

# CITY OF SUBIACO

## PLANNING POLICY 3.1

### ADDITIONS AND AMENDMENTS TO THE LOCAL GOVERNMENT INVENTORY FOR SUBIACO AND THE SCHEME REGISTER OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE

**ADOPTION DATE: 23 AUGUST 2011**

**REVIEW DATE: - 2 OCTOBER 2014**

**AUTHORITY:            *HERITAGE OF WESTERN AUSTRALIA ACT 1990; TOWN  
PLANNING SCHEME NO. 4***

#### **PURPOSE**

The purpose of this policy is to ensure that Council fulfils its statutory obligations under section 45 of the *Heritage of Western Australia Act 1990* and Division 7 of Town Planning Scheme No. 4 (TPS4) by setting out the procedure to be followed for the consideration of places and conservation areas to be added to or deleted from the Local Government Inventory and the Scheme Register, ensuring that decisions to amend the Local Government Inventory or the Scheme Register follow due process and that these decisions are based on consideration of the cultural heritage significance of a place or area.

#### **STATUTORY BACKGROUND**

Section 45(1) of the *Heritage of Western Australia Act 1990* requires that a local government compile and maintain an inventory (referred to as a Local Government Inventory) of buildings (places) within its district which, in its opinion, are or may become of cultural heritage significance. Section 45(2) requires that this inventory is updated annually and reviewed every four years after completion while section 45(4) requires that the inventory is compiled with proper public consultation.

Division 7 of the City of Subiaco's Town Planning Scheme No 4 (TPS4) establishes the process for the declaration of places as significant and worthy of conservation, a Register of Places of Cultural Heritage Significance (Scheme Register) and the declaration of conservation areas. Inclusion of a place on the Scheme Register or within a conservation area enables the Council to vary a development requirement or standard of the scheme in certain cases where conservation or enhancement of the whole or part of a place or conservation area is achieved as part of a development and there is no resultant adverse impact on the cultural heritage significance of the place or conservation area.

*State Planning Policy 3.5 Historic Heritage Conservation* recommends measures for local governments to identify and protect heritage places and areas that are important to local communities. A Local Government Inventory may be used to compile a heritage list under a local planning scheme (eg TPS 4) and the Council may elect to include some or all of these places within its heritage list.

Aboriginal heritage is protected by the *Aboriginal Heritage Act 1972* and the conservation of natural heritage is also protected by other Acts. Therefore, this policy does not apply to the conservation of either Aboriginal or natural heritage.

A Local Government Inventory prepared under the *Heritage of Western Australia Act 1990*, identifies and provides information on heritage places within the City. However, this Local Government Inventory exists and its compilation is undertaken quite independently of the planning system. The

Local Government Inventory does not have statutory force or effect in the exercise of the City's planning powers.

## **POLICY**

### **1. Clarification of Terms**

#### *Local Government Inventory*

The Local Government Inventory comprises the inventory of places which in the opinion of Council are, or may become, of cultural heritage significance as required under section 45 of the *Heritage of Western Australia Act 1990*. The City of Subiaco's Inventory is a database that holds heritage assessment information which defines the heritage values, provides the statement of significance and the management category that establishes the extent of conservation that would be required to retain these values for each identified place.

#### *Level of Significance*

All places included on the Local Government Inventory will have an assigned level of significance in accordance with Policy 3.5 'Assessment of Cultural Heritage Significance'.

#### *Register of Places of Cultural Heritage Significance (Scheme Register)*

The Scheme Register is established under TPS 4 and comprises a list of places and conservation areas which are of cultural heritage significance and, in the case of places, are considered worthy of conservation or enhancement. The Scheme Register may also contain places which are under consideration in this regard.

#### *Conservation Area*

Conservation areas are areas which have been assessed as having cultural heritage significance and, in the opinion of Council, require special planning controls to conserve and enhance the areas' cultural heritage significance under provisions of TPS4. A conservation area may contain elements of only minor individual significance but heightened collective significance. It may also contain elements of little or no significance. The places that make, or do not make, a contribution to the area will be clearly identified in the heritage assessment of the conservation area and the specific planning policy adopted for that area.

