



National Trust Advocacy Toolkit

Advocacy Guide No. 1:

Nominating a place or object for inclusion
in the Victorian Heritage Register

About the National Trust of Australia (Victoria)

The National Trust of Australia (Victoria) is the state's leading independent heritage advocacy organisation. We advocate for the recognition, protection, and celebration of our diverse natural, cultural, social, and Indigenous heritage in our cities and regions.

The National Trust's vision is for our diverse heritage to be protected and respected, contributing to strong, vibrant and prosperous communities.

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This publication is intended only to provide a summary and general overview of relevant matters. It is not intended to be comprehensive nor does it constitute legal advice. While care has been taken to ensure the content is current, we do not guarantee its currency. You should seek legal or other professional advice before acting or relying on any of the content.

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Introduction

About this Advocacy Guide

The National Trust Advocacy Toolkit is a free online resource developed by the National Trust of Australia (Victoria) to support communities to advocate for the protection of places of cultural heritage significance. The purpose of this Advocacy Guide is to provide a broad overview of the processes for nominating a place or object for inclusion in the Victorian Heritage Register. It is not intended to be a substitute for the detailed guidelines published by Heritage Victoria and the Victorian Heritage Council.

About the Register

Places and objects which are of special cultural significance to the state of Victoria can be nominated to be included in the Victorian Heritage Register (the Register). As at 2018, there are approximately 2,400 places and objects included in the Register.

Once a place or object is included in the Register, a permit or permit exemption is required from Heritage Victoria before any works or alterations can be undertaken on it.

It can still be sold or used for a different purpose.

 Search the Register at vhd.heritage.vic.gov.au/search

Criteria for inclusion in the Register

To be included in the Register, a place or object must meet at least one of the Victorian Heritage Council's eight criteria for assessment, and other thresholds, as set out in its guidelines for inclusion.

These thresholds include a "significance threshold", which is the minimum level of state cultural heritage significance that a place or object must have to justify its inclusion in the Register.

There is no minimum age for a place or object to be included in the Register but, as a general principle, as set out in the Heritage Council's guidelines, a generation (approximately 20–30 years) should pass after the creation of a place or object, to allow it to be rigorously and objectively assessed.

Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences.

The Burra Charter
(The Australia ICOMOS Charter for Places of Cultural Significance, 2013)

To be included in the Register the heritage value must be to wider Victoria (to a state-level cultural heritage significance), not just to a particular locality or municipality. Places of local cultural heritage significance are protected in planning schemes by the application of the Heritage Overlay. Check with your local council to find out whether a place or object is included in a Heritage Overlay.

 Read more about the Heritage Council's Register Criteria and Threshold Guidelines at: heritagecouncil.vic.gov.au/heritage-protection/criteria-and-thresholds-for-inclusion

Protecting significant cultural heritage before registration

Interim Protection Orders

If you are concerned that there is an immediate or imminent threat to a place or object of potential state-level cultural heritage significance and it is not included in the Register or is still being assessed for consideration by the Heritage Council then you can apply for an Interim Protection Order. An Interim Protection Order can be made by the Heritage Council or the Executive Director of Heritage Victoria under the *Heritage Act 2017*.

If an Interim Protection Order is made, the place or object is treated as though it is included in the Register and will receive protection while being assessed for permanent inclusion.

➤ To apply for an Interim Protection Order, contact Heritage Victoria on 03 9938 6894.

To succeed, you must be able to make a strong argument that the place is significant to the wider state. Strengthen your application by comparing the place or object you believe needs protection to similar places and/or objects that are included in the Register.

You must also show an “imminent threat”, which includes situations where:

- a demolition permit has been issued under the *Building Act 1993*
- a planning permit has been issued by the responsible authority for the redevelopment of that land
- there is evidence of plant and equipment being mobilised for the purposes of demolishing the place
- there is evidence of an imminent proposal to destroy, remove or disassemble the object, or
- there are known proposals to relocate the object to another location.

Demonstrating heritage value to a locality or municipality, but not to wider Victoria, is not enough. If a place or object is important to your local area but potentially not of state-level significance, contact your local council for advice.

How to nominate for inclusion in the Register

Anyone can nominate a place or object for inclusion in the Register—the owner’s permission is not required but the owner can make submissions and/or request a formal review, through the registration hearing process.

➤ To nominate, use Heritage Victoria’s prescribed registration form, available at heritage.vic.gov.au/heritage-registration-and-certificates/registration

The process of assessing cultural heritage significance is a rigorous and objective one that is guided by the principles of *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (2013)* and has been developed and refined over many years of heritage practice in Victoria and Australia more broadly.

