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DELEGATION FRAMEWORK

Version 2: JULY 2019

(replaces Version 1: NOVEMBER 2018)

INTRODUCTION

This document provides the framework and guidelines to support a delegation of all functions, powers and duties of the Heritage Council of Western Australia (the Heritage Council) arising under Section 73 and 74 of the *Heritage Act 2018* (the Act), relating to the prescribed area identified in the Government Gazette.

The Delegation Framework is based on the current delegation of powers to the Department of Planning, Lands and Heritage by the Heritage Council. The objective of the framework is to provide consistency in the assessment of referrals between the Heritage Council and the delegated authority.

Under Section 19(1) of the *Heritage Act 2018* (the Act), the Heritage Council may delegate any of its powers and duties, except for the power to delegate, to any person. In this context, “person” refers to any legal entity such as a body corporate or a public authority as provided in Section 5 of the *Interpretation Act 1984*.

Delegation is accomplished by a resolution of the Heritage Council which is then published in the *Government Gazette*. The delegation is not effective until the date of publication. Delegated powers and duties are exercised concurrently by the Heritage Council and the delegate, and the Heritage Council remains responsible for the actions of the delegate acting under delegated authority. As provided under Section 59 of the *Interpretation Act 1984*, any function delegated by the Heritage Council to a Committee or to any person is nonexclusive, in that the Heritage Council retains full authority to exercise the delegated function at any time.

This delegation does not exempt any development from referral under Section 73.

Maintenance and minor works identified and defined within the *Heritage Regulations 2019* do not require referral, regardless of whether they need planning approval or building permits.

The Delegation Framework supports the Heritage Council Strategic Plan 2019-23 Key Objective 2:

Western Australia’s heritage places are conserved through sound heritage practice and harmonious development and their full potential is realised.

PURPOSE

The purpose of the Delegation Framework is to provide details and guidelines to implement an approved process between the Heritage Council and delegated authority for the professional and objective analysis of referrals that are subject to Section 73 of the Heritage Act.

The purpose of referral is to advise the decision-maker on the potential impacts of a proposal on the significance and recognised heritage values of the place, as identified in the registration assessment documentation, significant fabric, contemporary heritage assessment or a Heritage Impact Statement. The delegation provides the authority for nominated positions within

the delegated authority to act on behalf of the Heritage Council in providing advice under Section 74 regarding certain types of proposals. The decision-making authority then makes its determination taking account of this advice in accordance with Section 75.

The Delegation Framework provides a clear and transparent process of development referral and decision making to owners of property within the State Registered place and ensures that the resources of the delegated authority and Heritage Council are used effectively in the timely assessment of referrals.

REFERRALS WITHIN THE DELEGATION FRAMEWORK

With regard to the delegation, the Heritage Council intends that:

- the delegated authority, acting under the Heritage Council's delegation, will determine routine development referrals
- the Heritage Council will determine development referrals that are large, complex or contentious, particularly those requiring the expertise of architects, planners, or other specialists to evaluate and projects with major social or economic impacts on the State or region.

Note: The Impact Matrix at Appendix 1 provides explanation of routine, large, complex or contentious and major referrals.

Respective nominees of the Department of Planning, Lands and Heritage and delegated Authority will consult from time to time to consider whether a particular referral should be determined by the delegated authority or the Heritage Council. Delegation is at the discretion of the Heritage Council and the Heritage Council may direct at any time that a referral is to be determined by the Heritage Council. The Heritage Council may also call in a referral for determination by the Heritage Council.

The decision-making activities of the Heritage Council and the delegated authority are summarised in the table below.

REFERRALS

OUTSIDE THE DELEGATION FRAMEWORK

The following referrals fall outside the Delegation Framework and will continue to be referred direct to the Department of Planning, Lands and Heritage for Heritage Council consideration:

- All individually State Registered places that fall within the prescribed area.
- All places adjacent to an individually State Registered place that falls within the prescribed area.
- All places operated or owned by the delegated authority within the prescribed area (to overcome a perceived conflict of interest).
- All referrals relating to a decision-making authority other than the delegated authority (for example, the Western Australian Planning Commission, Development Assessment Panel or State Administrative Tribunal).

Development Referrals

Delegated Authority	Provides advice on all routine development referrals under delegated authority, unless they require consideration by the Heritage Council. All referrals dealt with are reported to the Heritage Council
Heritage Council	Heritage Council considers development referrals involving <i>large, complex, or contentious projects</i> , particularly when the expertise of architects, planners, or other specialists is required and projects with <i>major social or economic impacts on the State or region</i>

Technical Advice

Delegated Authority	Provides technical advice to property owners and others on good conservation practice, Burra Charter guidelines, traditional methods and materials
Heritage Council	Monitors delegated authority's advice

REVIEW

This Delegation Framework is subject to annual review and in any case may be changed or withdrawn at the discretion of the Heritage Council.

