

Principles for considering change to places in the Victorian Heritage Register

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These principles provide guidance for considering change to a place in the Victorian Heritage Register in accordance with Part 5 of the *Heritage Act 2017*. They should be used to guide proposals ranging from conservation to new development. They replace earlier guidance published in September 2021.

What is change?

Change in the context of a place included in the Victorian Heritage Register (**place**) can mean conservation, development, relocation, subdivision, adaptation or demolition.

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 an appropriate adaptive reuse.
- Is compliant with building codes.
- Has equitable access.
- Can adequately address the impacts of climate change.

Heritage Victoria is generally supportive of change to places provided that the impacts on the cultural heritage significance are limited and appropriate, and/or the reasonable or economic use rationales outweighs the impacts on its cultural heritage significance. Where the impacts to a place are substantial, the proposal for change may not be supported even if there is a strong reasonable or economic use rationale.


Heritage Victoria is generally unsupportive of change which contemplates major interventions such as demolition of significant fabric and the construction of new built form which disrupts the setting or has other negative impacts on the cultural heritage significance of a place.

Managing change - the role of Heritage Victoria

Heritage Victoria administers the *Heritage Act 2017* (**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 through:

- 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.

¹ *Heritage Act 2017*, s.1(a)



Heritage Victoria issues around 170 heritage permits and 900 permit exemptions annually which allow for change to places in the Victorian Heritage Register.² When assessing change, the Heritage Act primarily requires consideration of the affect of approval on the cultural heritage significance of a place to be balanced against the affect of refusal on the reasonable use or economic use of the place.³

Heritage Victoria uses the matters set out at section 101 of the Heritage Act, as well as the underlying principles of the Burra Charter and other relevant policy and guidance, to make decisions about proposed changes.

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.

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

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. This may establish a conflict between heritage protection and planning approvals. For example, planning controls may allow for intensive development or multi-level buildings at a place which may not be permitted if the place is included in the Victorian Heritage Register. It is therefore possible for a permit to be approved under the P&E Act but refused under the Heritage Act, or vice versa.

It is preferable that an applicant lodges a heritage permit application with Heritage Victoria before lodging a planning application 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.

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).

³ *Heritage Act 2017* s.101(2)(a)(b).



Principles for managing change

There are several best practice principles consistent with the Burra Charter that should be addressed when considering change to a place in the Victorian Heritage Register. While every place is different and every application is assessed on its own merits, the following principles are considered by Heritage Victoria when determining heritage permit applications and should also be considered by applicants.

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.⁴ The Burra Charter similarly describes cultural significance as aesthetic, historic, scientific, social or spiritual values for past, present or future generations.⁵ 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 of the place.

Understanding and articulating this should be the starting point for considering change to a place. This will help to determine what level of change is acceptable, identify potential impacts and how they can be avoided or mitigated.

Sometimes significance can have an impact beyond the extent of a place and impact the heritage character of the city, suburb or regional town as a whole. If relevant, this wider area should also be a consideration of the proposal and subsequent assessment.

What should I do?

- 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 cautious approach

In accordance with the Burra Charter, Heritage Victoria supports 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.*⁶ As stated in Article 15, change may be necessary to retain cultural significance, but is undesirable where it reduces cultural significance.⁷ The significance of a place should always be respected.⁸

What should I do?

- 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.

⁴ Heritage Act 2017, p. 4

⁵ Australia ICOMOS (2013) *Burra Charter (The Australia ICOMOS Charter for Places of Cultural Significance)* Article 1.2.

⁶ *Burra Charter* p. 1

⁷ *Burra Charter* Article 15.1

⁸ *Burra Charter* Article 15, Explanatory Note



Principle 3. Protect significant settings and views

Places in the Victorian Heritage Register cannot be separated from their setting and often derive significance from it.

