

CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.7

ARCHAEOLOGICAL INVESTIGATION AS A CONDITION OF PLANNING APPROVAL

ADOPTION DATE: 28 JANUARY 2009
AUTHORITY: LOCAL PLANNING SCHEME NO. 4

STATUTORY BACKGROUND

Clause 7.7.1 of the City's Local Planning Scheme No. 4 (the Scheme) states that where planning approval is granted in respect of a place within a Heritage Area or included on the Heritage List, that Council may impose a condition on that planning approval which requires an archaeological investigation of the place to be undertaken and a report of that investigation to be provided to the Council for its information prior to the commencement of that approved development.

Clause 7.7.2 of the Scheme states that the condition referred to in clause 7.7.1 may be imposed where:

- (a) the place to which the planning approval relates:
 - (i) is a vacant site at the time the planning approval is granted; or
 - (ii) will be wholly or substantially redeveloped if the planning approval is implemented.
- (b) the Council has reasonable evidence the place may include contents, materials or objects that have aesthetic, historic, scientific, or social significance for the present community and future generations; and
- (c) the contents, materials and objects referred to in clause 7.7.2(b) are not subject to the Aboriginal Heritage Act, 1972.

Clause 7.1.7 of the Scheme states that the Municipal Heritage Inventory established under the previous town planning scheme, it is to have effect as the heritage list under this scheme, and entries may be removed or modified if it were entries on the heritage list under this scheme.

Clause 10.5.1 of the Scheme prescribes that a planning approval lapses in the event that the development is not substantially commenced within the term of that approval. The Scheme specifies a period of 2 years from the date of determination as being the term of planning approval, unless another time period is specified by Council.

Should this local planning policy be inconsistent with the provisions of the City's Scheme, the Scheme will prevail.

PURPOSE

The purpose of this policy is to;

1. describe the circumstances when Council will, as a condition of planning approval, require that an archaeological investigation be undertaken; and
2. outline the manner in which Council will consider this condition to be satisfied.

POLICY

In the context of this policy, the term 'archaeological artefacts' will be taken as meaning any contents, materials or objects that have an aesthetic, historical, scientific or social significance for the present community and future generations, as outlined in clause 7.7.2(b) of the Scheme.

REASONABLE EVIDENCE

Clause 7.7.2(b) of the City's Scheme states that in order for an archaeological investigation to be undertaken as a condition of planning approval, Council must have reasonable evidence that the place may have archaeological artefacts.

For this purpose, Council will consider the following as constituting reasonable evidence upon which to require an archaeological investigation:

- any existing conservation plan;
- in the case of a property listed upon the State Register of Heritage Places, any Heritage Council of Western Australia assessment;
- any documented evidence that appears upon the City's Municipal Heritage Inventory; or
- expert advice available to Council supported in the form of maps, historic photographs, recorded past uses, past finds or documented oral history;

which may indicate the potential for archaeological artefacts to exist upon the development site.

Where Council considers that there is reasonable evidence that indicates the possibility for archaeological artefacts to be located upon the development site Council may, as a consequence, require an archaeological investigation to be carried out as a condition of approval. In these instances the following condition shall be applied:

Prior to the commencement of development and at the applicant's expense, an archaeological investigation is to be undertaken by a suitably qualified person.

SUITABLY QUALIFIED PERSON

Clause 7.7.3(b) of the City's Scheme requires that where an archaeological investigation is to be undertaken, it shall be conducted by a suitably qualified person.

For the purpose of undertaking an archaeological investigation, Council shall consider that a suitably qualified person is an archaeologist that is listed upon the Council's panel of heritage consultants, and/or the Heritage Council of Western Australia's Directory of Consultants, and/or the Australian Association of Consulting Archaeologists' Register of Consultants. Applicants should contact the City's Planning Services Department for a current copy of the Council's panel of heritage consultants.

Any archaeologist selected for undertaking an investigation must be responsible for providing adequate indemnity against liability for all loss, damage or injury to persons or property caused as a result of the investigation.

In order to advise applicants the following advisory note will be applied, referencing to the number of the condition prescribing that an archaeological investigation is to be undertaken:

With regards to condition (insert number), the applicant is advised to contact the City's Planning Services Department for a current copy of the Council's panel of heritage consultants, to contact the Heritage Council of Western Australia (www.heritage.wa.gov.au) for a current copy of its directory of consultants, and to contact the Australian Association of Consulting Archaeologists (www.aacai.com.au) for a current copy of its register of consultants.

ARCHAEOLOGICAL INVESTIGATION

Once the services of an archaeologist are secured the chosen archaeologist is expected to be responsible for the submission of a final report outlining the archaeological investigation.

In order to fulfill these responsibilities, Council will provide the archaeologist with the following:

1. the base evidence upon which the investigation has been requested;
2. the proposed development plans for the site; and
3. any additional information that City officers consider warranted in order to help with the archaeological investigation.

The final archaeological report should include:

1. a brief summary of the subject site, including a study background of the property referencing the evidence upon which the investigation has been requested;
2. a description of the site investigations carried out, including location and dimensions of any exploratory dig(s) undertaken;
3. all detailed recordings of any findings of archaeological artefacts through surveyed measurements, drawings, documented descriptions and/or photographs, all portrayed upon a site plan(s) when appropriate;
4. an analysis of the historical archaeological (including built environment) evidence with the archival documentation (e.g. maps, photographs, documented past use); and
5. an archaeological conservation plan including recommendations for heritage interpretation, if warranted.

Council will require one (1) unbound hard copy, four (4) bound copies in A4 format and one (1) electronic copy on disc in either Microsoft Word (.doc) or Adobe Acrobat (.pdf) format, including all graphic materials.

Of the bound hard copies of the report submitted, Council will provide:

- one copy to the Heritage Council of Western Australia;
- one copy to the Local History Section of the City's library; and
- one copy to the subject property's owner.

COMMENCEMENT OF APPROVED DEVELOPMENT

Once the final archaeological report is submitted to Council, no development works may be carried out upon the subject property for a period of no less than one month. This month is to be taken from the date of receipt of the final archaeological report, as submitted to Council. Works may only occur prior to the expiry of this one month period if written consent is received from Council.

Upon expiry of this one month period, works may begin in accordance with the planning approval granted by Council.

TERM OF PLANNING APPROVAL

In accordance with clause 10.5.1 of the City's Scheme, Council ordinarily grants a term of planning approval that requires the substantial commencement of a development to occur within 2 years from the date of consent, unless otherwise specified in the approval.

However Council does recognise that there will be an unavoidable time cost for undertaking an archaeological investigation and therefore in acknowledgment of this cost Council will grant a term of planning approval with a commencement date of three years, from the date of approval.

In situations where an archaeological investigation is to be undertaken out as a condition of approval, the following condition will be applied:

The development hereby permitted must be substantially commenced within three (3) years from the date of this decision letter.

Whilst an archaeological investigation may be undertaken in order to satisfy a condition of planning approval, this investigation in itself will not be considered the substantial commencement of the development, as prescribed within the term of planning approval.

ARCHAEOLOGICAL FINDINGS

Council recognises that since an archaeological investigation was instigated as a condition of planning approval, any archaeological evidence consequently discovered cannot form the basis of Council rescinding a legal planning approval.

The applicant is entitled to proceed with the development upon the property in accordance with the planning approval granted, unless voluntarily modified by the applicant.

In circumstances where a property owner may not wish to retain possession of any artefact(s) that may be excavated in the course of an archaeological investigation, the owner is encouraged to contact the City's Planning Services Department in the first instance to discuss the possible voluntary donation or loan of the artefact(s) to another party.