

Heritage Amendment Regulations 2022

SL 2022/129

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Heritage Amendment Regulations 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Regulations amended

These regulations amend the *Heritage Regulations 2019*.

4. Regulation 3 amended

In regulation 3 insert in alphabetical order:

Commission means the Western Australian Planning Commission established by the *Planning and Development Act 2005* section 7(1);

5. Regulation 10 amended

- (1) Delete regulation 10(1) and insert:

- (1) The Minister may appoint a member of the Council as deputy chairperson.
- (1A) 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 deputy chairperson may act temporarily in the chairperson's place.
- (1B) If, in the circumstances set out in subregulation (1A), the deputy chairperson is unable or unavailable to act because of illness, absence or other cause, or if there is

no deputy chairperson, the Council may recommend to the Minister which member will act as chairperson.

- (2) In regulation 10(2) delete “subregulation (1),” and insert:

subregulation (1B),

- (3) In regulation 10(3) after “the chairperson” insert:

nor the deputy chairperson

- (4) In regulation 10(4) after “omission” insert:

of the deputy chairperson or

Note: The heading to amended regulation 10 is to read:

Acting in chairperson’s place

6. Regulation 30 amended

- (1) In regulation 30(1) —

- (a) in paragraph (b)(vi) delete “road;” and insert:

road.

- (b) delete paragraph (b)(vii).

- (2) After regulation 30(1) insert:

- (1A) A nomination of a place for entry on the register must give reasons why the nominator considers the place to have cultural heritage significance.

- (1B) Subregulation (1C) applies in relation to a place that was previously nominated for entry on the register if the outcome of the previous nomination was that —

- (a) the Council made a preliminary determination that the place did not warrant review; or
- (b) the Council completed a review of the place but did not recommend to the Minister that the place be entered in the register; or
- (c) the Minister directed the Council not to enter the place in the register.

- (1C) The statement of reasons required by subregulation (1A) must include significant information relating to the cultural heritage

significance of the place that was not provided to the Council in connection with any previous nomination.

(3) After regulation 30(2) insert:

- (3) The following persons are prescribed for the purposes of section 39(3) of the Act in relation to a place which the Council determines under section 39(2) of the Act to warrant review —
- (a) each local government in whose district the place or any part of it is situated;
 - (b) the Commission.

7. Regulation 31 amended

(1) In regulation 31 delete “Within” and insert:

(1) Within

(2) At the end of regulation 31 insert:

- (2) The following persons are prescribed for the purposes of section 41(3) of the Act in relation to a place that is the subject of a direction under section 41(1) of the Act —
- (a) each local government in whose district the place or any part of it is situated;
 - (b) the Commission.

8. Regulation 31A inserted

After regulation 31 insert:

31A. Entry in register

The following persons are prescribed for the purposes of section 42(2) of the Act in relation to a place that is the subject of an entry in the register —

- (a) each local government in whose district the place or any part of it is situated;
- (b) the Commission.

9. Regulation 33A inserted

After regulation 33 insert:

33A. Notice of amendment to land description

The following persons are prescribed for the purposes of section 46(2) of the Act in relation to a place, the land description of which is amended —

- (a) each local government in whose district the place or any part of it is situated;
- (b) the Commission.

10. Regulation 34 amended

After regulation 34(2) insert:

- (2A) A request under section 48(4) of the Act to refer the matter to the Minister must be made in writing.

11. Regulation 35A inserted

After regulation 35 insert:

35A. Notice of removal of register entry

The following persons are prescribed for the purposes of section 51(2) of the Act in relation to a place, the registry entry relating to which is removed —

- (a) each local government in whose district the place or any part of it is situated;
- (b) the Commission.

12. Regulation 38 amended

In regulation 38(e) delete “threatens the structural integrity, or risks the total loss,” and insert:

risks the total or partial loss

13. Regulation 39A inserted

At the beginning of Part 5 insert:

39A. Term used: decision-maker

In this Part —

decision-maker has the meaning given in section 71 of the Act;

proposal has the meaning given in section 71 of the Act;

referred proposal has the meaning given in section 71 of the Act.

14. Regulation 41 amended

(1) Before regulation 41(1) insert:

(1A) In this regulation —

built form —

- (a) means anything constructed on land; and
- (b) includes roads, paths, jetties, artificial lakes and watercourses, and earthmoving works.

