

Heritage Regulations 2019

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Consultation Draft

Heritage Regulations 2019

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Heritage Regulations 2019*.

2. Commencement

These regulations come into operation on the day on which the *Heritage Act 2018* section 164 comes into operation.

3. Terms used

In these regulations, unless the contrary intention appears —
committee means a committee established under regulation 25;
Council member —

- (a) means a member of the Council; and
- (b) includes the chairperson; and
- (c) in regulations 18(3), 19 and 23 includes an alternate member.

Part 2 — Heritage Council of Western Australia

Division 1 — How Council is constituted

4. Additional qualifying fields for nomination

The following fields are prescribed under section 14(3)(b)(xii) of the Act —

- (a) Aboriginal cultural heritage;
- (b) horticulture;
- (c) law;
- (d) tourism.

5. Expressions of interest in appointment as Council member

- (1) Before nominating a person for appointment as a Council member under section 14(1) of the Act, the Minister must publish an advertisement calling for expressions of interest in nomination for appointment.
- (2) The advertisement —
 - (a) must be published for at least 7 days on the Council's website; and
 - (b) may be published on any other form of media.
- (3) The Minister must consider expressions of interest lodged in accordance with the advertisement but may nominate a person as a Council member whether or not the person has lodged an expression of interest.

6. Term of office

- (1) A Council member holds office for the term specified in the member's instrument of appointment.
- (2) The term of office specified in an instrument of appointment must not exceed 5 years.

- (3) A person's eligibility for appointment as a Council member or the term for which a person may be reappointed is not affected by an earlier appointment.
- (4) A Council member whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless under regulation 7 the member resigns or is removed from office) until whichever of the following happens first —
 - (a) a person is appointed to fill the vacancy;
 - (b) a period of 6 months elapses after the expiry of the term of office.

7. Casual vacancies

- (1) In this regulation —
misconduct includes conduct that renders the Council member unfit to hold office as a member even though the conduct does not relate to a duty of the office.
- (2) The office of a Council member becomes vacant if the member —
 - (a) dies, resigns under this regulation or is removed from office under this regulation; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under regulation 13(1).
- (3) A Council member may resign from office by written notice addressed to the Minister.
- (4) The resignation takes effect on the later of the following —
 - (a) receipt of the notice by the Minister;

- (b) the day specified in the notice.
- (5) The Minister may remove a Council member from office on the grounds of —
 - (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) absence, without leave, from 3 consecutive meetings of which the member has had notice.

8. Leave of absence

- (1) The Council may, on the terms and conditions determined by the Council, grant a Council member leave to be absent from office for a period not exceeding 2 months.
- (2) The Minister may, on the terms and conditions determined by the Minister, grant a Council member leave to be absent from office for a period exceeding 2 months.

9. Alternate members

- (1) If a Council member other than the chairperson is unable or unavailable to act because of illness, absence or other cause, the Minister may appoint another person as an alternate member to act temporarily in the member's place.
- (2) If a Council member is acting in place of the chairperson at a meeting, the Minister may appoint another person to act in place of the member as an alternate member.
- (3) While acting in accordance with the appointment the alternate member is taken to be, and to have any entitlement of, a Council member.

- (4) An act or omission of an alternate member is not to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

10. Acting chairperson

- (1) If the chairperson of the Council is unable or unavailable to act because of illness, absence or other cause, or if there is no chairperson, the Council may recommend to the Minister which member will act as chairperson.
- (2) If a recommendation is made under subregulation (1), the Minister may —
- (a) appoint the recommended member to act temporarily in the chairperson's place; or
 - (b) appoint another Council member to act temporarily in the chairperson's place.
- (3) If neither the chairperson nor a person appointed to act in the chairperson's place under subregulation (2) is able to preside at a meeting or at a part of a meeting of the Council, the members present may elect one of their number to be the acting chairperson for the meeting or the part of the meeting as the case may be.
- (4) An act or omission of a Council member acting in the chairperson's place cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

11. Co-opted members

A person appointed under section 15 of the Act as a co-opted member of the Council in relation to matters that are specified in the instrument of appointment may vote on questions arising in relation to those matters as if the person were a Council member.