#### *Cultural Heritage Significance*

For the purpose of this policy, the "cultural heritage significance" of a place has the same meaning as in the *Heritage of Western Australia Act 1990*. Policy 3.5 'Assessment of Cultural Heritage Significance' outlines how cultural heritage values are assessed.

#### *Management Category*

The management category is assigned under the Local Government Inventory and is associated with the level of significance and desired outcome for a place.

#### *Other Terms and Definitions*

All terms and definitions related to heritage used in this policy are based on the terms used in "*The Burra Charter 1999 – the Australia ICOMOS Charter for Places of Cultural Significance*" unless otherwise indicated.

## Summary of City of Subiaco generated heritage listing regime

*(does not include World, National or State Registration or National Trust listing)*

	<b>Local Government Inventory</b>	<b>Register of Places of Cultural Heritage Significance - Places</b>	<b>Register of Places of Cultural Heritage Significance - Conservation Areas</b>
Statutory authority	<i>Heritage of Western Australia Act, 1990</i>	Town Planning Scheme No 4	Town Planning Scheme No 4
Applies to	Buildings and features	Places (may include works, buildings or contents of buildings)	Areas or precincts
Direct statutory planning implications of inclusion	None	<ol style="list-style-type: none"> <li>1. Possible variation of development requirements and standards of TPS 4;</li> <li>2. Different levels of development permitted without approval;</li> <li>3. Council obliged to consider conservation of the place in determining development applications.</li> </ol>	<ol style="list-style-type: none"> <li>1. Possible variation of development requirements and standards of TPS 4;</li> <li>2. Different levels of development permitted without approval.</li> <li>3. Subject to planning policy adopted by council for the area.</li> <li>4. Council obliged to consider conservation of the area in determining development applications.</li> </ol>
Indirect statutory planning implications of inclusion	<ol style="list-style-type: none"> <li>1. Establishes heritage values of all listed places;</li> <li>2. Establishes database of heritage places and their significance.</li> <li>3. Informs the development of the Scheme Register and the identification of potential conservation areas.</li> </ol>		
Requirements and process of amendment	<ol style="list-style-type: none"> <li>1. The Act requires “proper public consultation” but does not specify what this means;</li> <li>2. Inventory is adopted by a resolution of Council;</li> <li>3. Inventory is only amended by a decision of Council;</li> <li>4. Inventory should be updated annually and reviewed every 4</li> </ol>	<ol style="list-style-type: none"> <li>1. TPS 4 requires consultation with the owner and the occupier of the place and any other individuals or organisations where seen as necessary;</li> <li>2. Places are recorded in Register following declaration by council that the place is significant and worthy of retention;</li> </ol>	<ol style="list-style-type: none"> <li>1. There is a Scheme requirement to consult with the owners and occupiers of land within the area;</li> <li>2. Conservation Areas are declared by a resolution of Council;</li> <li>3. Conservation Areas can only be amended by a decision of Council.</li> <li>4. There is a Scheme requirement to adopt a planning policy for each Conservation Area.</li> </ol>

	years.	3. Register can only be amended by a decision of Council.	
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## 2. **Procedure for the Local Government Inventory**

In accordance with its statutory obligations under s45 of the Heritage of Western Australia Act 1990 Council will from time to time review and assess places for inclusion in or removal from the Local Government Inventory.

Any person, association or organisation may also nominate a place for inclusion in or removal from the Local Government Inventory or for amendment of the Inventory, subject to section 2.1 of this policy. This nomination is to be in writing and made on the 'Local Government Inventory Nomination/Amendment Form' attached to this policy. The form and any supporting information (including photographs if applicable) may be submitted to the Chief Executive Officer at any time. While it is not necessary for a nomination to be accompanied by a full assessment of the cultural heritage significance of a place, the nominator is encouraged to provide as much information as possible to assist with the assessment.

Places are included in, or removed from the Inventory on the basis of cultural heritage significance and in accordance with the standard heritage assessment criteria outlined in Planning Policy 3.5 'Assessment of cultural heritage significance'..

