

Heritage Victoria Guidance

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Principles for change to places in the Victorian Heritage Register

Relevant matters for the consideration of section 101 of the Heritage Act 2017

Purpose

1. This guidance is intended for use when considering change to places in the Victorian Heritage Register in accordance with Part 5 of the *Heritage Act 2017* (**the Heritage Act**). They can guide proposals ranging from conservation to new development.
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 Part 5 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 Guidance primarily relates to s101(2)(a) of the Heritage Act and can also relate to other sections of Part 5 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.*

What is change?

4. The term 'change' is not defined in the Heritage Act, however the concept of change is integral to the definition of the term 'works' as set out in section 3 of the Act. Change in the context of a registered place included in the Victorian Heritage Register can mean conservation, development, relocation, subdivision, adaptation or demolition. The Heritage Act does not limit the type or extent of works for which an application can be made.

Change may be required to ensure that a place:

- Is appropriately maintained and does not fall into disrepair.
- Can be used, either for its original purpose or for adaptive reuse purposes.

- Is compliant with building codes and has equitable access.
 - Can adequately address the impacts of climate change.
 - Is economically viable into the future.
5. Heritage Victoria manages change to places in the Victorian Heritage Register through the issuing of more than 180 permits each year. Applications are assessed under s101 of the Heritage Act and – among other considerations – balance the impacts on the cultural heritage significance of the place with reasonable or economic use rationales. If the impacts are substantial, the application may not be supported even if there is a strong reasonable or economic use rationale.

Managing change - the role of Heritage Victoria

6. Heritage Victoria administers the Heritage Act. One of the primary purposes of the Heritage Act is ‘to provide for the protection and conservation of the cultural heritage of the State.’¹ Heritage Victoria does this by:
- Assessing places and objects nominated for inclusion in the Victorian Heritage Register.
 - Assessing permit applications for places, objects and underwater cultural heritage in the Victorian Heritage Register.
 - Assessing consent applications for historical archaeological sites in the Victorian Heritage Inventory.
 - Delivering priority government initiatives including heritage grant programs and support for emergency and bushfire recovery.
 - Compliance and enforcement.
7. Heritage Victoria issues around 180 heritage permits and 900 permit exemptions annually which allow for change to places in the Victorian Heritage Register.² When assessing and determining permit applications Heritage Victoria uses the matters set out at s101 of the Heritage Act, as well as the underlying principles of the Burra Charter and other relevant policy and guidance.
8. The Burra Charter (the Australian ICOMOS Charter for Places of Cultural Significance) was endorsed by Heritage Victoria in 2010 and by the Heritage Council of Victoria in 2013 as a key document for guiding best-practice cultural heritage management in Victoria. It comprises a series of conservation principles, processes and practices, as well as separate Practice Notes. While the principles of the Burra Charter can inform an approach to change, they cannot overrule the terms of the Heritage Act.

The difference between the *Heritage Act 2017* and the *Planning and Environment Act 1987*

9. Places in the Victorian Heritage Register are also subject to planning controls under the *Planning and Environment Act 1987 (P&E Act)*. The Heritage Act and the P&E Act are separate legislation which operate independently of each other. Permit applications under each Act are required for places in the Victorian Heritage Register and approval of a permit application under one Act does not automatically guarantee approval under the other. For example, planning controls may allow for intensive development or multi-level buildings at a place which may not be appropriate if the place is included in the Victorian Heritage Register.
10. If a place is included in the Victorian Heritage Register, it is preferable that a heritage permit application is lodged with Heritage Victoria before a planning permit application is lodged with the regulatory authority. Heritage considerations may require changes to be made to the proposal, resulting in amendments to plans. The heritage permit application should be substantially progressed before a planning permit application is lodged to provide for a more efficient and integrated process overall.
11. Heritage and planning permit applications will sometimes be considered in parallel, though assessed separately under the relevant Acts. Workshops to discuss heritage, design and planning matters may be held with Heritage

¹ *Heritage Act 2017*, s.1(a)

² The capacity for change at a place is made explicit through s.93(1) of the Heritage Act which states that a ‘person may apply to the Executive Director for a permit to carry out works or activities in relation to a registered place or registered object.’ Applications can take the form of permit applications (considered against s.101 of the Heritage Act) or permit exemptions (considered against s.92 of the Heritage Act).

Victoria, the relevant authority and the Office of the Victorian Government Architect, with coordinated advice provided after each workshop.

