

OCTOBER 2020 – VERSION 1.0

## PART ONE

### 1. PURPOSE

Part 4 Division 2 of the *Heritage Act 2018* (the Act) includes provision for Repair Notices and Orders to be issued for State Registered places that have fallen into significant disrepair to the extent they are at risk of irreversible deterioration. This brings Western Australia's heritage legislation into line with heritage legislation in other Australian jurisdictions.

The approach identified within the Act and supported by the Heritage Council's policies is to promote engagement with owners/occupiers to work collaboratively on solutions that will assure the long-term preservation of State Registered places identified at risk of irreversible deterioration without the need to initiate formal measures under the Act.

### 2. OVERVIEW

These guidelines set out the procedures for Repair Notices and Repair Orders that will be followed by the Department of Planning, Lands and Heritage (the Department) and the Heritage Council (the Council), when considering action in response to potential neglect.

### 3. APPLICATION

The information in these guidelines is relevant to property owners, the Department and the general public in relation to the use of Repair Notices and Orders for places included in the State Register of Heritage Places.

## PART TWO

### 4. THE PROCESS

#### 4.1 BEFORE A REPAIR NOTICE IS CONSIDERED

1. Where it comes to the notice of the Council that a State Registered place appears to be neglected and at risk of irreversible deterioration, the Council will use its best endeavours to:
  - a. satisfy itself that repairs are necessary to prevent the loss of significant fabric and assure the long-term preservation of the place
  - b. contact the owner/occupier to alert them to the Council's concerns
  - c. with due regard to the interests of the owner/occupier and the objectives of the Act, consult with the owner/occupier to and explore opportunities to undertake repairs
  - d. if warranted, offer support available to the Council (e.g. heritage advice, grants to assist with conservation planning and/or works).
2. If agreement to repairs cannot be reached with the owner/occupier, and the place remains at risk of irreversible deterioration, then the Council may consider initiating a process under Part 4, Division 2 of the Act to formally address the neglect.
3. If the disrepair brought to the notice of the Council does not fall within the scope or intent of a Repair Notice, the Council may bring the disrepair to the attention of the relevant local government, which may consider such action as it deems appropriate pursuant to section 112 of the *Building Act 2011* or clause 13 of Schedule 2, of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

## 4.2 LEGISLATIVE FRAMEWORK

The *Heritage Act 2018* (the Act) and Heritage Regulations 2018 (the Regulations) set out the requirements and processes for issuing Repair Notices and Repair Orders:

### 4.2.1 REPAIR NOTICE

1. Under section 64(2) and in accordance with section 163 of the Act, the Heritage Council may give a notice (Repair Notice) to the owner or occupier of a Registered Place if it is at risk of irreversible deterioration from the following kinds of neglect or extent of neglect prescribed in the Regulations (Regulation 37):
  - 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 or
  - b. missing or damaged roof, wall, sub-floor or foundation structural elements or
  - c. infestation by white ants, rats or other vermin or
  - d. missing or defective hardware on doors or windows preventing them from closing and locking or
  - e. any other neglect or disrepair that threatens the structural integrity, or risks the total loss, of any element of fabric that contributes to the cultural heritage significance of the place.
2. A Repair Notice may not be served on a place that has been identified as a ruin in the statement of significance in the Register Entry, or if arresting the decline of a ruinous element of a place will diminish the place's cultural heritage significance.
3. If the Heritage Council considers that a place is at risk of irreversible deterioration, it may give a Repair Notice to the owner or occupier, which will:
  - a. identify the nature and extent of neglect
  - b. specify the works required to address the neglect, but go no further than to make

the place secure and safe from further deterioration that threatens structural integrity of irreversible loss of fabric

- c. in accordance with section 67, specify the standard of works, including compliance with:
  - i. any applicable requirements under the *Building Act 2011*, *Local Government Act 1995*, the *Planning and Development Act 2005*, and any other written law specified in the regulations
  - ii. any prescribed requirements or standards
  - iii. any requirements or standards specified in the Repair Notice

Examples may include:

- the specified works are to be completed according AICOMOS *Burra Charter* principles
- the specified works are to be planned and undertaken under the supervision of a suitably qualified and experienced heritage professional such as a Registered Practising Architect or registered Architectural Corporation (Architects Board of WA), a structural engineer (RPEng, NER, CPEng or FIEAust) or chartered surveyor (MRICS or FRICS), and/or such other relevant area of expertise necessary to effect proper repairs
- a brief report, with supporting photographs, by the supervising heritage professional to be provided to the Heritage Council to certify the works have been completed to appropriate standards
- inspection by the Council, or its representative, to verify the works have been completed.

- d. give a date by which the works are to be completed.

4. The Council is also to advise that if the works are not completed by the specified date, the Council will advise the Minister for Heritage (the Minister) to make a Repair Order in relation to place.