Division 2 — Conflicts of interest

12. Term used: member

In this Division —

member means —

- (a) a Council member; and
- (b) an alternate member acting under regulation 9; and
- (c) a co-opted member acting under section 15 of the Act.

13. Disclosure of interest

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the Council.

Penalty for this subregulation: a fine of \$5 000.

- (2) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the committee.

Penalty for this subregulation: a fine of \$5 000.

- (3) Subregulation (2) applies to a person who is a member of the committee and also a Council member even though the person has already disclosed the nature of the interest at a meeting of the Council.

- (4) If a member has, in the opinion of the person presiding at a meeting of the Council or a committee, a material personal interest in a matter being considered or about to be considered by the Council or committee, as the case requires, the person presiding may call on the member to disclose the nature and

extent of the interest and, in default of any such disclosure, may determine that the member has the interest.

- (5) A disclosure under subregulation (1) or (2) or a determination under subregulation (4) must be recorded in the minutes of the meeting.

14. Voting by interested member

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council or a committee —
- (a) must not vote, whether at the meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at the meeting.
- (2) A reference in subregulation (1)(a) or (b) to a matter includes a reference to a proposed resolution under regulation 15 in respect of the matter, whether relating to that member or a different member.

15. Regulation 14 may be declared inapplicable

Regulation 14 does not apply if —

- (a) a member has disclosed under regulation 13 an interest in a matter; and
- (b) the Council or committee, as the case requires, has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

16. Quorum where regulation 14 applies

- (1) Despite regulation 19, if a Council member or alternate member is disqualified under regulation 14 in relation to a matter, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- (2) The Minister may deal with a matter insofar as the Council cannot deal with it because of subregulation (1).

17. Minister may declare regulations 14 and 16 inapplicable

- (1) The Minister may by writing declare that regulation 14 or 16 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of the declaration to be laid before each House of Parliament within 14 sitting days after the declaration is made.

Division 3 — Council meetings

18. Holding meetings

- (1) Meetings of the Council are to be convened by the chairperson and, unless convened under subregulation (2) or (3), are to be held at times and places determined by the Council.
- (2) A special meeting of the Council may at any time be convened by the Minister or the chairperson.
- (3) If at least half the number of Council members in office give notice in writing to the chairperson requesting the chairperson to convene a meeting in relation to any matter, the chairperson must convene a meeting to be held within 14 days after the request is made.

19. Quorum

A number of Council members equal to at least half the number of members in office constitutes a quorum.

20. Procedure at meetings

- (1) The Council must determine its own meeting procedures to the extent that they are not fixed by these regulations.
- (2) In any case of dispute, doubt or difficulty in relation to matters of procedure or order, the decision of the member presiding is final.

21. Voting

- (1) At a meeting of the Council, each member present has a deliberative vote unless regulation 14 prevents the member from voting.
- (2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (3) Questions arising at a meeting must be resolved, in open voting, according to how a majority of votes are cast.

22. Holding meetings remotely

The presence of a person at a meeting of the Council need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

23. Resolution without meeting

A resolution in writing signed or otherwise assented to in writing by at least half of the Council members in office has the same effect as if it had been passed at a meeting of the Council.

24. Minutes

The Council must cause accurate minutes to be kept of the proceedings at each of its meetings and each meeting of a committee.

Division 4 — Committees

25. Committees

- (1) The Council may establish committees to assist in the performance of the Council's functions.
- (2) The Council may discharge, alter or reconstitute any committee.
- (3) The Council may —
 - (a) determine the functions, membership and constitution of the committee; and
 - (b) appoint such Council members and other persons as it thinks fit to be members of the committee.
- (4) A committee must include at least one member who is a Council member.

26. Directions to committee

- (1) The Council may give directions to a committee with respect to its functions and procedures.
- (2) A committee must comply with a direction given to it by the Council.

27. Other provisions relating to committees

- (1) A committee may, with the approval of the Council, invite a person to participate in a meeting of the committee but the person cannot vote on any matter before the committee.

- (2) Subject to any directions given by the Council and to the terms of any delegation under which the committee is acting, a committee may determine its own procedures.

Consultation Draft

Part 3 — State Register of Heritage Places

28. Public inspection of register

- (1) The register must be available for public inspection on the Council's website.
- (2) Information regarding amendments to, and removals of, entries in the register must be available for public inspection on the Council's website.