### 2.1 **Nominations from the public**

A nomination for the inclusion or removal of a place in the Inventory or an amendment of the Inventory in relation to a place will be accepted for consideration and assessment where it is:

- (a) For a privately owned property and is proposed by all of the owner/s of that property; or
- (b) For a privately owned property and is proposed by a third party with the written endorsement of all of the owner/s of the property; or
- (c) For a privately owned property that is already listed on the State Register of Heritage Places maintained by the Heritage Council of WA under the *Heritage of Western Australia Act, 1990*; or
- (d) For a place that is in public ownership.

While nothing in this section can be taken to prevent the council fulfilling its statutory obligations under s45 of the *Heritage of Western Australia Act 1990*, the council desires a co-operative approach together with landowners and anonymous proposals will not be favourably considered.

### 2.2 **Preliminary Consideration**

Any place nominated in accordance with section 2.1 shall in the first instance be assessed by city officers, with appropriate qualifications, with respect to the cultural heritage significance of the nominated place.

This assessment shall be made with regard to all of the information submitted with the nomination; any previous heritage assessment that may have been undertaken; any heritage studies or conservation plans in place; any other listing; and any other relevant information.

#### 2.2.1 **Identified Cultural Heritage Significance**

Where a place is identified as having cultural heritage significance after the preliminary consideration, a heritage assessment in accordance with Policy 3.5 'Assessment of cultural heritage significance' will be undertaken by a qualified heritage specialist. Public consultation shall be undertaken immediately in accordance with section 2.4 prior to a report being prepared for consideration by the Council for inclusion of the place in the Inventory.

### 2.2.2 No Identified Cultural Heritage Significance

Where a place is identified as not having any cultural heritage significance after the preliminary consideration, a report will be prepared for consideration by the Council with no requirement for prior public consultation.

The Council may, after considering the report, defer the matter and require that public consultation and/ or further investigation and assessment is undertaken prior to considering whether the place should be included in the Inventory.

### 2.2.3 State Register of Heritage Places

Any place that is listed on the State Register of Heritage Places maintained by the Heritage Council of WA under the *Heritage of Western Australia Act, 1990* will automatically be referred to Council for inclusion in the Inventory as a place of 'exceptional significance' (Level 1) in recognition of the cultural heritage significance of the place to the state of Western Australia. Public consultation will be undertaken in accordance with section 2.4 of this policy.

## 2.3 Removal from the Inventory

Places may only be removed from the Inventory if it can be demonstrated that their previous assessment of cultural heritage significance was erroneous or that they have subsequently lost this significance. A place will not be removed from the Inventory solely on the grounds that similar examples are already included; that it is not in its original state; or that it is in a poor condition. Where the Council approves the removal of a place from the Inventory, if that place is also included on the Scheme Register, its removal from the Scheme Register will be considered concurrently.

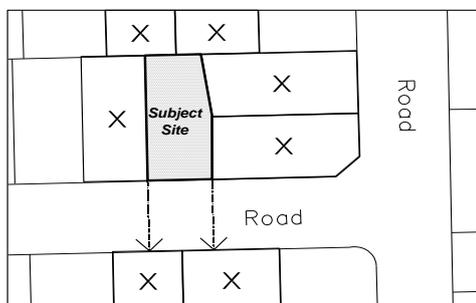
In some cases a place may have unintentionally been added incorrectly to the Inventory. Where such an error can be clearly identified and verified, the entry may be removed by a resolution of the Council without a review of the heritage assessment and without prior public consultation.

## 2.4 Public Consultation

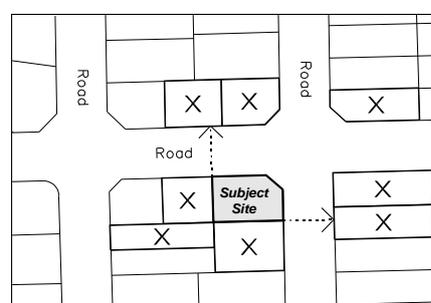
Submissions shall be invited from the owner/s and occupier/s of the place and the owner/s and occupier/s of the surrounding properties (refer to Map 1 or Map 2) together with the advertisement of the nomination in a local newspaper on the nomination of any place for inclusion in or removal from the Inventory or any amendment of the Inventory in relation to a place already on the Inventory.