5. The time-frame within which the specified works are to be undertaken will be dependent on the nature and complexity of the works required. This will include:
  - a. an appropriate provision of time to allow for the owner/occupier to undertake short-term protective measures (e.g. apply a tarpaulin over a missing section of roof, or boarding up a broken or missing window)
  - b. if required, the owner/occupier to apply for Development Approval pursuant to section 163 of the *Planning and Development Act 2005* from the relevant decision-making authority (usually local government) to undertake works that will provide for the ongoing protection of the property (e.g. replacement of roof sheeting).
6. After the Council has issued a Repair Notice to the owner/occupier, the Council will write to the owner/occupier to confirm that the owner/occupier received the Repair Notice and understands:
  - a. the works required by the Notice and specified date for the works to be completed
  - b. if the works are not completed to an appropriate standard within the time limit, the Minister may issue a Repair Order, which imposes a legal obligation for the owner/occupier to carry out the works.

The owner/occupier will be invited to meet with the Council, at a time within 10 days after contact is made, to discuss any matter relating to the Repair Notice and, if the owner/occupier desires, to negotiate aspects of the Notice.

7. For the purposes of step 6, the Council must contact the owner/occupier:
  - 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 or
  - b. otherwise, within 30 days after giving the notice and at least 10 days before the end of the period specified in the notice for completion of works.

8. If the owner/occupier agrees and enters into an agreement with the Council, the Council may, in accordance with section 64(4)(b), undertake the works at the expense of the owner/occupier. The Council may take a charge over the property or other assets to secure payment in respect of the works<sup>1</sup>.
9. If an owner/occupier is unwilling to voluntarily grant the Council or its representative access to the property to assess the extent of disrepair and specify repairs, the Council may request an inspector appointed under Part 11 of the Act to seek access to the property with the owner's consent or, in the absence of such consent, seek an entry warrant from a justice under section 121 of the Act for inspection purposes.
10. An owner/occupier to whom a Repair Notice has been issued is not eligible to apply for financial assistance under the Council's Heritage Grants Program.

#### 4.2.2 REPAIR ORDER

1. If the Repair Notice is unsuccessful in achieving repair of the place, or the specified repairs are not completed to a standard satisfactory to the Council, the Council may, under section 65 of the Act, recommend the Minister issue a Repair Order, advising the Minister of the following:
  - a. The Council has given a Repair Notice.
  - b. It has taken the steps for consultation and negotiations.
  - c. The works have not been carried out or were unsatisfactory.
  - d. The specified works are necessary to protect, secure, maintain or repair the place from damage, deterioration, intrusion or vandalism.
2. In preparing its advice to the Minister under step 1, the Council must invite the owner/occupier to make a submission to the Minister on the likelihood of an Order causing undue hardship. If the owner/occupier does not make a submission within 30 days, or obtain

<sup>1</sup> Section 64(4)(b) and (c) of the Act require regulations to empower the Council to enter into agreements with an owner to undertake works and accept payment from the owner. These regulations are currently being drafted.

- agreement to a reasonable extension of time within which to prepare a submission, the Council may proceed in rendering its advice to the Minister.
3. If, in accordance with section 65(2)(b), the Minister considers that the Repair Order is necessary and unlikely to cause undue hardship, and after obtaining consent from the relevant Minister if the property is unallocated Crown land or unmanaged reserve, owned or managed by the State, the Minister may issue a Repair Order over the place.
  4. In accordance with section 65(4), the Repair Order must include the following:
    - a. land description of the place to which it relates
    - b. the works to be undertaken
    - c. the date of when the works must be completed.
  5. The Council must, in accordance with section 66, serve a copy of the Repair Order on the owner/occupier and give statutory notification of the Order under section 163 by lodging a memorial on the relevant land title.
  6. Once the works are completed, the Repair Order can be terminated by:
    - a. the Minister writing to the owner/occupier or the Council in accordance with section 68(1)(a)
    - b. the Council giving written confirmation that the Repair Order works were undertaken satisfactorily in accordance with section 68(1)(b)
    - c. withdrawal of notification given under section 66 by lifting the memorial giving notice of the Repair Order on the title.
  7. Under section 69, the owner/occupier may apply to the State Administrative Tribunal for review, which may:
    - a. revoke the repair order or
    - b. confirm the repair order or
    - c. modify the repair order.
  8. An owner/occupier to whom a Repair Order has been issued, and does not complete the works specified in the Order by the date specified in the Order may, under section 132 of the Act and upon conviction by a court, be fined up to \$1 million and imprisoned for a year, with a daily penalty of \$50,000 for the period ongoing contravention of the Act.
  9. Where an owner/occupier to whom a Repair Order has been issued ceases to be an owner of the land, and shows that a contravention of the Order was attributable in whole or in part to a subsequent owner who had knowledge of the Order, the subsequent owner may be brought before a court under section 142 of the Act and found liable for the contravention. The original owner, on proof that they took all reasonable precautions to secure compliance with the Order must not be found liable in respect of the contravention of the Order.
  10. An owner/occupier to whom a Repair Order has been issued is not eligible to apply for financial assistance under the Council's Heritage Grants Program.

