

The *Heritage Act 2018* includes provision for the Minister for Heritage to issue special orders to protect a place from imminent damage. These are collectively known as protection orders.

A protection order is used to prevent or restrict specified activities that are likely to result in damage to a place. It is therefore used where there is a reasonable expectation that such activities are planned, or likely to occur. A place does not have to be included in the State Register for a protection order to be issued.

What triggers a protection order?

For a protection order to be issued, the Minister needs to consider that a place needs special protection and that there is a real threat of likely damage that could be prevented through such an order. In practice, the issue of a protection order is a serious matter and will be reserved for situations where there is significant risk, and for places likely to have State heritage values.

Who starts the process?

Information that may lead to a protection order can come from any source, including the general public. Regardless of the source, it will be important that information provided is reliable and based on identified facts.

Any concerns about imminent damage to a heritage place should be raised with the Department of Planning, Lands and Heritage (the Department). The matter can then be investigated, and appropriate action taken.

What happens next?

The Department will review the information and make a recommendation to the Minister. Where there is sufficient time, the view of the Heritage Council will also be sought. It is likely, however, that any identified risk will need prompt action.

If the Minister considers that a protection order is necessary, the Department will attempt to contact the property owner and agree a set of restrictions that should be applied. If this is successful, the Minister can issue a **consent order**. This form of protection order simply identifies that it is in place with the agreement of the owner(s).

Where more urgent action is needed, owners cannot be quickly contacted, or they indicate that the protection order is not supported, the Minister may issue a **stop work order**. This is a short-term order that will expire after 60 days, in which time it is intended that discussions with the owners will continue and hopefully a consent order will follow.

If discussions with the owners determine that they are unlikely to support the replacement of a stop work order with a consent order, the Minister may ask the Heritage Council to give notice of intent to issue a **continuing protection order**. The Council will then consult with owners and with the general public as to whether the order is needed. Following a review of submissions, the Council will make a recommendation to the Minister. The Minister may issue a continuing protection order whether or not the owners agree that it is required.

What can a protection order contain?

The aim of the protection order is to restrict activities that have been identified as likely to damage the place. It will therefore list actions that are prohibited on the site, which may include restrictions on persons entering the place (other than the owner or occupier), building works or demolition, activity likely to harm the heritage significance of the place, or any other specified action.

Can repairs or development still take place under a protection order?

Any normal repairs can be undertaken, with the relevant approvals where required. The protection order may also specify that prohibited activities may be undertaken if authorised by a nominated party, or allowed under certain conditions. It is not the intention of a protection order to prevent actions that help to conserve a heritage place.

What rights of appeal does an owner have?

Where a protection order has been put in place without the owner's consent, they may appeal to the State Administrative Tribunal (the Tribunal) for a review of the order. The order remains in effect until the Tribunal has determined the appeal.

How long does a protection order last?

A protection order may be issued with an agreed termination date, or may be for an indefinite period. A stop work order will always expire after 60 days, although the Minister may request an extension through the Tribunal. If the Minister's request is supported, the Tribunal may set a new expiry date, or may determine that the stop work order will continue indefinitely.

Once the need for a protection order has passed, the Minister can direct that it is revoked.

Who do I contact?

If you have any questions relating to a protection order, please contact the Department's Heritage Development team on 6551 8002 or email info@dplh.wa.gov.au.

What are the penalties for breaching a protection order?

If actions prohibited by a protection order are undertaken, those responsible can face penalties including a fine of up to \$1,000,000 and imprisonment, and a daily penalty of up to \$50,000.

How do I know what protection orders are in place?

All protection orders are identified in the Heritage Council's online database inHerit. They can be found through the 'Advanced Search' option, choosing the relevant orders within the 'Listing types' category. As of September 2020, there are 10 places identified within this list.

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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Published by the
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140 William Street
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Published September 2020

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