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Tools for Safeguarding Protection Standards**



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## The Conservation Scheme as a Legislative Guarantee for Equal Treatment of the Cultural Heritage Protection in Spatial Interventions

### Abstract

*Pursuant to the Slovenian Cultural Heritage Protection Act, the conservation plan may be a component of project documentation for obtaining a building permit if a planned intervention in cultural heritage structures is complex, if there is threat to or danger of destruction of protected values, if conservation-restoration work must be conducted during an intervention, and always for interventions in structural elements of a monument.*

*Despite the broad legal option enabling conservation requirements to be treated in a manner equal to other areas during development interventions in heritage, and the Act being in force for five years, preparing conservation plans has yet to become a fully established part of the practice.*

*The article shows a review of the reasons for this situation and the paths to a solution, as the authorisation by law to prescribe the preparation of the conservation plan is a rare tool for the conservation of heritage in the complex sphere of development. Conservation work must be prudently directed so that the investor sees the commission and approval of the conservation plan not only as meeting a legal obligation but as an offer of assistance by the society, and an opportunity for his success.*

### I Legal Arrangement

The conservation plan is enacted as a possible component of project documentation, needed to acquire a building permit, according to the Construction Act as sector act for construction works, and the Cultural Heritage Protection Act as specific act which also includes provisions for construction works.

**The Construction Act** stipulates that projects for acquiring a building permit for works within a protected cultural heritage area must obtain a protection approval<sup>1</sup>. In addition to the project documentation, other documents shall be a constituent part of the building permit, if so stipulated by law. In this manner heritage protection is included among project documentation, with the same treatment as other fields such as architectural project design, landscape architectural project design, structural project, mechanical installations and other projects, necessary for an intervention.

The **Rules on project documentation** stipulate that the conservation plan is an expert's detailed report as a component of the projects for acquiring a building permit and that it must be attached without fail if required for the intervention<sup>2</sup>. Independently of that, the Rules state for all protected cultural structures that the design of the existing repair must without fail show all the protected parts of heritage in the case of reconstruction or expansion.

**The Cultural Heritage Protection Act** stipulates, in respect of works on cultural heritage, that a protection approval must be obtained as proof that the project at hand conforms to previously issued protection conditions<sup>3</sup>. As a condition, the authoritative protection service may require the preparation of the conservation plan. The Act specifies interventions

<sup>1</sup> *Construction Act*. The Official Gazette of the Republic of Slovenia, Nos. 102/04, 14/05 – correction, 92/05, 111/05 (Constitutional Court's Decision), 93/05, 120/06 (Constitutional Court's Decision), 126/07, 108/09, 61/10 (ZRud-1), 20/11 (Constitutional Court's Decision), 57/12.

<sup>2</sup> *Rules on Project Documentation*. The Official Gazette of the Republic of Slovenia, No. 55/2008.

<sup>3</sup> *Cultural Heritage Protection Act*. The Official Gazette of the Republic of Slovenia, Nos. 16/2008, 123/2008, 8/2011, 30/2011 (Constitutional Court's Decision), 90/2012.

in cultural heritage where the conservation plan must be required in the protection conditions, as interventions in cultural heritage where is possible to require it. The conservation plan may be required in the cases when a planned intervention is complex, in the cases when protected values are under threat or in danger of destruction and in the cases when conservation-restoration works must be conducted during an intervention. The Act states that the conservation plan is always necessary for interventions in structural elements of a cultural monument, i.e. a heritage structure designated as a cultural monument by a dedicated state or municipal act due to its extraordinary importance.

The **Rules on the conservation plan**, as an implementing regulation, specify the content, the form and the manner of the preparation of the conservation plan<sup>4</sup>.

The content and the potential preparers, both defined by the Rules, play a key role in understanding the issue of the conservation plan preparation.

The *Conservation plan* consists of the Analytical section and of the Operational section.