The Victorian Heritage Register Criteria and Threshold Guidelines, Heritage Council of Victoria, 2014

Preparing your nomination

Review the Heritage Council's "Victorian Heritage Register Criteria and Threshold Guidelines" and follow these tips for preparing your nomination.

1. Respond to the Heritage Council's criteria for assessment

There are eight criteria used to assess a place or object for inclusion in the Register, and your nomination must demonstrate how the place or object qualifies for at least one of these criteria. The guidelines provide a detailed explanation of each criterion, as well as illustrated examples of places and objects included in the Register, under each criterion.

Usually, places included in the Register qualify for more than one criterion. However, a place or object only needs to satisfy one criterion to qualify. When preparing your nomination, select the most relevant criteria and concentrate your arguments on those. Successful nominations make strong arguments under a few criteria, rather than less convincing arguments across several criteria.

Make sure you show how the place or object can meet the basic test for each relevant criterion, as set out in the guidelines.

2. Demonstrate the place or object meets the criterion/criteria at a state level

You must also show that the importance of the place or object goes beyond its importance to your local community or region, and that it meets the criteria at a **state** level.

Check that you have met the basic test for determining state level significance relevant to each criterion, as set out in the guidelines.

One way to demonstrate this is to compare the place or object to similar places and objects already included in the Register. To find similar places or objects, search the Register at vhd.heritage.vic.gov.au/search

3. Support your nomination with evidence

Research the place or object you are nominating. If you need assistance, consider contacting your local historical society. Providing Heritage Victoria with as much information as possible will help them to assess your nomination more efficiently.

4. Ensure that you have provided all the information required

Before you submit your nomination, run through the Nomination checklist on the nomination form. If you don't provide all necessary information Heritage Victoria is likely to ask you for more information, and the process will take much longer.

Your nomination is assessed

If you submit a nomination (in the prescribed form), the Executive Director of Heritage Victoria may request further information in writing. You must provide this information within 30 days of the date of the request, or your nomination will be deemed to have lapsed.

If the Executive Director of Heritage Victoria accepts the nomination, the nominator of the place or object, the owner, and the local council will be notified. Heritage Victoria will then undertake a detailed assessment to decide whether the place or object is of potential state-level heritage significance for inclusion in the Register. There is no set timeframe for the nomination to be assessed by Heritage Victoria. Heritage Victoria receives a high volume of nominations, and the assessment process may take some time. Nominations for places or objects which are under imminent threat may be prioritised.

Your nomination is refused

The Executive Director may refuse a nomination if they think that there is no reasonable prospect of your proposed place or object being included in the Register. If this happens, you can apply to the Heritage Council for a nomination review. You must apply within 28 days of the Executive Director's decision, by filling out the correct form and detailing why you are requesting the review.

There is a fee for requesting a nomination review. Community groups can apply for this fee to be waived.

If a nomination is refused, that place or object cannot be nominated again for a period of five years, unless new information comes to light.

In determining a review application, the Heritage Council may:

- affirm the decision under review
- set aside the decision under review and make another decision in substitution for it, or
- set aside the decision under review and remit the matter to the Executive Director for reconsideration in accordance with any directions or recommendations.

Find out more from the Heritage Council about requesting a nomination review at heritagecouncil.vic.gov.au/registrations-reviews/nomination-reviews/nomination-reviews-explained

Recommendation of the Executive Director and consideration by the Heritage Council

After considering your nomination of a place or object, the Executive Director of Heritage Victoria must:

- recommend to the Heritage Council that the place, or only part of the place, or object be included in the Register and the category or categories in which it should be included, or
- recommend to the Heritage Council that the place or object not be included in the Register.

Notice of recommendation

At the time the Executive Director of Heritage Victoria makes their recommendation to the Heritage Council, they must provide a statement to you (as the nominator of the place or object), the owner and the local council. The statement must include, amongst other things, the reasons for the recommendation, including an assessment of the state-level cultural heritage significance of the place or object.

The recommendation must also be published by Heritage Victoria in a local newspaper, as well as on the Heritage Council's website. Recommendations are advertised for a period of 60 days. Within that 60-day period, anyone can make a submission to the Heritage Council about the recommendation and can request a hearing about it.

Find published recommendations at heritagecouncil.vic.gov.au/registrations-reviews/executive-director-recommendations

Making a submission on inclusion in the Register

Any person or body may make a submission to the Heritage Council **in response** to a recommendation of the Executive Director of Heritage Victoria that a place or object should or should not be included in the Register.