(2) In regulation 41(1) —

- (a) in paragraph (b) delete “building maintenance” and insert:

maintenance of buildings, structures and other built forms

- (b) in paragraph (b)(i) delete “building; or” and insert:

building, structure or built form; or

- (c) in paragraph (e) delete “repairs, including” and insert:

the repair of buildings, structures and other built forms by

- (d) in paragraph (e) delete “fabric, that does not involve the removal of, or damage to, the significant fabric of the building;” and insert:

fabric;

- (e) delete paragraph (j)(i);

- (f) in paragraph (k) delete “new grave or the erection of a monument or grave marker” and insert:

grave or erecting a memorial (as defined in the *Cemeteries Act 1986* section 3(1))

15. Regulation 42 amended

Delete regulation 42(1).

Note: The heading to amended regulation 42 is to read:

**Advice and notification of decision on referred proposal:
sections 74 and 75**

16. Regulation 43 replaced

Delete regulation 43 and insert:

43. Prescribed proposal: section 76

- (1) The following proposals are prescribed for the purposes of section 76(1) of the Act —
 - (a) an application for development approval;
 - (b) an application for subdivision approval;
 - (c) an application for approval under the *Planning and Development Act 2005* section 136;
 - (d) an application for development approval as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3;
 - (e) a development application within the meaning given in the *Swan and Canning Rivers Management Act 2006* section 67;
 - (f) an application for a building permit as defined in the *Building Act 2011* section 3;
 - (g) an application for a demolition permit as defined in the *Building Act 2011* section 3.
- (2) For the purposes of section 76(3) of the Act, the period for which the Council may direct that the operation of a decision is suspended is the period, not exceeding 3 months, specified in the direction.
- (3) Subregulation (4) applies to a decision-maker that —
 - (a) has been given notice by the Council that a place (the **relevant place**) is to be reviewed under section 40(1) of the Act; and
 - (b) has not been given notice by the Council of the conclusion of the review.
- (4) A decision-maker to which this subregulation applies must give the Council notice of a prescribed proposal that, if implemented, would, or would be likely to, affect the relevant place.
- (5) A decision-maker must give the Council notice of a decision to which section 76(3) of the Act applies as soon as is practicable if —

- (a) the decision-maker is given notice by the Council of an entry in the register; and
- (b) the decision relates to that place.

43A. Reconsideration of advice

- (1) In this regulation —
relevant party means —
 - (a) in relation to any proposal — the decision-maker; and
 - (b) in relation to a proposal that is an application for development approval — the applicant.
- (2) A relevant party may request the Council to reconsider the advice it has provided on a referred proposal if —
 - (a) the proposal has not yet been substantially implemented or acted upon; and
 - (b) since the advice was provided —
 - (i) there has been a material change in law; or
 - (ii) there has been a material change in circumstances relevant to the proposal; or
 - (iii) there has been a substantial lapse of time.
- (3) A request under subregulation (2) —
 - (a) must be in writing; and
 - (b) must, if the Council requires, be in a form approved by the Council; and
 - (c) must set out details of the material change of law, material change in relevant circumstances, or substantial lapse of time since the advice was provided.
- (4) On request under subregulation (2), the Council must reconsider the advice provided and either —
 - (a) affirm it; or
 - (b) amend it; or
 - (c) set it aside and provide fresh advice in substitution.

17. Parts 5B, 5C and 5D inserted

After regulation 44B insert:

Part 5B — Local heritage surveys

44C. Publication of guidelines for local heritage surveys

- (1) Guidelines issued under section 105(1) of the Act, and amendments to and revocations of guidelines made under section 105(3) of the Act, must be published on the Council's website.
- (2) The Council must maintain on its website an up-to-date consolidation of guidelines issued under section 105(1) of the Act that are for the time being in effect, reflecting all amendments and revocations that have been made.

Part 5C — State government heritage

44D. Heritage assets

For the purposes of Part 9 of the Act, each of the following places, if owned, occupied or controlled by a State agency, is prescribed to be a heritage asset in relation to the State agency —

- (a) a place that the Council has determined under section 39(2) of the Act warrants review;
- (b) a place that is identified or recorded in a local heritage survey prepared under Part 8 of the Act as a place that is, or may become, of cultural heritage significance;
- (c) a place that is included in —
 - (i) a heritage list established or maintained under a local planning scheme; or
 - (ii) a heritage area designated under a local planning scheme;
- (d) a place that is the subject of a protection order;
- (e) a place that includes land that is the subject of a heritage agreement;
- (f) a place that the Council considers to have cultural heritage significance, having regard to the criteria set out in section 38(1) of the Act.

