

# National Trust Advocacy Toolkit

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**Advocacy Guide No. 2**  
Submitting on Permit Applications  
to Change Properties on the  
Victorian Heritage Register





Image: Moormaong Collection, by Michelle Derrick.

## Contents

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Introduction	1	Permits	3
Heritage Protection in Victoria	1	Permit Review	6
The Victorian Heritage Register	3	Heritage Council's Determination	9

# Introduction

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## About this Advocacy Guide

The purpose of this guide is to provide a broad overview of the processes for commenting on an application for a planning permit to change a place protected by a Heritage Overlay. This guide is not intended to be an exhaustive resource regarding Heritage Overlay Permit Applications and it is advised readers also consult government published guidelines, such as the **Heritage Information Pack** by the Heritage Council of Victoria.

## About the National Trust's Advocacy Toolkits

The National Trust Advocacy Toolkit is a series of free online resources and guides, developed by the National Trust of Australia (Victoria) to support community members to advocate for the protection of places of cultural heritage significance.

**Cultural Heritage:** Refers to the qualities of a society that are valued and passed on to future generations. Cultural heritage can be tangible and intangible, built and environmental, an object and a practise. Cultural heritage is not a frozen example in time, it is dynamic and adaptive, it is valued because it carries meaning, with qualities shared across communities and social barriers.

### 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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Cover image: Como House

# Heritage Protection in Victoria

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Heritage protection in Victoria operates at two primary levels: local and state. Most heritage places hold significance for local communities and are best protected through local government mechanisms. These places may be included in a Heritage Overlay within the local Planning Scheme, which is administered by Local councils.

A much smaller proportion of places and objects are significant at the State level, as they contribute to the broader narrative of Victoria's history, and have significance beyond their local or regional context. Places and objects with State-level cultural heritage significance may be eligible for inclusion in the **Victorian Heritage Register** under the Heritage Act.

**Heritage Victoria** and the **Heritage Council of Victoria** are two separate entities that administer the Heritage Act 2017 for all Victorians.

- **Heritage Victoria** is the Victorian State Government agency responsible for protecting places and objects of State heritage significance. It administers the *Heritage Act 2017*, and makes recommendations for what should and should not be included in the Victorian Heritage Register. It has responsibilities for land-based and maritime archaeology. It also assesses permit applications for works on places included in the Victorian Heritage Register.
- **The Heritage Council of Victoria** is an independent statutory body that provides advice on heritage matters, determines what is included in the Victorian Heritage Register, holds permit and registration reviews, and promotes public understanding of Victoria's cultural heritage.
- **The National Trust of Australia (Victoria) (NTAV)** is a non-government-organisation, we are a community based, not-for-profit that advocates for protecting heritage and provides independent advice to our members and the public.

➤ To better understand the role of these organisations, and the wider heritage protection system including Heritage Overlays, [click here](#).



Labassa Mansion, by Jon Rendell.

# The Victorian Heritage Register

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A place or object that is included in the VHR, requires a permit or permit exemption from Heritage Victoria before any works or activities can be undertaken to it.

The place or object can still be sold or used for a different purpose without a permit from Heritage Victoria, although a change of land use may require a planning permit from the relevant local council. A range of planning and other controls may also apply.

## Permits

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Once a place or object has been registered and included in the Victorian Heritage Register (the Register), a person or body will require a permit or permit exemption from Heritage Victoria to carry out works or activities that affect that place or object.

This includes:

- building extensions, interior works, demolition or relocation of buildings and structures, changes of colour schemes and signage
- construction of new buildings and garden structures such as fences or decks, pathways and driveways, and changes of materials
- works to registered trees and gardens which are not regular maintenance works
- excavations at registered sites or damage or alteration to an archaeological artefact, and
- relocation, repair and conservation treatment of objects.

There are significant penalties if a person or body changes any place or object included in the Register without either a permit or a permit exemption.

## Permit exemptions

A permit exemption may be issued if the works will not harm the cultural heritage significance of a place or object. For example, minor repairs, or the replacement of like-with-like materials such as a tin roof replaced with tin roofing may be exempt from requiring a permit.

➤ Several examples are set out in the permits section of the [Heritage Victoria website](#).

You can find out if a place is included in the Victoria Heritage Register by searching the address [here](#).

For more information on how to nominate a place or object to the Victorian Heritage Register, see our other [Advocacy Toolkits](#).

## “Reasonable or economic use”

In determining whether to approve an application for permit, the Heritage Act 2017 requires Heritage Victoria to consider:

*the effect of the proposal on the “cultural heritage significance” of the registered place or registered object if the permit was granted, and*

*the effect of the proposal on the “reasonable or economic use” of the registered place or registered object if the permit was refused.*



Moormaong Estate, by Chris Groenhout.



Tasma Terrace, by Neisha Breen.

