

Heritage Victoria Guidance

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Reasonable or economic use

Relevant matters for the consideration of section 101(2)(b) of the Heritage Act 2017

Purpose

1. This Policy is intended to provide guidance as to the matters relevant to the consideration of 'reasonable or economic use' under s101(2)(b) of the *Heritage Act 2017* (**the Heritage Act**) by the Executive Director of Heritage Victoria (**the Executive Director**) when determining an application for a permit.
2. The Policy may assist:
 - Heritage Victoria staff assessing a permit application in relation to a place or object included in the Victorian Heritage Register
 - The Executive Director in fulfilling their obligations pursuant to s101(2)(b) of the Heritage Act when determining a permit application.
 - The Heritage Council of Victoria (**the Heritage Council**) when determining a review of a permit determination by the Executive Director.
 - Persons applying to the Executive Director for a permit or making a submission to the Heritage Council for a permit review, or those acting on their behalf.

Relevant legislation

3. This Policy relates to s101(2)(b) of the Heritage Act. Section 101(2) provides:
 - (2) *In determining whether to approve an application for a permit, the Executive Director must consider the following:*
 - a) *the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object;*
 - b) ***the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object;***
 - c) *any submissions made under section 95 or 100;*
 - d) *if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to perform a statutory duty specified in the application;*
 - e) *if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—*
 - (i) *the world heritage values of the listed place; or*
 - (ii) *any relevant Approved World Heritage Strategy Plan;*
 - f) *any matters relating to the protection and conservation of the registered place or registered object that the Executive Director considers relevant.*

Policy Statement

4. The following Policy applies to the consideration of permit applications made under s93 of the Heritage Act.
5. When determining a permit application, the Executive Director must consider the extent to which approval would affect cultural heritage significance (s101(2)(a)) and the extent to which refusal would affect reasonable or economic use (s101(2)(b)), in addition to other mandatory and discretionary considerations. The Executive Director attributes weight to each consideration according to the particular application and registered place or object, and their obligations under the Heritage Act.
6. Section 101(2)(b) is a mandatory consideration and must be considered by the Executive Director when determining a permit application.
7. Section 101(2)(b) requires the Executive Director to consider:

- The extent to which refusal of the application would affect the reasonable use of the registered place or object; and/or
 - The extent to which refusal of the application would affect the economic use of the registered place or object.
8. 'Reasonable use' and 'economic use' are distinct and must be assessed separately.
 9. The Executive Director must take into account the extent to which refusal would affect reasonable use and economic use.
 10. The Executive Director may require the applicant, or those acting on their behalf, to provide evidence demonstrating the extent to which reasonable use and/or economic use of the registered place or object would be affected by refusal, pursuant to section 98 of the Heritage Act. The Executive Director must consider the extent of the effect on reasonable and economic use regardless of whether the requested evidence is provided, therefore the Executive Director's assessment may be limited by an applicant's failure to adequately respond to requests for further information.
 11. The section 101(2)(b) consideration is concerned with reasonable or economic use, **not** reasonable or economic development. The proposed works cannot in themselves constitute 'reasonable or economic use', rather the consideration under s101(2)(b) relates to whether the works allow for the 'reasonable or economic use' of the registered place or object.
 12. A conclusion that refusal would not affect the reasonable use and economic use of the place does not mean that the permit application will be refused. The Heritage Act also requires consideration of other matters in determining a permit application.

Reasonable use

13. When determining a permit application, the Executive Director must consider the extent to which the reasonable use of the registered place or object would be affected by a refusal.
14. The 'reasonable use' consideration is an objective assessment and is concerned with the reasonable use of the registered place or object, not what is subjectively reasonable. For example, refusal to issue a permit for a development may affect the reasonable use of the registered place to a lesser extent if the current use is viable without the proposed changes.
15. When taking into account the circumstances of the permit application and the registered place or object, the Executive Director may consider: (1) the historic, recent and current uses of the registered place or object, (2) other compatible uses¹ of the registered place or object, (3) the context and setting within which the place or object is located, and (4) other relevant matters.
16. Refusal to issue a permit for works to enable a change in use may affect the reasonable use of a place to a greater extent if the historic or recent use is now obsolete, for example, the adaptive re-use of a now redundant industrial complex.
17. Refusal to issue a permit for upgrading facilities to bring them to contemporary or safe standards may affect the reasonable use of a place. For example, updating kitchens, bathrooms, access provisions or other necessary infrastructure or services required to meet current regulations or legislation.

Economic use

18. When determining a permit application, the Executive Director must also consider the extent to which the economic use of the registered place or object would be affected by a refusal.
19. The 'economic use' consideration is concerned with the economic functioning of the registered place or object and is not focussed on the financial circumstances of the applicant or owner.
20. The Executive Director may consider whether the proposed works would facilitate an economically sustainable use of the registered place or object. An economically sustainable use could be one that can continue for the medium to long term, mitigating the possibility of continual proposed changes to the registered place to facilitate new uses. It could

¹ *Compatible use* means a use which respects the cultural significance of a place. Such a use involves no, or minimal, impact on cultural significance. (Article 1.11, *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance*, 2013).

also be one which requires more substantial change, which would in turn provide an intensity of use to generate funds to ensure the ongoing maintenance and conservation of the registered place.

21. Refusal to issue a permit for works which would enable the use of the registered place or object to generate income to fund ongoing and future conservation and maintenance works, may affect the economic use of the registered place or object.
22. A permit refusal may also affect the economic use of a registered place or object if it would limit the capacity of an existing or compatible commercial use to generate income necessary to cover the cost of:
 - conservation and maintenance of the registered place or object.
 - rates and land tax directly associated with the registered place.
 - capital improvements to ensure the continued use of the registered place or object, where that use contributes to its significance (including debt repayment and interest costs). For example, improving infrastructure or services to ensure that an existing compatible commercial use continues to attract tenants and/or customers.

if the permit applicant contends that the future economic use of the registered place or object would be affected by refusal, they may be required to provide relevant information to support this contention for the Executive Director's consideration, pursuant to s98. This may include evidence of the forecasted impact, showing the degree of impact over a relevant timeframe with an explanation of assumptions used in the modelling.

Questions to consider when addressing reasonable use or economic use under s101(2)(b) of the Heritage Act

Reasonable use

- What was the original use?
 - Is the registered place or object still being used in this way?
 - If not, why not?
- What is the current use?
 - Is this use still valid?
 - If not, why not?
- What physical changes are required to accommodate the proposed new use?
- Are the changes necessary to meet code and compliance requirements?
- If the permit application was refused, could the registered place or object still be reasonably used?
 - If not, why not?

Economic use

- Is the current use financially viable?
 - If not, why not?
- To establish a base level for understanding the need for development:
 - What are the current and projected incomings and outgoings?
 - What are the projected costs for conservation works other than maintenance?
- Why are the proposed works necessary to facilitate the economic use of the registered place or object?
- How will the proposed works maintain or improve the economic use of the registered place or object?
- How will the development generate income to fund ongoing and future conservation and maintenance? (eg: sinking fund, maintenance program etc)
- If the permit application was refused, could the registered place or object still be put to economic use?