44E. Guidelines about State government heritage

- (1) Guidelines issued under section 107(1) or (2) of the Act, and amendments to and revocations of guidelines made under section 107(4) of the Act, must be published on the Council's website.

- (2) The Council must maintain on its website an up-to-date consolidation of guidelines issued under section 107(1) or (2) of the Act that are for the time being in effect, reflecting all amendments and revocations that have been made.

44F. Disposal of heritage assets

- (1) In this regulation —
heritage asset has the meaning given in section 106 of the Act;
prescribed heritage asset means a place that is prescribed to be a heritage asset by regulation 44D;
State agency has the meaning given in section 106 of the Act.
- (2) This regulation does not apply to a prescribed heritage asset mentioned in regulation 44D(b), (c), (d) or (e) if —
 - (a) the Council has made a preliminary determination under section 39(2) of the Act that it does not warrant review under section 40(1) of the Act; or
 - (b) having completed a review of the prescribed heritage asset under section 40(1) of the Act, the Council has determined not to recommend to the Minister under section 40(2) of the Act that it be entered into the register; or
 - (c) the Minister has directed the Council under section 41(1)(b) of the Act not to enter it in the register.
- (3) Before a State agency disposes of a heritage asset, it must give the Council at least 4 months' notice in writing of the proposed disposal.
- (4) A notice under subregulation (3) of a proposed disposal must include or be accompanied by the following items of information —
 - (a) the name of the State agency that is to make the disposal;
 - (b) the street address (if any) of the heritage asset;
 - (c) a map showing the precise area of the heritage asset;
 - (d) whether the disposal involves the sale, lease or demolition of the heritage asset;
 - (e) the intended or expected date of the disposal;
 - (f) the State agency's reasons for making the disposal;

- (g) in the case of a prescribed heritage asset —
 - (i) a description of the heritage asset; and
 - (ii) a land description of the heritage asset or other particulars sufficient to identify the location and boundaries of the land included in the heritage asset; and
 - (iii) at least 1 photograph of the heritage asset as commonly viewed from the street or nearest public road.
- (5) Before a State agency disposes of a heritage asset, it must consult the Council regarding the preparation of a plan or strategy for the continuing conservation of the heritage asset.
- (6) Before a State agency disposes of a heritage asset that is a registered place by way of sale or lease, it must require each purchaser or lessee as a condition of the sale or lease to enter into a heritage agreement in relation to the heritage asset.
- (7) Subregulation (6) does not apply to the disposal of a heritage asset if, before the disposal, the Council determines that, having regard to the circumstances of the disposal —
 - (a) a heritage agreement is not necessary in order to assure the conservation of the heritage asset and to carry into effect the objectives of the Act in relation to the heritage asset; or
 - (b) a heritage agreement would have no significant conservation benefit.

Part 5D — Compensation in relation to work prohibition

44G. Application for compensation

- (1) An application for compensation under section 153 of the Act must be made within 90 days after —
 - (a) in the case of an application that relates to a stop work order — the first day on which a copy of the stop work order is served under section 59(a) of the Act; and
 - (b) in the case of an application that relates to a direction under section 76(3) of the Act — the first day on which notice of the direction is given under section 76(5)(b) of the Act.
- (2) An application for compensation under section 153 of the Act must —
 - (a) be in writing; and

- (b) include details of the compensable loss in respect of which compensation is claimed; and
- (c) include a statement as to why the compensable loss is not capable of recovery or mitigation, or further recovery or mitigation.

44H. Time period for recommendation

The Minister must make a recommendation under section 154(1)(b) of the Act in relation to an application for compensation within 90 days after receiving the application.

18. Regulation 47A inserted

After regulation 47 insert:

47A. Statutory notification

- (1) This regulation applies if the Council gives statutory notification of an event in accordance with section 163(3) of the Act to the Registrar of Titles, the Registrar of Deeds and Transfers, or another person or agency.
- (2) The Registrar or other person or agency may take such steps as may be necessary or appropriate to bring particulars of the event to the attention of persons seeking information as to the title to the land affected.

V. MOLAN, Clerk of the Executive Council.