



Western Australia

Heritage Act 2018

## **Heritage Regulations 2019**



# Heritage Regulations 2019

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**Defined terms**

## Heritage Regulations 2019

### 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 —

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

***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.

[Regulation 3 amended: SL 2022/129 r. 4.]

## **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 cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**10. Acting in chairperson's place**

- (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) If a recommendation is made under subregulation (1B), 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 the deputy 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 the deputy chairperson or 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.

*[Regulation 10 amended: SL 2022/129 r. 5.]*

**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 member as defined in regulation 12 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 as defined in regulation 12, or a member of a committee, 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 a meeting or otherwise, on the matter; and
  - (b) must not be present while the matter is being considered at a 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 a 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.

## **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 or other particulars sufficient to identify the location and boundaries of the land included in the place;
    - (iv) a map showing the precise area 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) deleted]*

- (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.
- (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.
- (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.

*[Regulation 30 amended: SL 2022/129 r. 6.]*

**31. Section 41 direction**

- (1) 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.
- (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.

*[Regulation 31 amended: SL 2022/129 r. 7.]*

**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.

*[Regulation 31A inserted: SL 2022/129 r. 8.]*

**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 or other particulars sufficient to identify the location and boundaries 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.

**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.

*[Regulation 33A inserted: SL 2022/129 r. 9.]*

**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 or other particulars sufficient to identify the location and boundaries 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.

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

*[Regulation 34 amended: SL 2022/129 r. 10.]*

**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.

**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.

*[Regulation 35A inserted: SL 2022/129 r. 11.]*

**36. Statement of cultural heritage significance: section 52**

A statement of cultural heritage significance in relation to a registered place must include the following —

- (a) the name of the place;
- (b) a general description of the place;
- (c) a description of the cultural heritage significance of the place;
- (d) a description of the features and elements of the place that contribute to its cultural heritage significance.

**37. 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

### 38. Neglect giving cause for repair notice: section 64

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 risks the total or partial loss of any element that contributes to the cultural heritage significance of the place.

*[Regulation 38 amended: SL 2022/129 r. 12.]*

### 39. 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**

### **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.

*[Regulation 39A inserted: SL 2022/129 r. 13.]*

### **40. 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.

### **41. Exemptions from requirement to refer proposals: section 73**

(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.

(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) maintenance of buildings, structures and other built forms that does not involve —
  - (i) the removal of, or damage to, the existing fabric of the building, structure or built form; 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) the repair of buildings, structures and other built forms by replacing missing or deteriorated fabric with like for like fabric;
- (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) deleted]*

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

*[Regulation 41 amended: SL 2022/129 r. 14.]*

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

*[(1) deleted]*

- (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 after 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.

*[Regulation 42 amended: SL 2022/129 r. 15.]*

**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.

[Regulation 43 inserted: SL 2022/129 r. 16.]

**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.

*[Regulation 43A inserted: SL 2022/129 r. 16.]*

**44. 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 or other particulars sufficient to identify the location and boundaries of the land included in the place;
    - (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 5A — Valuation of land**

*[Heading inserted: SL 2020/246 r. 4.]*

### **44A. Taking account of matters affecting land use or development**

- (1) This regulation applies when, under section 82(1)(a) of the Act, the Valuer-General takes into account restrictions on the use of land arising out of —
  - (a) the entry of the land in the register; or
  - (b) a heritage agreement to which the land is subject.
- (2) The Valuer-General may take into account other restrictions on the use of land, including —
  - (a) a State planning policy as defined in the *Planning and Development Act 2005* section 4(1); and
  - (b) a local planning scheme; and
  - (c) another planning instrument as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 77; and
  - (d) a region planning scheme as defined in the *Planning and Development Act 2005* section 4(1); and
  - (e) an improvement plan referred to in the *Planning and Development Act 2005* section 119; and
  - (f) an improvement scheme as defined in the *Planning and Development Act 2005* section 4(1); and
  - (g) an approved redevelopment scheme as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3; and
  - (h) a document referred to in the *Metropolitan Redevelopment Authority Act 2011* section 7(1)(b)(i); and



- (i) a master plan in force under the *Hope Valley-Wattleup Redevelopment Act 2000* Part 3.