Some permit applications approved by Heritage Victoria will inevitably result in works or changes that may impact the heritage values of a registered place or object. This may include granting permission for full or part demolition, or the construction of a new development. Examples of these include the approved demolition of the Princess Mary Club on Lonsdale Street in Melbourne and the approval of a high-rise development within Pentridge Prison. While these decisions may seem confusing; they reflect the balancing exercise between preserving heritage and allowing 'reasonable economic use' of a place or object.

**'Reasonable use'** refers to the proposed use of the registered place or object. For example, an extension to a domestic residence may have its reasonable use questioned if the place could still be used as a domestic residence without the proposed changes. This does not necessarily mean a place must retain its original historic use. Appropriate reuse proposals and introducing contemporary facilities and safety standards can be reasonable. In fact if a heritage place can no longer serve its original purpose, adaptive re-use is often the best way to ensure its maintenance and relevance. The National Trust supports the adaptive reuse of heritage buildings to ensure they have an ongoing purpose and remain viable assets to their communities.

**'Economic use'** refers to the continued economic functioning of the registered place or object, and NOT the financial circumstances of the owner/applicant. The proposed works should facilitate an economically sustainable use of the place in the medium-long term and reduce the need for further changes to the place. Economically sustainable use includes financing the conservation and maintenance of the heritage place, rate and land tax associated with the place, and capital improvements to ensure the continued use of the site.

'Reasonable use' and 'economic use' are considered independent of each other, though an applicant will often refer to them as a joint criterion to justify their request for permit.

Heritage Victoria seeks to balance reasonable and economic use when there are competing heritage objectives. In such cases if a permit is granted, it may specify permit conditions that try to lessen or limit negative impacts for the heritage place.

## Permit Application Open for Public Comment

Once Heritage Victoria is received all necessary information regarding a permit application public notice, or advertising, of the permit application will occur unless Heritage Victoria is satisfied that approving the permit would not harm the place.

Currently advertised permits can be viewed on the Heritage Victoria website [here](#).

### Tips

- Heritage Victoria generally updates this webpage weekly so if there is an application you are concerned about you should set a reminder to yourself to check the website each week

You only have 14 days to prepare your submission from the date that notice is published— it is important to meet this deadline to make sure that your submission will be considered. The closing date can be extended in exceptional circumstances, but only with the agreement of the applicant and owner of the registered place or object.

## Read and understand the nature of the permit application

When reviewing the permit application, make sure you read and understand it. It is important your submission appropriately addresses the extent of the proposed changes or works to the registered place or object.

## Prepare your submission

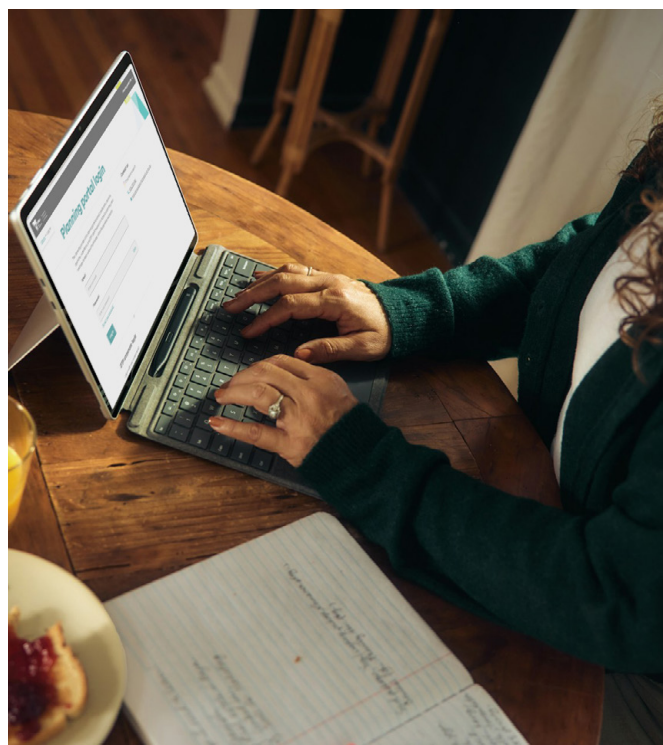
Anyone may make a submission during the public comment period. There is no prescribed format, but a submission usually takes the form of a letter, sometimes with supporting documentation attached.

Submissions can be lodged via the Heritage Victoria [HelpDESK](#). You will need to create an account or log in to lodge your submission.

Submissions close at 11.59pm on the specified closure date.

### Tips

- Visit the [Victorian Heritage Database](#) and search for the registered place or object and read the Statement of Significance. This is a succinct summary of what is significant about the place or object, and why it is significant. Prepare your submission with it in mind.
- Consider whether the granting of this permit has the potential to cause harm to the cultural heritage significance of the object or place. Your submission will be more effective if you can focus on this, such as by referencing the reason(s) for cultural heritage significance as set out in the statement of significance and the possible effect of the proposed works.
- Consider what specific parts of the proposal might be of concern for you, for example the height of a certain building, the sight lines facing a certain direction, the proposed use, etc.
- It is unusual for a permit application to be refused outright. However, if you can suggest changes to the proposal that would reduce the risk of harm or lead to a better heritage outcome, then your objection is more likely to be viewed as reasonable and balanced.  
*For example, you may recommend a permit condition that certain heritage conservation works be undertaken, or suggest a further setback on one side to maintain sight lines.*
- Be clear about what outcome you would be willing to accept, versus what you would not be willing to compromise on.