The *Analytical section* serves to ground the recognisability of a monument that consists of:

- key data on the monument,
- a brief description of its development
- and a description of the values of the whole and of individual components.

The analytic section serves also to summarise the findings of potential preliminary researches and to describe protected values and their social importance, the condition of the monument and threats to it.

The *Operational section* prescribes detailed standards for the conservation and protection of the monument. It can also include a spreadsheet of components and a conservation-restoration project. For an intervention in a minor part of a monument, the conservation plan is accordingly reduced to individual parts of the operational section.

## **I Promotion of Conservation Plan in practice**

Five years after the adoption of the new Heritage Protection Act the conservation scheme has yet to become an established part of the practice. Conservators are reluctant to prescribe it and instead set numerous detailed protection conditions for interventions. Developers are reluctant to commission it, while contractors that prepare it are rare. Regarding the conservation section, there are many expert, legal, and administrative issues concerning:

- alignment of the Rules with the Act,
- content of conservation plans regarding the aim of the Act,
- restriction of preparing conservation plans to conservators of the competent cultural heritage service,
- unclear definitions of its approval, revision, and consent.

These ambiguities reflect unfavourably upon the conservation plan itself. Instead of being seen as an asset of experts, developers, and the entire society in conducting interventions in heritage, the practice only embraces it with reservation. The article clarifies key professional and investor dilemmas, particularly defining the scope of the conservation plan and the problems in relation with its preparation and enforcement in practice.

### **\_Scope of conservation plan**

Although the content of the conservation plan required by conservators in order to ensure an integrated treatment of cultural heritage is broadly defined, in the operational section the result of the conservation plan only figure as standards for an intervention and not as a specific intervention project. The only part of the operational section belonging to the category of technical projects as components of development documentation is the conservation-restoration project.

Pursuant to the Administrative Procedure Act, an administrative matter is tied to a client's

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<sup>4</sup> *Rules on Conservation Plan*. The Official Gazette of the Republic of Slovenia, No. 66/2009.

application, i.e. to the boundaries of the draft concept of an intervention prescribed by the Construction Act for issuing conditions. The same Act also contains provisions regarding environmental impacts, one of them being the impact of a minor intervention to other heritage. The demand for an integrated study of heritage at the expense of the developer outside the area of potential impacts of a planned intervention is, although professionally sound, problematic from the legal viewpoint. In any case such demand goes beyond the needs of a developer, costing him time and money. Integrated study of heritage should therefore be restricted to the area of potential impacts of a planned intervention.

### **Investor dilemmas**

Open dilemmas of investors are the following:

- additional expenditure for a developer who commissions the conservation plan,
- shortage of widely available conservation personnel for the preparation.

Investors often attempt to avoid a commission. An intervention is made simpler so it can be planned based on detailed protection conditions without commissioning the conservation plan, or a structure is left to decay. In the former case there can be unforeseen complications and consequently unplanned modifications of execution during the development itself, while in the latter the society will most likely lose the said heritage structure and with it a part of its environment. In both cases the aftermath is unfavourable both for heritage and the society.

### **Preparation of conservation plan**

According to the law, the preparer of the conservation plan must be qualified to conduct specialised protection works.

The analytical section consists of conservation assessments of values, importance, and condition of a cultural heritage structure. This is a detailed presentation of contents which must be known when preparing proposals for adding items to the Heritage Register and designation of monuments, and when preparing material for spatial acts. It is possible to enter additional findings based on results of new research, particularly archaeological, architectural, and restoration research. The analytical section results from detailed study of heritage which is a principal task and legal obligation of the competent cultural heritage service. However, the Ministry of Culture has decreed that the Cultural Heritage Service of the Institute for the Protection of Cultural Heritage of Slovenia – although second-to-none in our country regarding qualifications and familiarity with heritage – is disallowed to prepare conservation plans including their analytical sections, which justify heritage values. The reason is the incompatibility of the administrative role of the Service in issuing protection consents to interventions, more precisely the conflict of interest and risk of corruption in issuing said consents.