Principles for managing change

While every place is different and every application is assessed on its own merits, there are several best practice principles consistent with the Burra Charter which will assist with considering change to a place in the Victorian Heritage Register.

Principle 1. Understand why the place is significant

The heritage values and physical characteristics of a place must be clearly understood and articulated before contemplating change. The statement of significance is a useful starting point, but a more thorough analysis is often required.

The Heritage Act describes cultural heritage significance as aesthetic, archaeological, architectural, cultural, historical, scientific or social significance.³ These values will be embodied in the place itself, through buildings, objects, gardens and land; the physical and visual relationships between these elements; and through the setting, views, orientation and patterns of use.

Understanding and articulating this should be the starting point for considering change to a registered place. This will help to identify physical and visual impacts and whether they can be avoided or mitigated.

Key steps

- Understand what cultural heritage significance criteria and values are applicable to the place.
- Articulate how the heritage values are embodied in the place.
- Use this knowledge as a starting point for determining what changes might be acceptable.

Principle 2. A considered approach

The Burra Charter encourages a cautious approach to change at places in the Victorian Heritage Register: *do as much as necessary to care for a place and to make it useable, but otherwise change it as little as possible so that its significance is retained.*⁴ As stated in Article 15, change may be necessary to retain cultural significance, but is undesirable where it reduces cultural significance.⁵ The significance of a place should always be respected.⁶

There may be circumstances where proposed works go beyond this. Sub-sections of s101 of the Heritage Act allows for consideration of a broad range of matters.

Key steps

- Be familiar with the conservation principles, processes and practices of the Burra Charter.
- Consult the Burra Charter prior to commencing a proposal for change to a place.
- Be familiar with all sub-sections of s101 of the Heritage Act.

Principle 3. Protect significant settings and views

The location, setting and views to and from a place can contribute to its cultural heritage significance.

When a place is included in the Victorian Heritage Register, an extent of registration is determined. This is often the cadastral parcel but can also include land to protect the setting and views to and from the place. It can also provide a

³ Heritage Act 2017, p. 4

⁴ Burra Charter p. 1

⁵ Burra Charter Article 15.1

⁶ Burra Charter Article 15, Explanatory Note

buffer or 'breathing space'.⁷ Everything in the extent of registration, including all built form (interior and exterior), land, vegetation, landscape features and archaeology is included in the Victorian Heritage Register unless explicitly excluded. The extent of registration also includes the airspace above and land below a place. Approval from Heritage Victoria is required for change to any of these elements. Vacant land or airspace within the extent of registration should not automatically be considered as developable.

Before considering any type of change it is important to understand all elements of the place in the context of their setting including:

- The historical, visual and physical associations between the place and its setting.
- The historical, visual and physical relationships between elements of the place including buildings and landscape features, and how they all work together.
- The significance of the spaces between buildings and landscape features.

Types of change which have the potential to substantially impact the setting and views of a place include:

- Multi-level, large or cantilevered building proposals can have an adverse impact on the setting of a place. Ensure that these types of proposals do not visually overwhelm the place and detract from the heritage elements.
- Development where new buildings are proposed which occupy most of the vacant land (and sometimes airspace) at a place. Ensure that heritage elements are not isolated and that historic and spatial relationships remain clear.

The subdivision of land into smaller parcels is not harmful on its own. However, subdivision usually precedes the selling of lots and the construction of new buildings. This has the potential to alter the context of a place, separate visual and historic relationships, obstruct views to and from a place and impact its holistic management.

Key steps

- Use site analysis diagrams, 3D modelling or other visual tools to properly assess and understand the significance of the setting, views, and historical and visual relationships between different heritage elements of the place.
- Include all land that is part of the extent of the place in the site analysis. Link the site analysis to the heritage values of the place to determine whether there are areas suitable for development.
- Ensure significant settings, views, and visual and historical relationships between the heritage elements at a place are not adversely impacted by change. The location of new built form should avoid disrupting or dominating views or vistas to or from the place, or obscure historical and visual relationships between heritage elements.

Principle 4. Respectful change and new built form

In contemplating new built form at a heritage place, consideration should be given to:

- Setting
- Scale
- Massing
- Setback
- Architectural style and expression
- Materials and finishes
- Structural and engineering capacity of the place
- Impacts of building code compliance, seismic strengthening and environmentally sustainable design requirements.

⁷ Under s.32 of the Heritage Act, land can be as part of a place if it is considered that: (a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or (b) land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place.

