

## Part 7 — Heritage Protection

### 7.1 Heritage List

- 7.1.1 The local government is to establish and maintain a Heritage List to identify those places within the Scheme area which are of cultural heritage significance and worthy of conservation under the provisions of the Scheme, together with a description of each place and the reasons for its entry.
- 7.1.2 In the preparation of the Heritage List the local government is to –
- (a) have regard to the municipal inventory prepared by the local government under section 45 of the *Heritage of Western Australia Act 1990*; and
  - (b) include on the Heritage List such of the entries on the municipal inventory as it considers to be appropriate.
- 7.1.3 In considering a proposal to include a place on the Heritage List the local government is to –
- (a) notify in writing the owner and occupier of the place and provide them with a copy of the description proposed to be used under clause 7.1.1 and the reasons for the proposed entry;
  - (b) invite submissions on the proposal from the owner and occupier of the place within 21 days of the day the notice is served;
  - (c) carry out such other consultations as it thinks fit; and
  - (d) consider any submissions made and resolve to enter the place on the Heritage List with or without modification or reject the proposal after consideration of the submissions.
- 7.1.4 Where a place is included on the Heritage List, the local government is to give notice of the inclusion to the Commission, the Heritage Council of Western Australia and to the owner and occupier of the place.
- 7.1.5 The local government is to keep a copy of the Heritage List with the Scheme documents for public inspection.
- 7.1.6 The local government may remove or modify the entry of a place on the Heritage List by following the procedures set out in clause 7.1.3.

*Note: The purpose and intent of the heritage provisions are –*

- (a) *to facilitate the conservation of places of heritage value; and*
- (b) *to ensure as far as possible that development occurs with due regard to heritage values.*

### 7.1A Municipal Heritage Inventory under Previous Scheme

- 7.1A.1 The Municipal Heritage Inventory adopted as the basis for heritage protection under Town Planning Scheme No. 9 shall be employed as the basis for heritage protection under this Scheme as if it were established as a Heritage List under clause 7.1 unless and until a Heritage List is established under that clause. Until that time:

- (a) The Municipal Heritage Inventory shall have effect under this Scheme as if it was a Heritage List established under clause 7.1; and
- (b) a reference to the Heritage List shall apply as if it was a reference to the Municipal Heritage Inventory.

7.1A.2 The Municipal Heritage Inventory referred to in clause 7.1A.1 may be amended in accordance with the provisions of clause 7.1 as if it were the Heritage List under the current Scheme, but will cease to have effect upon the adoption of a Heritage List under that clause.

*Note: The purpose of this savings clause is to recognise the application of the existing Municipal Heritage Inventory under Town Planning Scheme No 9, and to avoid a situation in which there is no basis for heritage protection upon the gazettal of the new scheme. N.B. The enabling provisions of clause 7.1 cannot be acted upon prior to gazettal of the scheme, and the sometimes extensive consultation associated with the approval of a heritage list would otherwise leave the local government without any effective basis to consider heritage issues.*

## **7.2 Designation of a Heritage Area**

7.2.1 If, in the opinion of the local government, special planning control is needed to conserve and enhance the cultural heritage significance and character of an area, the local government may, by resolution, designate that area as a heritage area.

7.2.2 The local government is to –

- (a) adopt for each heritage area a Local Planning Policy which is to comprise —
  - (i) a map showing the boundaries of the heritage area;
  - (ii) a record of places of heritage significance; and
  - (iii) objectives and guidelines for the conservation of the heritage area;
 and
- (b) keep a copy of the Local Planning Policy for any designated heritage area with the Scheme documents for public inspection.

7.2.3 If a local government proposes to designate an area as a heritage area, the local government is to –

- (a) notify in writing each owner of land affected by the proposed designation and provide the owner with a copy of the proposed Local Planning Policy for the heritage area;
- (b) advertise the proposal by —
  - (i) publishing a notice of the proposed designation once a week for 2 consecutive weeks in a newspaper circulating in the Scheme area;
  - (ii) erecting a sign giving notice of the proposed designation in a prominent location in the area that would be affected by the designation; and
  - (iii) such other methods as the local government considers appropriate to ensure widespread notice of the proposal;
 and
- (c) carry out such other consultation as the local government considers appropriate.

- 7.2.4 Notice of a proposal under clause 7.2.3(b) is to specify –
- (a) the area subject of the proposed designation;
  - (b) where the proposed Local Planning Policy which will apply to the proposed heritage area may be inspected; and
  - (c) in what form and in what period (being not less than 21 days from the day the notice is published or the sign is erected, as the case requires) submissions may be made.
- 7.2.5 After the expiry of the period within which submissions may be made, the local government is to –
- (a) review the proposed designation in the light of any submissions made; and
  - (b) resolve to adopt the designation with or without modification, or not to proceed with the designation.
- 7.2.6 If the local government resolves to adopt the designation, the local government is to forward a copy of the designation to the Heritage Council of Western Australia, the Commission and each owner of land affected by the designation.
- 7.2.7 The local government may modify or revoke a designation of a heritage area.
- 7.2.8 Clauses 7.2.3 to 7.2.6 apply, with any necessary changes to an amendment of the designation of a heritage area.

