



National Trust Advocacy Toolkit

Advocacy Guide No. 5:
Heritage Overlays and Planning Scheme
Amendments

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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OBTAINING INDEPENDENT LEGAL ADVICE

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 participating in a Planning Scheme Amendment.

About Planning Schemes and Amendments

Planning Schemes determine how land can be used, developed and protected.

From time to time planning schemes are amended to respond to changes in an area, changes in policy or to improve how a scheme operates. This includes the application of Heritage Overlays to places of local cultural heritage value.

Any change to a planning scheme requires a Planning Scheme Amendment. The Minister for Planning (the Minister) has the power to approve Planning Scheme Amendments without notice and consultation. However, a proposed Planning Scheme Amendment will usually go through a public process before the Minister makes a final decision.

About Heritage Overlays

The Heritage Overlay is used in planning schemes to recognise places of local cultural heritage value.

A site's inclusion in a Heritage Overlay does not mean that a place cannot be altered, sold, or used for a different purpose. Instead, it means that a Planning Permit may be required for any proposed development or demolition which must take the heritage values of that place or precinct into consideration. (See "Advocacy Guide No. 3: Objecting to an Application for a Planning Permit for Properties Covered by a Heritage Overlay".)

There are many ways in which a Planning Scheme Amendment may affect a site with heritage value. For example, a Planning Scheme Amendment may add, remove or amend places that are covered by a Heritage Overlay.

Other heritage controls

Other relevant planning controls which can be applied under the Planning Scheme to recognise heritage values include Neighbourhood Character Overlays, Significant Landscape Overlays, and Environmental Significance Overlays.

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)

Planning Scheme Amendments to protect heritage

A Planning Scheme Amendment is required to apply a Heritage Overlay. Planning authorities (most often local councils) usually prepare Planning Scheme Amendments to protect heritage places which have been identified as part of a study of places of potential heritage significance undertaken by a qualified heritage consultant.

The study could be for the whole municipality, a suburb, a site, or a particular type of heritage place. In rare cases, a planning authority may prepare a Planning Scheme Amendment for a single place that is under threat.

Any Planning Scheme Amendment which seeks to apply the Heritage Overlay needs to be supported by independent heritage advice from a qualified heritage expert that demonstrates that a place has heritage values.

The preparation of Planning Scheme Amendments requires planning authorities to invest considerable funding and staff resources. Justification of this expenditure is necessary to demonstrate that there is a clear community benefit in proceeding with the amendment. It is therefore helpful for community members who care about heritage to support planning authority efforts to protect heritage. A Planning Scheme Amendment is more likely to be supported by the planning authority if there is community support behind it.

You can write to your planning authority (usually your Council) to encourage them to undertake heritage studies and Planning Scheme Amendments to protect places of heritage significance. If a place is at risk, ask the planning authority to seek advice from its Heritage Advisor or a qualified heritage consultant about the significance of that place, so that it can be considered as part of any future Planning Scheme Amendments.

Requesting a Planning Scheme Amendment

Usually a planning authority prepares and initiates Planning Scheme Amendments for the application of the Heritage Overlay to one or more individual places or precincts.

However, anyone can ask a planning authority to prepare a Planning Scheme Amendment—and must demonstrate that this amendment is justified.

Once the Minister considers an application for a Planning Scheme Amendment, the Minister will either:

- authorise the planning authority to commence preparation of the amendment, or
- refuse to authorise preparation of the amendment.

If the Minister refuses to authorise the Planning Scheme Amendment, there is no avenue to review this decision.

Getting involved in a Planning Scheme Amendment

Once a planning authority has been given authorisation to prepare a Planning Scheme Amendment, the amendment documentation will be prepared for public consultation. This is called the exhibition phase.

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: Exhibition phase

The exhibition phase is when the planning authority (usually a local council) gives notice of the proposed amendment and seeks submissions from the community and affected persons. The purpose of this process is to capture and record submissions concerning the impact of a proposed Planning Scheme Amendment on the local community. This enables the planning authority and the Minister to consider the likely impacts of the proposed amendment as part of the decision-making process.