29. Form and content of register

- (1) The register must be kept in the form of an electronic database.
- (2) The register must include the following —
 - (a) a separate entry for each place entered on the register;
 - (b) a record of amendments made to any entry on the register;
 - (c) a record of any entry for a place that has been removed from the register.

30. Nomination for entry on the register

- (1) A nomination of a place for entry on the register must —
 - (a) be made in writing; and
 - (b) include the following —
 - (i) the name and address of the nominator;
 - (ii) the street address (if any) of the place;
 - (iii) a land description of the place;
 - (iv) a map showing the vicinity of the place;
 - (v) a description of the place;
 - (vi) at least one photograph of the place as commonly viewed from the street or nearest public road;
 - (vii) the nominator's reasons for nominating the place for entry on the register.

- (2) Within 60 days after receiving the nomination the Council must make a preliminary determination as to whether the nominated place warrants review under section 40(1) of the Act.

31. Section 41 direction

Within 30 days after receiving a recommendation made by the Council under section 40(2) of the Act the Minister must give a direction under section 41(1)(a) or (b) of the Act.

32. Request for amendment of land description in register entry

- (1) A request under section 43(1) of the Act to amend a land description must —
- (a) be made in writing; and
 - (b) include —
 - (i) a land description of the land; and
 - (ii) the owner or owners' reasons for seeking the amendment.
- (2) Within 60 days after receiving the request the Council must make a determination as to whether the requested amendment warrants consideration in detail.

33. Section 45 direction

Within 30 days after receiving a recommendation made by the Council under section 44(2) of the Act the Minister must give a direction under section 45(1)(a) or (b) of the Act.

34. Request for removal

- (1) A request under section 48(1) of the Act to remove an entry in the register must —
- (a) be made in writing; and
 - (b) include —
 - (i) a land description of the land; and

- (ii) the owner or owners' reasons for seeking the removal.
- (2) Within 60 days after receiving the request the Council must make a determination as to whether the requested removal warrants consideration in detail.
- (3) If the matter is referred to the Minister under section 48(4) of the Act, the Minister must act under section 48(4)(a) or (b) of the Act within 30 days after the referral.

35. Section 50 direction

Within 30 days after receiving a recommendation made by the Council under section 49(4) or (5)(b) of the Act the Minister must give a direction under section 50(1)(a) or (b) of the Act.

36. Reviewing statement of cultural heritage significance

The Council must review the statement of cultural heritage significance for a registered place whenever errors or inaccuracies in the statement are brought to the Council's attention by any person.

Part 4 — Repair notices

37. Neglect giving cause for repair notice: section 64

- (1) The following kinds of neglect or extent of neglect of a registered place are prescribed for the purposes of section 64(1)(a) of the Act —
 - (a) missing or leaking roof fabric, flashings, gutters, downpipes, doors or windows or exterior wall damage that allows rainwater to enter the interior or accumulate adjacent to the foundation of a structure;
 - (b) missing or damaged roof, wall, sub-floor or foundation structural elements;
 - (c) infestation by white ants, rats or other vermin;
 - (d) missing or defective hardware on doors or windows preventing them from closing and locking;
 - (e) any other neglect or disrepair that threatens the structural integrity, or risks the total loss, of any element of fabric that contributes to the cultural heritage significance of the place.

- (2) Subregulation (1) does not apply in relation to a registered place to the extent that —
 - (a) the statement of cultural heritage significance for the registered place identifies the place as a ruin; or
 - (b) the management of the fabric of a place as a whole, or certain elements of a place, as an unrestored ruin is consistent with a conservation management plan accepted by the Council (for example, the reconstruction or repair of fabric would diminish the place's cultural heritage significance).