*[Regulation 44A inserted: SL 2020/246 r. 4.]*

**44B. Supplementary valuation assumptions**

- (1) This regulation applies when, under section 82(1)(b)(i) of the Act, the Valuer-General assumes that all improvements to or on land at the date of valuation that contribute to its cultural heritage significance must be conserved and are not to be demolished.
- (2) The Valuer-General may assume —
  - (a) that the improvements that must be conserved are to be conserved so that the current use of the land may be continued; and
  - (b) that the improvements that must be conserved are new, so that no allowance need be made in the valuation for their actual condition; and
  - (c) that the cost of construction of the improvements that must be conserved has no effect on land value, so that no allowance need be made in the valuation in respect of any difference between —
    - (i) the cost of construction of those improvements as new improvements; and
    - (ii) the cost of construction of other improvements used as a basis for comparison in the determination of land value.

*[Regulation 44B inserted: SL 2020/246 r. 4.]*

## **Part 5B — Local heritage surveys**

*[Heading inserted: SL 2022/129 r. 17.]*

### **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.

*[Regulation 44C inserted: SL 2022/129 r. 17.]*

## **Part 5C — State government heritage**

*[Heading inserted: SL 2022/129 r. 17.]*

### **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.

*[Regulation 44D inserted: SL 2022/129 r. 17.]*

### **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.

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- (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.

*[Regulation 44E inserted: SL 2022/129 r. 17.]*

**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.

*[Regulation 44F inserted: SL 2022/129 r. 17.]*

## Part 5D — Compensation in relation to work prohibition

*[Heading inserted: SL 2022/129 r. 17.]*

### 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.

*[Regulation 44G inserted: SL 2022/129 r. 17.]*

### 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.

*[Regulation 44H inserted: SL 2022/129 r. 17.]*

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## Part 6 — Miscellaneous

### 45. Notice by electronic communication: section 163(1)(b)

For the purposes of section 163(1)(b) of the Act —

- (a) a notice required or authorised to be given under the Act to the Council may be given by means of electronic communication to the email address specified on the Council's website as being available for use;
- (b) a notice required or authorised to be given under the Act to a person by the Council may be given by means of electronic communication to an email address provided by the person.

### 46. 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) and (b) 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) or (b) of the Act or subregulation (2), the notice may be given —
- (a) by advertising the document in accordance with regulation 49; 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.

**47. 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.



**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.

*[Regulation 47A inserted: SL 2022/129 r. 18.]*

**48. 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 occupier, or allows an owner or occupier to make a submission, in relation to a matter that may affect the owner's or occupier's land, the Council must give the owner or occupier 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 or occupier'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 49.
- (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 land to which the matter applies.
- (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.

**49. 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 28 days after the making, taking or giving of the statutory action; or
  - (b) otherwise — not later than 28 days after the Council becomes aware that an advertisement is required or allowed in respect of the matter.

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## Notes

This is a compilation of the *Heritage Regulations 2019* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

### Compilation table

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<i>Heritage Regulations 2019</i>	27 Jun 2019 p. 2377-406	1 Jul 2019 (see r. 2 and <i>Gazette</i> 27 Jun 2019 p. 2375)
<i>Heritage Amendment (Valuation of Land) Regulations 2020</i>	SL 2020/246 18 Dec 2020	r. 1 and 2: 18 Dec 2020 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Dec 2020 (see r. 2(b))
<i>Heritage Amendment Regulations 2022</i>	SL 2022/129 5 Jul 2022	r. 1 and 2: 5 Jul 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Jul 2022 (see r. 2(b))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
built form .....	41(1A)
Commission .....	3
committee .....	3
Council member.....	3
decision-maker.....	39A
heritage asset.....	44F(1)
member .....	12
misconduct .....	7(1)
prescribed heritage asset .....	44F(1)
proposal.....	39A
referred proposal .....	39A
relevant party .....	43A(1)
relevant place .....	43(3)
State agency .....	44F(1)
statutory action.....	49(1)