### **Prescription of protection conditions**

To prescribe the conservation plan as part of project documentation means the inability of the competent cultural heritage service to set any subsequent protection conditions for an intervention, based on new findings. In this way the cultural heritage service is unable to prescribe specific protection conditions for interventions in the most important not yet researched cultural heritage structures.

Standards in the operational section of the conservation plan which serve as orientation for interventions are a vague and potentially questionable addition by the plan preparer to the conditions issued by the competent cultural heritage protection service. The competent service cannot set specific conditions for an intervention. Developers and planners often need lengthy convincing that requirements made by experts regarding the preparation of the conservation plan are sound and correct.

## **I Proposed Amendments for a more efficient preparation of the Conservation Plan**

In order to ensure a more efficient preparation of the conservation plan as the most suitable assurance for correctly conducted interventions, and raising awareness of developers and the entire society, certain constraints and attitudes should be changed:

- It would be appropriate to follow the provision regarding the optional prescription of the conservation plan for all heritage structures and not to restrict this possibility only for monuments as heritage can hide qualities that are not visible to naked eye.
- It would be correct to restrict the preparation of conservation plan components to the required extent, pursuant to the established wording of the Rules.
- It's professionally justifiable to split the analytical section of the conservation plan into the general section with a wider, integrated study of a heritage structure, and the detailed section with an in-depth study of the area and environmental impacts of an intervention. The general section is mandatory when existing conservation documentation on a structure is incomplete – this is set in protection conditions – and in all cases with prescribed preliminary research. The detailed section is mandatory. The analytical section is approved by the competent cultural heritage service, which can also prepare it. Based on the detailed section, it can also set additional protection conditions for an intervention. The operational section consists of general integrated conservation and heritage protection standards and specific proposed solutions based on additional protection conditions for a proposed intervention. A protection approval to the entire prescribed conservation plan must be obtained from the competent service.
- It's a professional necessity to give the Cultural Heritage Service an authorisation by law to issue additional protection conditions for a planned intervention, based on the analytical section of the conservation plan and independently of its preparer.
- It's professionally correct to allow the Cultural Heritage Service to prepare analytical sections of conservation plans as the most competent personnel for this type of work.
- It's urgent to set up the register of qualified contractors for conservation works.
- It's necessary to make the legal option of approving the entire conservation plan consistent with the protection consent. The analytical part of the conservation plan can be approved separately.
- It's appropriate to raise the awareness of developers regarding advantages of the conservation plan due to the importance of cultural heritage and their greater confidence during interventions.

## **I Favourable consequences of proposed Amendments**

The proposed amendments to the Rules on the conservation plan enable the following positive effects:

- allow a balanced treatment of cultural heritage,
- bring about a solution to open contentious legal issues regarding the legality and suitability of provisions in the Rules,
- prevent content overlap in existing conservation documentation and consequently reduce the cost of preparing the conservation plan,
- enable all qualified contractors to produce conservation documentation,
- prevent the often lengthy process aimed to make external contractors conform to conservation requirements of the competent cultural heritage service in preparing the conservation plan,
- increase the confidence of the developer and development project planner in adopting the conservation plan,
- increase the alignment of the entire project for obtaining a building permit with conservation requirements.

## **I Conclusion**

Authorisation by law to prescribe the preparation of the conservation plan is a rare tool for the conservation and development of integrated cultural heritage values in the complex sphere of development. A clear, simple, and rational prescription of this authorisation is in the interest of the society as the caretaker of the cultural importance of heritage, and of the developer as a commercial factor of change. Quality conservation work is evident all around us and reflected by the entire social environment. The society has a duty to prudently direct conservation work so that the investor sees the commission and approval of the conservation plan not only as a legal obligation but as an open offer of quality assistance.