The submission must be made within 60 days of the Executive Director's recommendation being published and must be in the prescribed form.

Requesting a hearing on your submission

A submission may include a request that the Heritage Council conduct a registration hearing about that submission. Usually only the owner has the automatic right to call a registration hearing. The Heritage Council can otherwise conduct a registration hearing if it considers it appropriate to do so.

If you make your initial submission within the 60-day time frame you will secure your right to be heard, if a hearing is scheduled. This will give you the opportunity to present a detailed submission in person before a committee constituted of at least three members of the Heritage Council.

Once a registration hearing is scheduled, **any person or body** who made an initial submission can make a detailed written submission and present it before the Heritage Council.

Registration hearings are public processes that allow interested people and groups to present their views on whether a place or object should be included in the Register. The following instructions are adapted from “Registration Hearings Explained” on the Heritage Council’s website, at heritagecouncil.vic.gov.au/hearings-appeals/registration-hearings/registration-hearings-explained, where you can also find the forms you need to use.

Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious.

The Burra Charter
(The Australia ICOMOS Charter for Places of Cultural Significance, 2013)

First chance: Making a submission in response to the Executive Director’s recommendation

1. Check you are in time (60 days)

You have a 60-day timeframe from the date of publication of the recommendation to respond by making a written submission.

Check the listing of recommendations on the Heritage Council’s website (as referred to above) for the recommendation you wish to respond to, and the date comments close.

2. Fill out the prescribed form

Use the Heritage Council’s “Form A—Submission to the Heritage Council” to make a submission, available on the Heritage Council’s website.

When setting out your reasons, in the submission, for supporting or objecting to the Executive Director’s recommendation, focus on the cultural heritage significance of the place or object.

You may wish to comment on the extent or boundaries of the proposed registration, and whether you think it is adequate to protect the values of that place or object.

General style tips

Be succinct—submissions which are concise and to the point will be received well. Edit your submission and ask someone to proofread it before you submit it.

Choose your best arguments—give your time to your strongest arguments and be ruthless and cut out weaker arguments, which may take the focus away from your main argument.

Avoid personal grievances—personal attacks on the character of the owner, special interest groups, or the property manager are not relevant to the Heritage Council’s considerations and will distract attention from your genuine objections.

3. Where appropriate, request a hearing

Generally, only the owner or someone with a “real or substantial interest” in a place or object can request a hearing (contact the Heritage Council for further information).

Second chance: Making a submission at the registration hearing

If you made an initial submission on a recommendation, within the deadline, you will be notified if a registration hearing is held. You will also have the right to present a detailed submission in person at the hearing.

Preparing your detailed submission for a registration hearing

1. Prepare a detailed submission

While you can simply rely on your initial submission, this is an opportunity to expand it by introducing more detail, including new material or arguments. Once you are at the hearing you cannot rely on anything you have not previously introduced (see “Fourth chance”, below).

Allow yourself plenty of time: your submission may require new visual and documentary information, and you may also wish to engage an expert to produce an expert witness report (see below), and this can take time.

2. In your submission, clearly respond to the eight criteria for assessment

For a place or object to be included in the Register, it must meet at least one of the Heritage Council of Victoria’s eight criteria for assessment. Your submission should respond to at least one criterion. See “Preparing your nomination”, above.

3. Request to participate in the hearing

You must also submit the Heritage Council’s “Form B—Registration Hearing Participation Form” if you wish to present your submission in person or have someone present it on your behalf (such as a lawyer).

4. Submit all material by the relevant deadlines

Check the closing dates by which you need to have submitted your submission and any request to participate. The Heritage Council hearing and submission filing dates are listed on the Heritage Council’s website—search for “scheduled registration hearings”.

When to engage an expert witness

Engaging an expert witness to support your submission isn’t essential, but it can help to strengthen your case. If you wish to rely on expert evidence, a report by the expert should be submitted with your detailed submission. If you engage an expert witness to provide evidence at the registration hearing, they must be available to attend the hearing to present their evidence and be cross-examined.

The role of an expert witness is different from that of a submitter. An expert witness has established credentials in a field, usually through a combination of qualifications and professional experience. While an expert might be hired by a property owner or submitter, their duty is to provide fair and impartial evidence to the Heritage Council and not to advocate for the party relying on their evidence.

When an expert witness provides evidence at a registration hearing, they may be cross-examined by any other party. This allows their evidence to be “tested” and explains why the Heritage Council is likely to give expert opinion more weight than untested submissions.