This is a critical opportunity to show your support for the proposed Planning Scheme Amendment, and balance objections by property owners. The more community support there is for a planning scheme amendment, the more likely it is to progress.

1. View the Planning Scheme Amendment

The public consultation period for Planning Scheme Amendments must be open for at least one calendar month. For example, if a Planning Scheme Amendment is published on 8 October, it must not close prior to 8 November.

The planning authority will usually give notice of the Planning Scheme Amendment by placing a notice in a local newspaper, and sending letters to affected property owners. The notice will invite submissions. Public information sessions may also be held, and most council websites have a page dedicated to Planning Scheme Amendments currently open or being considered.

➤ Sign up to the Victorian Government's Planning Matters email service at planning.vic.gov.au/publications/planning-matters for updates on when Planning Scheme Amendments are being exhibited.

➤ Visit the Department of Environment Land Water & Planning website at planning-schemes.delwp.vic.gov.au for a listing of all planning schemes and current and proposed Planning Scheme Amendments across Victoria, as well as the progress or stage of an amendment.

2. Prepare your submission

Anyone can make a submission in writing about a Planning Scheme Amendment. Once you provide your submission to the planning authority it will be a public document which will be made available for others to read. Here is some guidance on how to write your submission:

- Cite the amendment number that your submission responds to.
- State why your support or oppose the amendment.
- Clearly link your argument back to **relevant planning considerations**.
- If you have evidence or supporting information which may assist your submission, include a copy.

Some relevant planning considerations may include:

- Does the place have heritage value or significance to the local area?
- Is the heritage assessment that supports the planning scheme amendment accurate? Is any information missing?
- How does the place compare to other places already within the Heritage Overlay?
- Are there any significant trees on the property which should be included in the Heritage Overlay?
- Is the garden important to the heritage significance of the place?

➤ Use the "Planning Practice Note 1: Applying the Heritage Overlay" to help you understand how the Heritage Overlay works. This practice note guides how the Heritage Overlay control is used and describes what needs to be considered in its use. It is available on the planning practice notes section of the DELWP website at planning.vic.gov.au/publications/planning-practice-notes

3. Submit on time

Do everything you can to submit on time. If your submission is late then you may have to apply to the council or the Minister to have your submission considered.

Second chance: Planning Authority's consideration of submissions

If the planning authority (being a council) receives submissions during the public exhibition phase, then it must consider them at a council meeting. As a submitter, you should be notified when a Planning Scheme Amendment is added to the agenda of a council meeting.

If you become aware that a Planning Scheme Amendment has been referred to be considered at a council meeting, review the planning authority's report on the Planning Scheme Amendment. This will include a review of the submissions made on the Amendment and propose a way forward. Councils usually publish council meeting agendas for review, prior to the meeting.

Even after the report on submissions is released, you may be able to win some last-minute support from councillors. Councillors often only receive a summary of submissions and not individual submissions. When the amendment goes to a council meeting consider taking the following action:

- Contact councillors prior to the meeting to communicate your views and try to influence their decision, either in person, over the phone, or via email. If your council has local wards, you may want to contact the councillors in the relevant ward to ask for a meeting to discuss your concerns. If there is a councillor who is known for an interest in heritage you may want to start with them.
- Attend the council meeting and make a verbal submission outlining your views. At some council meetings, submitters are required to register to speak prior to the meeting, so contact the relevant council to find out what the correct procedures are. Usually, verbal submissions are limited to a short amount of time (around 3 minutes). Make sure you have prepared by writing down your key points and stay focused on these.

In considering the submissions received during the exhibition process, the planning authority must either **accept** submissions and **amend** or **abandon** the relevant parts of the Planning Scheme Amendment or **refer** the submission to an independent Planning Panel.

Third chance: Planning Panel hearing

Planning Panels provide an opportunity for members of the community to participate in the planning process. A panel is made up of experts who will independently consider submissions and make recommendations to the planning authority.

