

Amendment of permits

Guidance on the amendment of permits under s105 of the *Heritage Act 2017*

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Purpose

This guidance is intended to assist applicants, owners and consultants in applying to amend a permit which was issued under s105 of the *Heritage Act 2017* (the Act).

Relevant legislation

Section 105 of the Act states:

- (1) *The holder of a permit issued under this Part may request the Executive Director to amend the permit.*
- (2) *A request under subsection (1) must –*
 - (a) *be made in the prescribed form; and*
 - (b) *be accompanied by the prescribed fee (if any).*
- (3) *If a permit holder is not the owner of the registered place or registered object in respect of which the permit is issued, the permit holder must obtain the written consent of the owner before making a request to amend the permit.*
- (4) *On receiving a request under subsection (1), the Executive Director must notify –*
 - (a) *any person who made a submission in relation to the permit application; and*
 - (b) *the responsible authority for the area in which the registered place or registered object in respect of which the permit is issued is situated and, if the responsible authority is not a municipal council, the relevant municipal council.*
- (5) *The Executive Director must agree to a request to amend a permit, or refuse the request, within 28 days of receiving the request.*
- (6) *The Executive Director must refuse the request if the Executive Director considers that the requested amendment is so substantial that a new permit application is necessary.*
- (7) *The Executive Director may refuse a request if the Executive Director considers that the requested amendment, if agreed to, may result in harm to the cultural heritage significance of the registered place or registered object in relation to which the permit was issued.*

Should all changes be considered amendments under s105 of the Act?

Recent permits will generally have a variation of the following condition:

Should minor changes in accordance with the intent and approach of the permitted works approved and the endorsed documentation become necessary, correspondence and supporting documentation must be prepared and lodged in accordance with this permit condition for assessment by the Executive Director. More fulsome or major changes to the permit may require the submission of a permit amendment application to Heritage Victoria.

This allows for minor changes to a scope of works which are in the spirit of the permit approved and may not require formal assessment and approval through s105 of the Act (for example, the need for additional exit lighting signs for compliance or on-site dimensions require the slight adjustment of positioning of a skylight where these works will have no further impact on the Place). In these cases the change can be dealt with through this condition.

If this condition is not included, the changes will have to be considered through the amendment process no matter how minor.

Who must be notified of an application for a permit amendment?

Heritage Victoria must notify any persons who made a submission to the initial permit application that an application for a permit amendment has been received. Heritage Victoria must also notify the responsible authority. The notifications must be given on receipt of the request.

Unlike ss95 or 100 of the Act, responses from the submitters or responsible authority are not sought or anticipated under s105.

When must the Executive Director make their determination?

The Executive Director has 28 days from receipt of a valid request to determine whether or not a permit will be amended as requested, or refused. Once the determination is made, Heritage Victoria aims to issue the permit within seven days.

How is a request to amend a heritage permit determined?

When determining an amendment to a permit, the Executive Director is not empowered to assess the merits of the decision to issue the permit again. The decision is whether to amend the permit and the assessment is about the requested amendment(s) to the permit.

Common examples of amendment requests include:

- A request to extend the validity of the permit – the time in which the works or activities subject to the permit can occur (a request to amend the validity condition on the permit).
- A request to alter the scope of works approved by the permit.
- A request to amend a condition on the permit.

What are relevant considerations?

The following list is neither exhaustive nor definitive, but provides guidance on the matters which may be taken into consideration by the Executive Director on what is relevant to each application informed by the facts of the particular case and the change(s) to be brought about by the amendment:

- The effect of the change(s) in relation to the purposes of the Act, which include ‘the protection and conservation of the cultural heritage of the State’ (s1 of the Act).
- The extent of the changes.
- Changes to heritage status and policy, such as a new discovery or changes in approach or perspective on cultural heritage significance.
- The probability of a permit being issued if a fresh application was made. This relates to requests for an extension of time to commence works where the permit was issued some time ago. Views on works to places in the VHR changes over time and heritage permits issued in the past may not necessarily be issued now. In these cases consideration may be given as to whether the validity of the permit should be extended or whether it should be allowed to expire and a new application made.
- Length of time left under the permit.
- Length of time since the public and other relevant parties have been afforded an opportunity to participate in the application process.
- The number of times the permit has already been amended. There are some active permits which have been extended or amended a number of times and are now confusing and complicated to review and

monitor. In these cases, consideration may be given as to whether the amendment should be approved, or whether a new permit application is required.

- If a bank guarantee is attached to the permit and the permit was issued some time ago, whether the value of the bank guarantee would still cover the cost of the works.

The following are less likely to be relevant considerations, although this will depend on the circumstances of each case:

- Whether or not a relevant planning permit has been extended.
- The effect of amending or extending the heritage permit on any planning-related Victorian Civil and Administrative Tribunal proceedings.
- The planning controls that apply to the land and whether the planning controls have been amended since the heritage permit was issued. While the planning controls and policy context may be relevant in some scenarios, it is unlikely that they would form a sole basis for not amending a heritage permit.

Can the Executive Director refuse a request for an amendment?

Sections 105(6) and 105(7) of the Act state:

s105(6) The Executive Director must refuse the request if the Executive Director considers that the requested amendment is so substantial that a new permit application is necessary.

s105(7) The Executive Director may refuse a request if the Executive Director considers that the requested amendment, if agreed to, may result in harm to the cultural heritage significance of the registered place or registered object in relation to which the permit was issued.

This indicates two situations where the Executive Director must and may (respectively) refuse an amendment, but these situations are not exhaustive. An amendment can be refused for other reasons based on the above (and other) relevant considerations.

Can the Executive Director approve part of the requested amendment(s) and/or impose new conditions as a result of agreeing to amend a permit?

Section 105 only provides the Executive Director with the ability to accept or reject the requested amendment. There is no power to accept the requested amendment in part and/or impose new conditions on the permit as a result of the amendment.

This is in contrast to ss101 and 102, which sets out the Executive Director's powers regarding approving or rejecting initial permit applications. Sections 101 and 102 expressly provides the Executive Director with the power to (inter alia) 'approve some of the works or activities specified in an application; and impose any terms or conditions on a permit'.

If the Executive Director wishes to approve only some parts of an amendment request, or wishes to add conditions to an amended permit, the simplest means of achieving this under the provisions of s105 is for the Executive Director to refuse the application and then invite the permit holder to submit a new amendment request. A pre-application meeting should be arranged to discuss the issues prior to lodgement of a new amendment request.

Can the Executive Director's decision be reviewed?

The review provisions in s106 of the Act do not apply to applications for amendments to permits made under s105.

Other Relevant Policy and Guidance

Heritage Victoria's *Guiding principles for changes proposed to places in the Victorian Heritage Register*.