The invitation to make a submission will be made in writing and include information on the identified heritage significance/values of the property. The submission period will be not less than twenty one (21) days and all submissions should be made in writing.

Map 1.



Map 2



## 2.5 Matters to Which Council will have Regard

In considering the inclusion or removal of a place on the Inventory, or any other amendment to the inventory regarding a place the Council will have regard to:

- (a) Submissions received during the public consultation period;
- (b) All available information of relevance to the cultural heritage significance of a place including the heritage assessment; information already contained within the Inventory; any other heritage studies; and/or any conservation plans already in place;
- (c) Any advice received from the Heritage Council of Western Australia; and
- (d) Any other matter that it considers necessary.

### **3. Procedure for the Register of Places of Cultural Heritage Significance**

In determining whether a place should be declared significant and worthy of retention and included in the Scheme Register, the Council will follow the procedure outlined in clause 55 of TPS4. Places to be considered for inclusion on the Scheme Register will also be considered for inclusion in the Local Government Inventory and Council may advertise and consider these listings concurrently.

Following amendments to the Local Government Inventory, Council will consider whether any of the places included in or removed from the Inventory should also be considered for inclusion in or removal from the Scheme Register.

Places that are listed on the State Register will automatically be referred to Council for inclusion on the Scheme Register due to the identification of these places as having exceptional cultural heritage value to the community. The notification procedures for including such places on the Scheme Register under clause 55(2) of TPS4 are still applicable.

#### **3.1 Identification of Places to be considered for Inclusion in Scheme Register**

Places identified on the Local Government Inventory as being of 'exceptional significance' (Level 1) will be automatically referred to council for inclusion in the Scheme Register in recognition of the cultural heritage significance of the place to the city. Places of 'exceptional significance' will generally also be places that are included in the State Register of Heritage Places (either permanently or on an interim basis) and are therefore also of broader significance to the state of Western Australia. Consideration of inclusion on the Scheme Register (including any public consultation requirements) may be undertaken concurrently where the place is also proposed separately by the Heritage Council for inclusion on the State Register.

Places identified on the Local Government Inventory as being of 'considerable significance' (Level 2) are generally places that have been identified as very important to the heritage of the City of Subiaco. These places will be referred to Council for consideration of inclusion in the Scheme Register on their merits together with a recommendation from a person with appropriate qualifications to determine heritage significance.

Places identified on the Local Government Inventory as being of 'some significance' (Level 3) or have been identified as making a contribution to the streetscape rather than being of heritage significance in their own right will only be referred to council for consideration of inclusion in the Scheme Register upon the receipt of a written request from the owner of that property.

#### **3.2 Public Consultation**

Having determined which places are to be considered for inclusion in or removal from the Scheme Register the Council will consult the relevant property owners and occupiers as required by clause 55 of TPS4 and the public consultation will be undertaken in accordance with section 2.4 of this policy.

Where possible, consultation regarding any inclusions in, removals from and amendments to the Local Government Inventory and the Scheme Register will be carried out concurrently.

#### **3.3 Matters to Which Council will have Regard**

In considering the inclusion or removal of a place on the Scheme Register Council will have regard to the matters listed in section 2.5 of this policy.

## **4. Procedure for Conservation Areas**

### **4.1 Identification and nomination of Conservation Areas**

The Local Government Inventory and other heritage studies will be used to identify potential conservation areas. Any person, association or organisation may also nominate a streetscape, area and/or precinct for consideration as a conservation area.

### **4.2 Preliminary Assessment**

Conservation areas identified through the Local Government Inventory or by nomination shall in the first instance be assessed by city officers with appropriate qualifications with respect to the potential cultural heritage significance of the area. This assessment shall involve a site visit and a review of the information in the Local Government Inventory, any previous heritage assessments that may have been undertaken, any heritage studies in place, any other listings and any other relevant information.