Any new built form should present as well-designed companion buildings which respond to and respect the heritage place. The presence of the place should not be diminished, and the emphasis should always remain on the heritage elements. New built form should:

- Be proportionate to other buildings and structures at a place. It should not dominate, challenge, disrupt or compete with the heritage elements.
- Reference the heritage elements of the place without replication or mimicry. Contemporary design is acceptable as long as it has equivalence with the heritage place in terms of scale, materials and form.
- Avoid cantilevering or extending into airspace above the place.
- Retain important views to and from the place.
- Reflect the State level significance of the place through the quality of the new design, materials and finishes.
- Avoid substantial demolition of heritage elements.
- Avoid the need to dismantle and reconstruct heritage elements.
- Avoid structural interventions that may harm heritage elements.

Key steps

- Locate new buildings in areas that minimise visual or physical impacts on the place.
- Ensure scale and massing of new built form is appropriate to the scale and massing of the heritage place.
- Apply a respectful, high quality design approach to architectural expression, materials and finishes.

Principle 5. Provide for upkeep

The use of a place is important for its ongoing maintenance and retention of its cultural heritage significance.⁸ The reasonable use and economic use provision of the Heritage Act (s101(2)(b)) helps in assessing this. In determining whether to approve a heritage permit application, Heritage Victoria must balance the impact of approval on the cultural heritage significance of a place with the impact of refusal on the reasonable use or economic use of a place.⁹ Further information can be found in Heritage Victoria's guidance on Reasonable or Economic Use.¹⁰

Reasonable use

Proposals for change should reflect the 'reasonable use' of a place. A reasonable use is one which respects the heritage values of the place. In determining a reasonable use, the historic, recent and current uses should be considered. In some cases, the historic use may be part of the place's significance and changes may be required to ensure the continuation of this use. If the historic use is redundant, a new use will be required. When determining new uses, the impacts of services, building code compliance and structural engineering must also be considered.

In some cases, the historic use of a place may not be sufficient justification for a new development proposal. For example, the historic use of a place may be 'office use', but that does not necessarily mean that intensive new development to accommodate increased office use at the place is appropriate or acceptable.

Reasonable use in a heritage context may differ from reasonable use in a planning context. For example, high density development may be permitted under the planning scheme but may not be appropriate or compatible with the heritage values of the place.

Economic use

The economic use of a place is concerned with the economic functioning of the place and is not focussed on the financial circumstances of the owner or maximising development return. Change may be necessary to ensure a place can generate income to ensure ongoing maintenance, conservation, capital improvements and payment of rates and land tax.

⁸ Heritage Victoria (2020) *Minimum standards for maintenance and repair of heritage places*.

⁹ *Heritage Act 2017*, s.101

¹⁰ Heritage Victoria (2021) *Reasonable or Economic Use*.

Key steps

- Consult Heritage Victoria's guidance on Reasonable or Economic Use.
- Understand the cultural heritage significance of the place (Principal 1) and use that as a starting point for considering change.
- Determine whether the proposed use and changes are necessary to facilitate an economically sustainable use of the place.
- Consider whether mechanisms such as covenants, owners corporations or sinking funds are required to ensure funds are set aside for the ongoing maintenance, protection and conservation of the place.

Further reading

Heritage Act 2017 http://www5.austlii.edu.au/au/legis/vic/consol_act/ha201786/

Australia ICOMOS (2013) *Burra Charter (the Australian ICOMOS Charter for Places of Cultural Significance)*
<https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

Heritage Victoria (2021) *Reasonable or Economic Use Policy*
https://www.heritage.vic.gov.au/_data/assets/pdf_file/0016/512152/Reasonable-or-Economic-Use-Policy-June-2021.pdf

The Office of the Victorian Government Architect (OVGA) (2019) *Good Design + Heritage*
<https://www.ovga.vic.gov.au/good-design-heritage-issue-7>

Heritage Victoria (2020) *Minimum standards for maintenance and repair of heritage places.*
https://www.heritage.vic.gov.au/_data/assets/pdf_file/0015/506103/Minimum-standards-for-maintenance-and-repair-of-heritage-places.pdf

Heritage Victoria (2021) *Guidelines for preparing heritage impact statements*
https://www.heritage.vic.gov.au/_data/assets/pdf_file/0023/507047/Guidelines-for-preparing-heritage-impact-statements-June-2021.pdf