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 sufficient to maintain the setting as well as views to and from a place. It can also provide a buffer or 'breathing space' for the place.⁹ Everything in the extent of registration, including all built form (interior and exterior), vegetation, landscape features and archaeology is included in the Victorian Heritage Register unless explicitly excluded. The extent of registration also comprises all areas above (airspace) and below (sub-surface) a place. Approval from Heritage Victoria is required for change to any of these elements.

Land or airspace within the extent of registration should not automatically be considered as developable. Some places may only be able to sustain limited new development, while others may not be able to sustain any at all.

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 connections 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.

Major changes which have the potential to substantially impact the setting and views of a place include:

- Towers - multi-level tower proposals almost always have an adverse impact on the setting of a place. They often include cantilevering over a place to maximise floor plate size and can also visually overpower a place so that the heritage elements are reduced to secondary elements.
- Overdevelopment - this can occur when new buildings are proposed which occupy most of the land at a place. This can isolate and confuse historic and spatial links between heritage elements, and the understanding of a place.
- Subdivision - 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.

What should I do?

- 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 maintained and are not adversely impacted by change. The location of new built form should not disrupt or dominate views or vistas to or from the place, or obscure historical and visual relationships between heritage elements.

⁹ 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.



Principle 4. Respectful change and new built form

Once an appropriate level of change has been established, consideration should be given to any new built form proposed as part of that change. The development of new built form should consider:

- 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.

Inappropriate setting, scale or massing cannot be compensated for by architectural style, expression, materials and finishes. Any new built form should present as a well-designed companion building(s) which defers to the place. The presence of a 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.
- Avoid highly contemporary design which is starkly different to the heritage elements.
- Avoid cantilevering or extending into airspace over 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 demolition of heritage elements.
- Avoid the need to dismantle and reconstruct heritage elements.
- Avoid structural interventions that may harm heritage elements.

What should I do?

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



Principle 5. Provide for upkeep

The use of a place in the Victorian Heritage Register is important for its ongoing maintenance and retention of its cultural heritage significance.¹⁰ The reasonable use and economic use provision of the Heritage Act helps to determine this but should not be used to justify change which is inappropriate. In determining whether to approve an application for a permit, Heritage Victoria must balance the impacts an approval may have on the cultural heritage significance of a place against the impacts a refusal may have on the reasonable use or economic use of a place.¹¹ Further information can be found in Heritage Victoria's guidance on Reasonable or Economic Use.¹²

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 and does not require unacceptable levels of change. In determining a reasonable use, the historic, recent and current uses should first 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 may be appropriate. 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, the concept of highest and best use¹³ in a planning or feasibility context is often incompatible with the heritage values of a place. Where impacts on heritage significance must be taken into account, the highest and best use of a place may be substantially different.

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. It usually applies to places with a commercial use and relates to the ability of the place to generate income sufficient to ensure its ongoing economic functioning including maintenance, conservation, payment of rates and land tax, and capital improvements.

What should I do?

- Consult Heritage Victoria's guidance on Reasonable or Economic Use.
- Use the heritage values assessment developed under Principle 1 to determine the level of change that the place can sustain with minimum impact to heritage values. Adaptive reuse which triggers the requirement for substantial structural and/or seismic interventions under the Building Code of Australia is unlikely to be appropriate.
- Determine whether the proposed use and changes are necessary to facilitate an economically sustainable use of the place.
- Ensure that the proposed level of development does not substantially exceed the economic need of the place.
- Consider whether mechanisms such as covenants, owners corporations and the like are required to ensure funds are set aside for the ongoing maintenance, protection and conservation of the place.

¹⁰ Heritage Victoria (2020) *Minimum standards for maintenance and repair of heritage places*.

¹¹ *Heritage Act 2017*, s.101

¹² Heritage Victoria (2021) *Reasonable or Economic Use*.

¹³ The Australian Property Institute defines highest and best use as: The use that maximises its potential and would produce the highest value and must be physically possible, legally permissible and financially feasible. (<https://www.api.org.au/standards/definitions/>)



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