38. Consultation and negotiation regarding works

- (1) The Council must, within the time specified in subregulation (2), contact the owner or occupier to whom a repair notice is given and —
- (a) confirm that the owner or occupier —
 - (i) has received the repair notice; and
 - (ii) is aware of what works are specified in the notice and what date is specified in the notice for completion of the works; and
 - (iii) is aware that if the works specified in the repair notice are not completed by the date specified in the repair notice the Council may advise the Minister to issue a repair order and that there is a substantial penalty for failing to comply with a repair order;
- and
- (b) invite the owner or occupier to meet with the Council at a time within 10 days after the contact is made to discuss any matter in relation to the repair notice and, if the owner or occupier wishes, to negotiate in relation to any aspect of the repair notice.
- (2) Subject to subregulation (3), the Council must contact the owner or occupier under subregulation (1) —
- (a) if the repair notice specifies a period of less than 30 days for the completion of works, at least 10 days before the end of that period; and
 - (b) otherwise, within 30 days after giving the notice and at least 10 days before the period specified in the notice for completion of the works.
- (3) For the purposes of subregulation (1), contact may be made by giving notice in accordance with section 163 of the Act.

- (4) If the owner or occupier accepts the invitation given under subregulation (1)(b), the Council must arrange a time and place for the meeting and notify the owner or occupier accordingly.
- (5) The Council may agree with the owner or occupier that the owner or occupier carry out works other than those specified in the repair notice that are satisfactory to the Council for the purposes of preventing irreversible deterioration to the registered place.
- (6) The Council may agree with the owner or occupier that the date for completion of the works specified in the repair notice be extended.

Part 5 — Proposals affecting places of heritage interest

39. Prescribed proposal: section 71

An application for subdivision approval is prescribed to be a proposal for the purposes of Part 5 Division 2 of the Act.

40. Exemptions from requirement to refer proposals: section 73

- (1) For the purposes of section 73(4)(a) of the Act, proposals for the following matters are exempted from the application of section 73(1) of the Act —
- (a) an application for a building permit or demolition permit under the *Building Act 2011* if —
 - (i) the application arises from approval of a proposal that has already been referred under section 73(1) of the Act; and
 - (ii) the Council has given its advice in relation to the referred proposal;
 - (b) building maintenance that does not involve —
 - (i) the removal of, or damage to, the existing fabric of the building; or
 - (ii) the use of new materials;
 - (c) cleaning that is low pressure, non-abrasive and non-chemical;
 - (d) gardening or landscape maintenance that does not involve a major alteration of the layout, contours, structures, significant plant species or other significant features on the land;
 - (e) repairs, including replacing missing or deteriorated fabric with like for like fabric, that does not involve the removal of, or damage to, the significant fabric of the building;

- (f) replacement of utility services using existing routes or voids that does not involve the removal of, or damage to, the fabric of the building;
 - (g) repainting of the surface of a building —
 - (i) in the same colour scheme and paint type if they are appropriate to the substrate and do not endanger the survival of earlier paint layers; and
 - (ii) without disturbing or removing an earlier paint layer unless it is chalking, flaking or peeling;
 - (h) an excavation, that does not affect archaeological remains, for the purpose of exposing, inspecting, maintaining or replacing utility services;
 - (i) the erection or installation of a temporary security fence, scaffold, hoarding or surveillance system that does not affect the fabric of a building, the landscape or archaeological features of the land;
 - (j) signage that —
 - (i) does not obscure signage that has an integral relationship to the land; or
 - (ii) is temporary and does not have a deleterious effect on the fabric of a building; or
 - (iii) is temporarily located behind a shop window but is not internally illuminated or flashing; or
 - (iv) advertises that a place is for sale or lease but does not remain on the place for more than 10 days after the place is sold or leased;
 - (k) digging a new grave or the erection of a monument or grave marker of materials, size and form that are consistent with the character of the place.
- (2) Subregulation (1) does not apply to a proposal that, if implemented, would, or would be likely to, affect a place mentioned in section 72(1)(c) of the Act.

**41. Advice, and notification of decision, on referred proposal:
section 75**

- (1) In this regulation —
decision-maker has the meaning given in section 71 of the Act.
- (2) The Council must provide its advice on a proposal referred to it by a decision-maker under section 73(1) of the Act within 42 days of receiving the referred proposal or within such longer period as the decision-maker may allow.
- (3) A decision-maker must notify the Council of its decision on a proposal referred by it to the Council under section 73(1) of the Act within 10 days after making the decision.