You can find heritage experts in a range of fields in the Consultants Directory on Heritage Victoria’s website. Sometimes experts may provide pro-bono or discounted services to community groups, but you should be prepared to raise funds. Always ask what fees will be charged.

 Visit the Consultants Directory at heritage.vic.gov.au/consultants-directory

Third chance: Submissions in reply

Before the registration hearing, you will receive a copy of all other submissions made about the recommendation, including any expert evidence to be relied on by other parties at the hearing. The submission in reply is your opportunity to respond to these in writing before the hearing. These reply submissions will also be circulated to all parties at the hearing.

Remember that no new information may be introduced at the registration hearing. If you have discovered something since lodging your detailed submission or submission in reply you will not be able to rely on it at the registration hearing.

Fourth chance: Presenting your submission

1. Preparing for and attending the registration hearing

Registration hearings are managed by the Heritage Council's secretariat. Contact them prior to the hearing if you have any questions about the process. The hearings are designed to be more informal than a court environment. A committee of at least three members of the Heritage Council will conduct the registration hearing.

At the beginning of the hearing, the chairperson will begin by explaining how things will run. The chairperson will make sure people stay to the time allocated for presentations and do not repeat points or comments made by others. There will also be an opportunity to ask questions at the beginning of the hearing.

All parties should be respectful of the committee and other participants. Be careful not to interrupt those making submissions, or experts, while they are presenting to the committee.

2. Presenting your submission

You can choose to present your submission yourself or to be represented by someone else (such as a lawyer).

The order of hearing submissions will generally be:

- the Executive Director
- the nominator
- the local council
- the National Trust
- other persons, and
- the owner of the place or object.

Tips for making your presentation

- Be as brief as possible.
- Reflect the main arguments of the written material you have lodged—the more time you spend in preparation (including reviewing expert evidence and other submissions) the better you will be able to focus on these.

- Avoid restating points made by previous speakers. You may need to edit your submission on the day of the hearing.
- Use images and plans where this is useful to help you make your argument. You can include images in your written submission or prepare a visual presentation in a program such as Microsoft PowerPoint to show at the hearing. Avoid including images, maps or plans which do not support your main arguments. A few key images can be more effective than a lengthy or repetitive slideshow of historic images.
- You may only use material (including images) that was in your initial submission or submission in reply or has otherwise been circulated—no new material can be introduced.

3. Asking questions and cross-examination

Submitters cannot generally be questioned by other parties. However, questions are allowed for the purposes of clarification, with the chairperson's permission.

Any party can directly question an expert witness. The chairperson may disallow questions that they consider inappropriate or badgering of the witness.

If you have not engaged your own expert witness, but another party at the hearing has, you may still ask the expert witness questions within an allocated time if you wish to establish something which will assist your argument. You should not interrupt an expert witness while they are giving their evidence but wait until the appropriate time. The chairperson will ask you if you have any questions, once the evidence has been presented.

Generally, limit your cross examination to one or two relevant questions and only ask closed questions (which have a clear "yes" or "no" answer). You should read the expert's witness statement (which you will have received in advance) to assist you in preparing your questions. Asking questions just for the sake of doing so or asking the wrong question can hinder rather than help your case. If you ask a question which is not directly relevant, the chairperson may direct the expert not to answer it.

Heritage Council's determination

After considering a recommendation that a place or object should or should not be included in the Register as well as any submissions in respect of the recommendation and conducting any hearing into the submissions, the Heritage Council may determine that:

- the place or part of the place, or object, is of state-level cultural heritage significance and is to be included in the Register, or
- the place or part of the place, or object, is not of state-level cultural heritage significance and is not to be included in the Register.

In the case of a recommendation relating to a place, the Heritage Council may determine that the place is not to be included in the Register but refer the recommendation and any submissions to the relevant planning authority (the relevant municipal council) for consideration for an amendment to a planning scheme (applying a Heritage Overlay to the place).

The Heritage Council must make its determination within 40 days of the date by which written submissions were to be made, or, if a hearing is conducted, within 90 days of the completion of the hearing.

If you have been a party to a hearing, the Heritage Council must notify you in writing of its decision. The decision will also be published on the Heritage Council website, at heritagecouncil.vic.gov.au/hearings-appeals/registration-hearings/recent-registration-decisions

Heritage is an integral part of our lives. From the grandeur of Flinders Street Station in Melbourne, to the rustic craftsmanship of the Murtoa Stick Shed, to the local charm of the Globe Theatre in Winchelsea and the beauty of the Macedon Avenue of Honour, our heritage places and objects offer a lens through which to understand our past, and provide us with a wide range of benefits.

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