Should the preliminary assessment reveal that the area is likely to meet the threshold to be identified as a conservation area under the Town Planning Scheme the area will be included in the city's assessment program. The formal assessment of areas included in the assessment program will be prioritised according to the level of intactness of the area identified during the preliminary assessment and potential development pressures facing the area.

### **4.3 No Cultural Heritage Significance**

Where an area is identified as not having any cultural heritage significance after the preliminary assessment, a report will be prepared for consideration by the Council with no requirement for prior public consultation.

The Council may, after considering the report, defer the matter and require that public consultation and/ or further investigation and assessment is undertaken prior to considering whether the area should be declared a conservation area.

### **4.4 Formal Assessment**

Where an area is identified as likely meeting the threshold for declaration as a conservation area a comprehensive assessment of the heritage values of the area, together with a recommendation as to whether the area warrants identification as a conservation area will be undertaken by a heritage specialist in accordance with Policy 3.5 'Assessment of cultural heritage significance'.

### **4.4 Public Consultation**

In determining whether an area or precinct should be declared a conservation area or whether an existing conservation area should be amended, the Council will follow the procedure outlined in clause 59 of TPS4 and section 2.5 of this policy.

In the case of a proposed conservation area, Council must first receive a report advising of the extent of the proposed conservation area and the reasons for the nomination of the area. If the Council wishes to proceed with a declaration of the proposed conservation area, it must first:

- (a) advise each of the owners and occupiers of land within the area and invite them to make a submission;
- (b) Advertise the location of the proposed conservation area in a newspaper circulating in the Scheme area inviting public submissions; and
- (c) Notify in writing where practicable any other party who may be directly affected by the proposal.

The written invitations to make a submission will include a map clearly defining the boundaries of the proposed conservation area and supporting information outlining the identified heritage significance/values of the area. The period for public consultation will be not less than twenty one (21) days and all submissions should be made in writing.

Following the conclusion of the consultation period, Council will review the proposed conservation area having regard to any written submissions before determining whether or not to declare the area as a conservation area.

## **5. Council determination**

The decision to include or remove places on the Local Government Inventory, Scheme Register or to amend the Inventory or Scheme Register or to declare a conservation area can only be made by a resolution of the Council in accordance with the provisions of the *Heritage of Western Australia Act 1990* and TPS4, respectively and the procedures outlined in this policy.

Following the heritage assessment and consultation procedures outlined above the Council may, depending on the circumstances of each case:

- (a) include, not include or remove a place on the Local Government Inventory; or
- (b) amend the existing Local Government Inventory place entry; or
- (c) declare or refuse to declare a place as significant and worthy of conservation for recording in the Scheme Register; or
- (d) declare or not declare an area to be a conservation area;
- (e) include or amend an existing entry in the Scheme Register regarding a place or conservation area; or
- (f) remove a place or conservation area from the Scheme Register.

The property owner, occupier and all parties who made a written submission on the proposal before Council will be notified in writing of the meeting at which Council will consider the proposal and will also be notified in writing of the Council's determination. The Heritage Council will be notified of any declarations regarding places or conservation areas on the Scheme Register.

## **6. Administrative Matters**

If an amendment to the Local Government Inventory or Scheme Register is required as a result of an administrative matter (eg change of address or land details due to subdivision) and does not alter the content or the intent of the current listing of the place, an additional heritage assessment is not required and administrative changes of this nature may be initiated by officers. This procedure only applies where the subject place is already included on the Local Government Inventory or Scheme Register. In this case, the owner/s and occupier/s will be advised as per the requirements of section 2.4 of this policy and an item will then be prepared for Council.

The Local Government Inventory and the Scheme Register shall be made available to the public as a community resource relating to the heritage of Subiaco.

### **6.1 Right of Review**

A right of review of any decision where the Council exercises its discretion may exist subject to the provisions of the City of Subiaco's Town Planning Scheme No. 4, the *Planning and Development Act 2005* and the *Heritage of Western Australia Act 1990*.