METHODOLOGY/ GUIDELINES

Assessment of the impact of all referrals will be in accordance with the Development Assessment Framework ([Heritage Council Development Assessment Framework](#)) and principles of the *Australia ICOMOS Burra Charter, 2013*.

The identified impacts on State heritage significance and values will fall into the following categories:

- Positive
- No Discernible Impact
- Minor
- Moderate
- Major

Referrals that have a positive, no discernible or minor impact will be considered routine development.

Referrals that have moderate or major impact will be considered to be large, complex, or contentious projects or have a major social or economic impact on the state or region.

Thresholds to measure the level of impact are explained in more detail in the Impact Matrix (see Appendix 1).

All development applications falling within this delegation framework are to be submitted to the delegated authority.

Applications received by the delegated authority for properties adjacent to the prescribed area are to be referred to the Department of Planning, Lands and Heritage for Heritage Council consideration.

ASSESSMENT

Once received, the application is to be referred to the delegated authority for assessment under Section 74 of the Act. The assessment is to be carried out by named staff with the appropriate level of heritage skills and experience, to the satisfaction of the Heritage Council. Should this person(s) no longer be in position, the Heritage Council is to be notified, in writing. If at any time this resource is unavailable then the delegated authority will redirect the referrals to the Department of Planning, Lands and Heritage for assessment.

Assessment should be consistent with advice and policies contained in the Heritage Council conservation and development and maintenance series publications which can be found at <http://www.stateheritage.wa.gov.au/publications>

The Impact Matrix and supporting assessment forms provide the basis for assessing the level of impact and recording the assessment and form part of the referral documentation that will be submitted to the Department of Planning, Lands and Heritage for the Heritage Council's record and audit purposes.

For *routine* development referrals, the delegated authority will provide the Heritage Council's advice under Section 74 of the Act direct to the decision-making authority giving its recommendation to *not object, support, conditionally support or not support* the development approval. The decision-making authority must take account of this advice as required under Section 75 of the Act.

For referrals that are *large, complex, or contentious* projects, or have a *major social or economic impact on the State or region*, the delegated authority will forward the referral to the Department of Planning, Lands and Heritage for its consideration by the Heritage Council. The department will provide details of timeframes for submission of agenda items for timely consideration by the Heritage Council. The Heritage Council will then provide its advice to the decision-making authority.

HERITAGE AGREEMENTS

Without the express prior approval of the Heritage Council, the delegate may not advise the decision-maker in respect of a referred proposal that, as a condition of the Heritage Council's support for approval of the proposal, the owner of registered property that is the subject of the proposal is to be required to enter into a heritage agreement.

If the delegate determines that a heritage agreement is appropriate under the circumstances, the delegate may recommend

to the Heritage Council that such a condition be imposed. The Heritage Council will then decide whether to accept the recommendation, accept it subject to changes, or reject it. If the Heritage Council's decision is to accept the recommendation or accept it with changes, the delegate is to so inform the decision-maker as part of the delegate's advice to the decision-maker.

RIGHT OF REFERRAL AND APPEAL

Any owner of a property within the prescribed area can reserve the right to have their referral determined by the Heritage Council even though it may fall within the area of delegated authority.

The delegated authority can also refer an application for determination by the Heritage Council even if this falls within their delegation.