#### 4.2.3 REPAIR ORDER MATRIX

The intent of a Repair Order is to protect a Registered Place from neglect or disrepair that threatens the structural integrity of a structure, or the irreversible deterioration of any element that contributes to the cultural heritage significance of the place. The Repair Order Matrix (Table 1) outlines the levels of neglect leading to structural damage and guides the corresponding action to be taken by the Council.

The matrix is based on a risk management approach to managing neglect that could lead to irreversible deterioration of the place. The examples used in the matrix are indicative only. The level of neglect must be assessed on a case by case basis based on an inspection of the place by the Heritage Council and/or a suitably qualified and experienced practitioner.

## 5. FURTHER INFORMATION

A flow chart of the process is included on the last page of this policy document for easy reference.

TABLE 1 - REPAIR NOTICE MATRIX

|   | No action  | Bring to owner / occupier's attention<br>Watch and wait   | Negotiate repairs   | Negotiate repairs<br>Consider Repair<br>Notice if required  | Negotiate repairs<br>Repair Notice if required  |
|---|--|---|---|---|---|
| Risk  | Insignificant  | Minor   | Moderate  | Major   | Catastrophic  |
| Missing/leaking roof fabric, rainwater goods, doors/windows or exterior wall allowing rainwater to enter the interior or accumulate adjacent to the foundations                     | Historical inundation<br>Roof elements remain generally intact and watertight<br>Historical damage that does not compromise structural integrity | Occasional inundation during major storm events<br>Building dries out between events<br>Superficial damage to non-structural elements | Inundation at every storm event<br>Water subsides quickly<br>Structural elements shows early signs of damage  | Inundation whenever it rains<br>Water subsides slowly<br>Structural elements compromised by water inundation causing damage | Roof not extant<br>Structure sits in water that does not subside<br>Structural elements severely compromised by water inundation causing partial collapse |
| Missing/damaged roof, wall, sub-floor or foundation structural elements   | Roof elements remain generally intact and watertight<br>Superficial cracking of a non-structural nature<br>Minor floor surface deflection        | Minor roof deflection<br>Minor cracking through structural elements   | Loss of integrity of roof<br>Cracking/deterioration of structural elements<br>Structure unsound   | Structure is considered dangerous/at risk of collapse   | Structure has partially collapsed due to neglect  |
| Infestation by white ants, rats or vermin   | Non-active infestation to decorative/non-structural elements<br>Pest control actively being implemented  | Non-active infestation to structural members but not at risk of collapse<br>Active pest control measures in place                     | Non-active infestation has caused damage to structural members.<br>Partial collapse of internal non-structural elements<br>Active pest control measures | Active Infestation has caused damage to secondary structural elements<br>No active pest control measures                    | Infestation has caused severe damage to majority of primary structural members causing partial collapse   |
| Missing/defective hardware on doors/windows preventing closing and locking  | Doors/windows have faulty locks but doors/windows are shut.<br>Building is occupied or<br>Active surveillance over the structure                 | Doors/windows have minor damage preventing the structure from being secured<br>Signs of unauthorized occupation                       | Doors/windows show signs of unauthorised entry<br>Signs of superficial vandalism, minor loss of non-structural elements                                 | Majority of door/windows are missing<br>Structure shows signs of vandalism to structural elements                           | Doors/windows are no longer extant<br>Structure shows signs of significant vandalism, total loss of elements of significant fabric                        |
| Any other neglect or disrepair threatening structural integrity or risk of total loss, of any element of fabric that contributes to the cultural heritage significance of the place | Historical loss of fabric and<br>No active/ongoing damage  | Superficial damage to significant fabric<br>Loss of small portion of non-structural elements  | Damage to non-structural elements<br>Loss of internal non-structural elements   | Damage to secondary structural elements<br>Loss of large portion of significant fabric                                      | Severe structural damage<br>Partial collapse<br>Total loss of elements of significant fabric  |



## FLOW CHART PROCESS FOR REPAIR ORDERS



\*All works are to comply with any applicable requirements under the *Building Act 2011*, the *Local Government Act 1995*, the *Planning and Development Act 2005*, and any other prescribed regulations, requirements and standards.

The Department of Planning, Lands and Heritage recognises the diversity of the Aboriginal peoples of Western Australia and acknowledges the Traditional Owners and custodians and their connection to this land and its waterways. We pay our respect to Elders past and present and those who will follow in their footsteps.

### Disclaimer

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