Planning Panels are conducted by Planning Panels Victoria, which is part of the Department of Environment, Land, Water and Planning. Members of Planning Panels of Victoria include experts in planning and related areas such as architecture, urban design, engineering, environment, and heritage.

When a Planning Panel is appointed, members will be appointed based on the relevant experience to the Planning Scheme Amendment being considered.

➤ Find out more about panels at the Planning Panels Victoria website at planning.vic.gov.au/panels-and-committees/planning-panel-guides

As a submitter, once a Planning Panel is appointed, you will be notified by Planning Panels Victoria. You will receive a letter which outlines next steps and key dates. If you want to participate in the hearing, you will need to fill out the online "Request to be Heard Form" and submit it by the deadline.

For any matters or advice relating to the Planning Panel process, you should contact Planning Panels Victoria, and not the planning authority undertaking the planning scheme amendment.

Directions Hearing

Prior to the Panel Hearing, Planning Panels Victoria usually holds a Directions Hearing. This is a preliminary hearing to explain the Planning Panel hearing process, consider procedural issues such as the timetable, and provide an opportunity for all parties to ask questions. Attendance is not compulsory, but it's useful to attend, especially if you have never been involved in a Planning Panel before.

Once the Directions Hearing is held, Planning Panels Victoria will issue a "Directions Letter and Timetable" to all parties. These will outline the timetable and set out relevant instructions about circulating expert evidence (if any is being relied upon).

Planning Panel Hearing

A Planning Panel hearing is not the same as a court environment. It is designed to hear your views with a reduced level of formality. You should plan to write a new or amended submission and present it in person to the Planning Panel. It is not compulsory to present in person, but it will help to clearly communicate your views. It also provides the Planning Panel members with an opportunity to ask any follow-up questions that will assist them to take your views into account.

Preparing your submission

You will be able to base your submission to the Planning Panel on your original submission. However, you should edit it to acknowledge any changes which may have occurred because of the public exhibition period and any subsequent decision by the planning authority, such as a decision coming out of a council meeting.

(You can identify any changes and the decisions that led to them by reading the agenda and minutes of the meeting where the Planning Scheme Amendment was discussed. This will be available on the relevant local council's website.)

You will need to bring hard copies of your submission when you attend the hearing. The number of copies you will need to bring will be set out in the Directions Letter. If you don't have access to a printer to make copies, contact Planning Panels Victoria prior to the hearing to ask for assistance.

Planning Panel Report

At the end of the Planning Panel hearing, the Planning Panel will consider all submissions and prepare a report with recommendations to the planning authority.

The Planning Panel report must be made available to the public 28 days after the planning authority receives it.

View panel reports and the progress of Planning Scheme Amendments at Planning Schemes Online at planning-schemes.delwp.vic.gov.au/updates-and-amendments.

Fourth chance: Council consideration

While the recommendations of the Planning Panel are influential, the planning authority is not bound by its advice.

The planning authority will consider the Planning Panel's advice at another meeting, usually a council meeting. Submitters will be notified of the date of the meeting at which the report will be considered. You may be able to influence the planning authority's response to the Planning Panel's report (see "Second chance: Planning Authority's consideration of submissions", above, for steps you can take to seek to persuade (lobby) councillors).

After consideration of the advice and the issues, the planning authority will submit a Planning Scheme Amendment with or without the changes recommended by the Planning Panel, to the Minister for approval.

Ministerial approval

Once a Planning Scheme Amendment has been submitted to the Minister for approval, the Minister will:

- approve the amendment as submitted
- approve the amendment with changes
- refuse the amendment, or
- direct that further work is required before the amendment will be supported.

Once the Minister approves a Planning Scheme Amendment the decision is final, and it will be published in the Victorian Government Gazette.

You can view all Planning Schemes and Planning Scheme Amendments on the DEWLP website at planning-schemes.delwp.vic.gov.au.