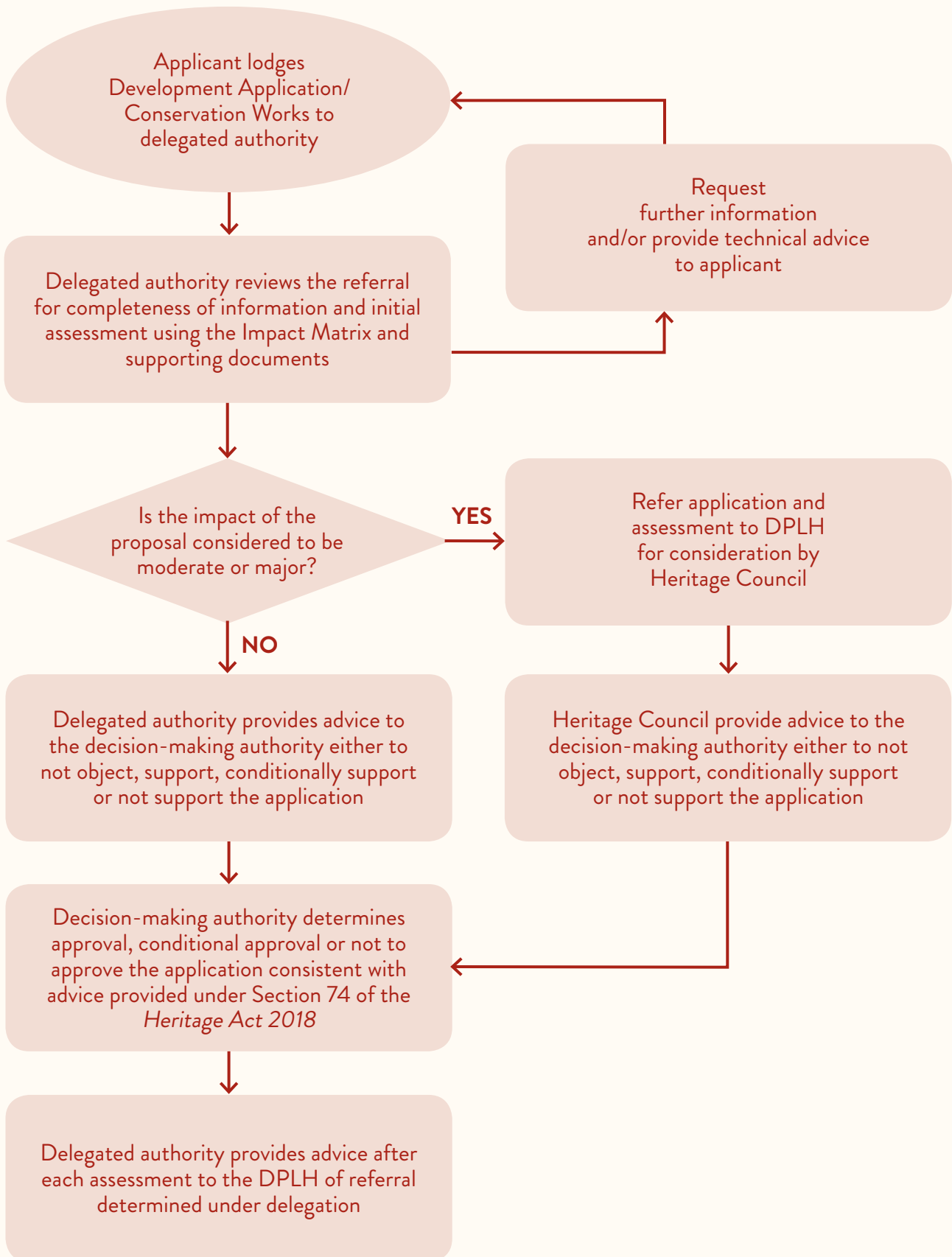
Any owner can request, at the time of lodgement to the delegated authority, that their application be referred to the Heritage Council for its determination.

REGULAR REPORTING

The Delegation Framework provides for regular reporting by the delegated authority to ensure the Heritage Council is kept informed of advice and decisions relating to the State Registered place(s).

Following each referral assessment, the delegated authority will provide the Department of Planning, Lands and Heritage with copies of the assessment and advice including any drawings/specifications of the proposed works. A summary of the referrals will be provided in an agreed format and timely manner to coincide with the Heritage Council's monthly agenda.

Flow chart for referrals included within delegation



APPENDICES –

Appendix 1 – Impact Matrix

SUPPORTING DOCUMENTS –

[Heritage Council Development Assessment Framework](#)

