delete any provision of the template or add any new provision to the template if the Executive Director believes doing so is unsound.

Other than that, the Department will not be involved in negotiation of the agreement between the parties. The Department will produce a complete draft and send it to the parties. It will then be up to the parties to review it and discuss it with each other, then inform the Department of any changes agreed upon by the parties. The Department will make any agreed-upon changes unless the Executive Director determines that a change is not consistent with the Heritage Council's view of best practices for heritage agreements. As with any other contract, both the owner and the local government are encouraged to obtain independent legal advice prior to signing the heritage agreement. The State Heritage Office cannot provide such advice to either party.

5. Executing and certifying heritage agreements made under this Policy

When all parties to the agreement indicate that they are satisfied with the draft, the Department will produce signature copies and send them to the local government with written instructions to obtain proper signatures from both the owner(s) and the local government on each copy, and return all signed copies to the Department.

The Department will then seek the Heritage Minister's certification of the agreement, as required under section 32 of the Heritage Act, which is necessary in order for the agreement to come into effect.

If the heritage agreement is intended to remain binding on future owners of the place, the

Department will also lodge a memorial for the agreement on the certificate(s) of title for the land that is subject to the agreement.

6. Costs

There is no charge to either the local government or the owner for the Department's assistance in preparing the agreement. However, the parties are asked to pay the cost of lodging the memorial, if required.

7. Effect of Heritage Agreements made under this Policy

Making an unregistered place the subject of a heritage agreement brings that place within the referral requirement of section 11 of the Heritage Act. Any future development application or other approval application that may affect the place must be referred to the Heritage Council for advice, just as those that may affect a registered place must be referred.

Making an unregistered place subject to a heritage agreement does not make the place subject to the offence provisions of the Heritage Act or otherwise require the place to be treated as a registered place.

RELATED DOCUMENTS

Heritage of Western Australia Act 1990 Sections 7(1)(c), 11, 29(2)(c) and 45.

Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Clause 10

Note – This policy is not exclusive. Neither an owner nor a local government is required to use the assistance of the State Heritage Office to prepare a heritage agreement in respect of an unregistered place. Both remain free to obtain the assistance of a legal practitioner to prepare a heritage agreement.