## **7.2A Conservation Precincts under previous scheme**

- 7.2A.1 Where an area of land has been duly classified as a Conservation Precinct under the previous Town Planning Scheme, it shall be employed as the basis for heritage protection under this Scheme as if it were designated as a Heritage Area under clause 7.2.

*Note: The purpose of this savings clause is to recognise the application of the existing Conservation Precincts under Town Planning Scheme No 9, and to avoid a situation in which there is no basis for heritage protection upon the gazettal of the new scheme. N.B. The enabling provisions of clause 7.2 cannot be acted upon prior to gazettal of the scheme.*

## **7.3 Heritage Agreements**

The local government may, in accordance with the *Heritage of Western Australia Act 1990*, enter into a heritage agreement with an owner or occupier of land or a building for the purpose of binding the land or affecting the use of the land or building insofar as the interest of that owner or occupier permits.

- Note:*
1. *A heritage agreement may include a covenant intended to run with the land relating to the development or use of the land or any part of the land.*
  2. *Detailed provisions relating to heritage agreements are set out in the Heritage of Western Australia Act 1990.*

## **7.4 Heritage Assessment**

Despite any existing assessment on record, the local government may require a heritage assessment to be carried out prior to the approval of any development

proposed in a heritage area or in respect of a heritage place listed on the Heritage List.

## **7.5 Variations to Scheme Provisions for a Heritage Place or Heritage Area**

Where desirable to –

- (a) facilitate the conservation of a heritage place entered in the Register of Places under the *Heritage of Western Australia Act 1990* or listed in the Heritage List under clause 7.1.1; or
- (b) enhance or preserve heritage values in a heritage area designated under clause 7.2.1,

the local government may vary any site or development requirement specified in the Scheme or the *Residential Design Codes* by following the procedures set out in clause 5.5.2.

## **7.6 Conservation Incentives**

7.6.1 In dealing with any application concerning or affecting a place of cultural heritage significance or a conservation precinct, the Council may for the purpose of conserving or enhancing the place or precinct give a special approval, benefit, allowance or incentive, including but not limited to, the granting of density bonuses and the transfer from a place of cultural heritage significance or a conservation precinct to another place within the district of unused development rights.

7.6.2 Where in the Council's opinion the granting of a conservation incentive is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the incentive, the Council shall consult the affected parties by following one or more of the provisions dealing with advertising "A" uses pursuant to clause 9.4 and shall have regard to any expressed views prior to making its decision to grant the incentive.

7.6.3 In granting a conservation incentive under this subclause, the Council may enter into an agreement with an owner who would benefit from the incentive which may specify the owner's obligations and contain covenants capable of being noted on relevant Certificates of Title, or otherwise capable of being protected by Caveat.

### **7.6.4 Density Bonuses**

7.6.4.1 Within a conservation precinct, the Council may permit on a residential lot an increase up to 50% of permitted dwelling density which otherwise would apply on that lot under the *Residential Design Codes*, where the increased development would not adversely affect the cultural heritage significance or character or amenity of the place, the streetscape or precinct, and if one or more of the following circumstances apply:

- (a) provision is made for the preservation of significant landscape features, including significant trees or other vegetation;
- (b) provision is made for the carrying out of conservation works approved by the Council on a heritage place; or

- (c) a cash contribution is made to a fund set up by the Council for the purpose of heritage conservation.

7.6.4.2 In any case where the Council has allowed under paragraph 7.6.4 an increase in the permitted dwelling density, the standards and provisions of the higher density code applicable to that permitted dwelling density shall apply.

### **7.6.5 Transfer of Development Rights**

The Council may approve the transfer of development rights from a residential lot within a conservation precinct to a recipient's lot provided that:

- (a) the recipient lot is not or does not include a place of cultural heritage significance, and is not within a conservation precinct;
- (b) the recipient lot has an area of not less than 850 square metres;
- (c) the increase in the permitted dwelling density of the recipient lot does not amount to more than 25% and in any case does not exceed two additional units;
- (d) where an increased dwelling density is permitted on a recipient lot, the standards applicable to the resulting density code shall apply;
- (e) the increased development density on the recipient lot will not have an adverse impact on the locality of that lot; and
- (f) with the exception of the increased density under item (c), the development complies with the provisions of the Scheme and all other applicable written laws.

### **7.7 Advisory Committee**

The Council may establish an Advisory Committee pursuant to sub-clause 11.4 to advise it on any matter arising under this clause. The membership of the advisory Committee may include at least one person nominated by the National Trust and/or the Heritage Council of Western Australia, a person having experience or expertise relevant to the conservation or adaptation of places of cultural heritage significance, and a person representing the community within a conservation precinct.