Appendix 1 – Impact Matrix

Impact (Level of impact will be identified for each criterion)	Values				Rarity	Representativeness	Condition	Integrity	Authenticity	Demolition	Scale of development and economic impact	Reputation and Image
	Aesthetic including streetscape and setting	Historic	Scientific including archaeology	Social								
Positive	Development that enhances the aesthetic value.	Development that conserves the historic value and interprets the history of the place.	Development* informed by a CP or AMP that protects and/or reveals scientific value through interpretation.	Development that enhances a sense of place through retention of use associations, meaning and/or interpretation.	Enhances by retaining or conserving element that contributes to rarity.	Enhances by retaining or conserving element that contributes to representativeness.	Development that maintains preserves or restores significant fabric to a known earlier state.	Development retains and enhances integrity of the place through retention or reinstatement of original use, associations and meaning.	Development retains and enhances original fabric through good conservation practice.	Demolition or removal of elements identified as intrusive (in a professionally prepared HIS, CMP or CMS) which then enhances the heritage values of the place. (Does not include total demolition)		Positive news story promoting successful conservation of the values of the place including economic development supportive of those values.
No Discernible Impact	Development that maintains or does not affect the aesthetic value	Development that does not affect the historic value	Development does not affect known or potential scientific/ archaeological value	Development does not affect the social value of the place	There is no loss or proposed change that affects rarity	There is no loss or proposed change that affects representativeness	Development that maintains stabilises or preserves significant fabric in its current state without contributing to its deterioration.	Development does not affect the integrity of the place.	Development does not affect the authenticity of the place	Demolition or removal of element that is identified as intrusive or of little significance in an independent HIS, CMP or CMS, that does not impact on the significance of the place	Development does not impact on the bulk or scale of the precinct or density of use	Low impact or no news item
Minor	Development that does not detract from the aesthetic value and may include minor alterations to the visual appearance of the place either internally or externally. Development that is consistent with a professionally prepared CP or CMS.	Development that does not detract from the historic value and may include minor alterations to the place either internally or externally. Development that is consistent with an professionally prepared CP or CMS.	Development does affect areas of little or some scientific value and is consistent with an appropriate Management Plan.	Development results in loss of fabric or change of use of a place that has some past but lapsed association with the community.	Results in a change to an element that contributes to rarity but impact can be mitigated by interpretation.	Results in a change to an element that contributes to representativeness but impact can be mitigated by interpretation.	Development that could be detrimental to the condition of significant fabric but can be mitigated by providing advice and conditional support. Development that is consistent with a professionally prepared CP or CMS.	Development that does not detract from the integrity of the place and may include minor alterations to the place either internally or externally, to provide for a compatible re-use.	Development that does not detract from the authenticity of the place and may include minor alterations to the place either internally or externally, to provide for a new or continued use. Development that is consistent with a professionally prepared CP or CMS	Partial demolition or relocation of element of some significance as identified in an independent HIS, CMP or CMS, which is limited and does not materially, alter the significance of the place and can be interpreted.	Development introduces new elements into the streetscape that is a minor variation in height of surrounding buildings or increases the density of use however, impacts mitigated by design.	Low impact, low news item.
Moderate (Includes a positive or negative impact)	Development that extensively reconstructs fabric to reproduce an earlier state or materially alters the appearance of a place either internally or externally through other adaptations, additions or construction of new fabric.	Development that extensively reconstructs fabric to reproduce an earlier state or materially alters fabric of some or considerable historic significance as identified in a HIS, CMP or CMS, either internally or externally through other adaptations or construction of new fabric or change of use.	Development that is not informed by a conservation or archaeological management plan and may affect potential scientific value.	Development results in a significant loss of fabric or use of a place that has a strong and current association with the community.	Element that contributes to rarity is lost and impact cannot be mitigated.	Element that contributes to representativeness is lost and impact cannot be mitigated.	Development that will lead to deterioration in the condition of significant fabric and the applicant is not receptive to advice to mitigate the impact.	Development that proposes a change of use that is not identified as compatible within a CP or does not reflect the values of the place	Development results in a significant loss of fabric or settlement pattern that contributes to the authenticity of the place.	Demolition, removal or relocation of elements of some or considerable significance as identified in a HIS, CMP or CMS, which materially alters the significance of the place.	Referral includes a strategic planning document, design guidelines or a development relating to one lot but in close proximity to similar existing or proposed development. Bulk, scale and materiality of development is different to surrounding properties.	Public criticism of moderate impact, moderate news profile, Ministers involved
Major (Includes a positive or negative impact)	New infill development on vacant lots (including those approved for total demolition), carparks, open space and new build that retains a façade of historic fabric.	Development that significantly detracts from the historic value of the place through adaptation or removal of significant elements or introduction of a new incompatible use.	Development that significantly affects or destroys known scientific values.	Development results in a total loss of place or use that has a strong and current association with the community.	Development that results in a substantial loss of an element or area identified as contributing to the rarity of the place.	Development that results in a substantial loss of an element or area identified as contributing to the representativeness of the place.	Development that will lead to deterioration in the condition of significant fabric and/or fails to address urgent works identified in a CP/CMS and the applicant is not receptive to advice to mitigate the impact.	Development that proposes a change of use that is unsympathetic to the values of the place and detracts from the significance of the place.	Development results in a total loss of fabric or settlement pattern that contributes to the authenticity of the place and/or results in only the retention of a façade or shell that contributes to the authenticity.	Total demolition or removal or relocation of a building to an alternative site or dismantling and reconstruction of historic fabric. Partial demolition of elements of exceptional significance.	Referral includes a development application relating to two or more contiguous lots within the same application. Bulk, scale and materiality of the development is considerably different from surrounding properties. Results in an economic impact that affects the State or region.	Public criticism with high impact, widespread, high news profile, Ministers and Government required to make public statement.