## 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 in cutting 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 Heritage Victoria's considerations and will distract attention from your genuine heritage concerns.*
- *Lodge your submission with Heritage Victoria by the deadline - Once a permit has been issued by Heritage Victoria, there is no appeal process for members of the public, so it is crucial to make your submission within the 14-day public comment period. The cut off time is 11.59pm on the listed date.*


## Permit Review

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Once a decision has been made by Heritage Victoria, a review of the decision can usually only be requested by the applicant or owner.

The Heritage Council of Victoria reviews Heritage Victoria's decisions on permit applications. Owners or applicants who are dissatisfied with a decision may apply to the Heritage Council within 60 days to have their case heard.

If an appeal is granted to review a decision by Heritage Victoria other people and bodies may apply to be heard and be party to the review.

 A detailed outline of the process involved in Permit Reviews can be found on the Heritage Council of Victoria website [here](#).

### How to request a review

Complete "Form C—Request for a Permit Review", on the Victorian Heritage Council's [HCV Hub](#), giving reasons for requesting a review, and lodge the request within 60 days of Heritage Victoria's decision.

## Determination of permit applications

After considering an application Heritage Victoria may either:

- issue a permit for the proposed works or activities
- issue the permit for only some of the proposed works or activities, or
- refuse the permit application.

## Permit Review Hearing

Permit review 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 permit review hearing.

A committee appointed by the Heritage Council will conduct the Review. A review hearing may or may not be held. If a hearing is to be held, the committee will set a date that allows time for the following people to lodge detailed submissions:

- the permit applicant
- the Executive Director, Heritage Victoria
- the owner
- the responsible authority
- the relevant Municipal Council
- the National Trust (if the National Trust lodged a written submission with the Executive Director in relation to the permit application), and
- any person the committee allows who can provide more information.

## Request to participate in the hearing

You must submit the Heritage Council's "Form D—Permit Review Hearing Participation Form" if you wish to submit to a permit review hearing. This form is available on the Heritage Council's [HCV Hub](#).

## Prepare a detailed submission

You can include detailed material in your submission to the review panel, and you must do so if you intend to rely on it in any hearing that is listed and that you are granted permission to attend. This includes evidence from an expert witness.

Make sure you allow enough time to gather and prepare your materials, so you can submit by the deadline.



Rippon Lea Estate, by Neisha Breen.

## When to engage an expert witness

Engaging an expert witness to support your submission is not 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 review 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 a property owner or submitter might hire an expert, the duty of an expert 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 review hearing, they may be cross-examined by any other party, including legal representatives. It is important to consider that appearing as an expert witness can be a very challenging role to play. There are also [specific protocols](#) that both you and your expert must follow.

You can find heritage experts in a range of disciplines on the National Trust's [Victorian Heritage Services Directory](#). Sometimes experts may provide pro-bono or discounted services to community groups, but you should be prepared to raise funds. Always ask about what fees will be charged.

VICTORIAN  
HERITAGE  
SERVICES  
DIRECTORY



## Submissions in reply

Before the permit review hearing, you will receive a copy of all other submissions to the hearing, including any expert evidence to be relied on by other parties. Preparing a 'submission in reply' is your opportunity to respond to the submissions from other parties before the hearing. These reply submissions will be circulated to all parties at the hearing.

Remember, no new information may be introduced at the 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 permit review hearing.

## Presenting your submission

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.

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

The hearing submissions will typically be in the following order:

- the Executive Director
- the responsible authority
- the National Trust
- other persons, and
- the owner(s) or government asset manager, and
- the applicant.

### Tips

- *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*
- *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 submissions—no new material can be introduced.*

## Asking questions and cross-examination

Other parties typically cannot question submitters. However, questions are allowed for the purpose 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; instead wait until the appropriate time. The chairperson will ask you if submitters 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 and try to prepare your questions before the hearing.

### Tips

- *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

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After conducting the review (whether there was a hearing or not), the Heritage Council may determine to:

- affirm the decision under review
- vary the decision under review, or
- set aside the decision under review and make another determination in substitution for it.

If the Heritage Council determines to approve the permit application, Heritage Victoria must, within seven days of the determination, issue the permit to the applicant and give written notice to:

- the applicant for the review and/or the owner
- the responsible authority, and
- any other person or body that was a party to the hearing.

The decision will also be published on the Heritage Council [website](#).

Once the Heritage Council has made a determination following a permit review, there are no further avenues for review.



The Heights, by @thecommonwanderer