42. Permit for works affecting registered place

- (1) An application for a works permit under section 79 of the Act must —
 - (a) be made in writing; and
 - (b) include the following —
 - (i) the name of the applicant;
 - (ii) a land description of the place where the works are proposed to be done;
 - (iii) a description of the works that are proposed to be done that is sufficiently detailed to enable the identification of possible impacts on the cultural heritage significance of the place.
- (2) The period of 30 days after receipt of an application for a works permit is prescribed for the purposes of section 79(3) of the Act.
- (3) The period of 10 days after the Council makes a decision under section 79(3) of the Act is prescribed for the purposes of section 79(6) of the Act.

Part 6 — Miscellaneous

43. Other prescribed ways of giving notice to an owner or occupier: section 163(1)(d)

- (1) This regulation sets out ways of giving notice to an owner or occupier that are in addition to the ways set out in section 163(1)(a) of the Act.
- (2) A notice required or allowed to be given under the Act to an owner or occupier of land or a place to which the notice relates may be given to the owner or occupier by sending it by prepaid post (including document exchange) addressed to the person —
 - (a) at the address of the land or place; or
 - (b) at an address appearing on recent correspondence addressed by or on behalf of the owner or occupier to the Council or otherwise notified to the Council or published by the person; or
 - (c) at an address shown in the rate book kept by a local government under the *Local Government Act 1995* as the address for the service of rate notices under that Act on that person.
- (3) If an address for service cannot be identified for the purposes of section 163(1)(a) of the Act or subregulation (2), the notice may be given —
 - (a) by advertising the document in accordance with regulation 46; or
 - (b) if the notice is to be given to a person because the person is the occupier of land or a place — by addressing the notice to the person and affixing it to a conspicuous part of the land or place.

44. General notice

- (1) This regulation applies if —
 - (a) notice is required, or allowed, to be given under the Act to owners affected by a matter; and
 - (b) it is not reasonably practicable for the Council to give a separate notice to every owner affected by the matter; and
 - (c) the Act does not otherwise specify the manner in which the notice must be given.
- (2) The Council may give general notice by —
 - (a) publishing the notice —
 - (i) in a newspaper circulating generally throughout the State; or
 - (ii) in a newspaper circulating in the area where the land the subject of the notice is situated; or
 - (iii) on the Council's website;and
 - (b) giving notice to the local government of the area where the land the subject of the notice is situated.

45. Consultation under Act

- (1) This regulation applies if —
 - (a) consultation is required or allowed under the Act in relation to a matter; and
 - (b) the Act does not otherwise specify the manner in which the consultation must be carried out.
- (2) If the Act requires or allows consultation with an owner, or allows an owner to make a submission, in relation to a matter, the Council must give the owner notice in accordance with section 163(1) of the Act.

- (3) The notice must include the following —
 - (a) details of the matter in respect of which the consultation is to be carried out;
 - (b) a general description of how the matter may affect the owner's land;
 - (c) a postal address to which written submissions in regard to the matter may be made.
- (4) The notice must specify a period of at least 42 days after the first publication of the notice within which written submissions may be made.
- (5) If the Act requires or allows consultation with the public, or allows a member of the public to make a submission, in relation to a matter, the Council must publish an advertisement in accordance with regulation 46.
- (6) The advertisement must include the following —
 - (a) details of the matter in respect of which the consultation is to be carried out;
 - (b) a general description of how the matter may affect the owner's land.
- (7) The advertisement must specify a period of at least 42 days after the first publication of the advertisement within which written submissions may be made.

46. Publication of advertisements

- (1) In this regulation —

statutory action means any of the following —

 - (a) a decision made by the Council;
 - (b) an action taken by the Council;
 - (c) advice given, or a recommendation made, by the Council to the Minister.

- (2) This regulation applies if —
 - (a) an advertisement is required or allowed under the Act in relation to a matter; and
 - (b) the Act does not otherwise specify the manner in which the advertisement must be published.

- (3) The advertisement must be published on the Council’s website for a period of not less than 14 days commencing —
 - (a) if the advertisement is of a statutory action — not later than 7 days after the making, taking or giving of the statutory action; or
 - (b) otherwise — not later than 7 days after the Council becomes aware that an advertisement is required or allowed in respect of the matter.

Clerk of the Executive Council.