Heritage Act Amendment Factsheet 2024

Exclusion determinations



Applications to exclude a place or object from the Victorian Heritage Register for a period of 5 years

# Exclusion applications

An exclusion application is a new application to exclude a place or object from the Victorian Heritage Register for a period of 5 years. The application can only be made by certain public authorities and government asset managers, and in relation to projects costing at least $5 million.

Exclusion applications must be made on the prescribed form through the [HeritageDesk portal](https://application-hub.app.planning.vic.gov.au/hv) and accompanied by the prescribed fee.

## Exclusion determinations

The executive director may make or refuse to make an exclusion determination based on whether a place or object has ‘no reasonable prospect of inclusion in the heritage register’.

### If an exclusion determination is made

The executive director cannot accept a nomination for that place or object for five years except if the nomination contains new information and the executive director considers that information to be significant.

### If an exclusion determination is refused

The executive director is taken to have accepted a nomination of that place or object. The provisions of Part 3 of the *Heritage Act 2017* then apply.

## Who can apply

Only particular bodies can apply for exclusions:

* A government asset manager that is responsible for the major development;
* A department head within the meaning of section 4(1) of the *Public Administration Act 2004* who is responsible for the major development;
* A public authority that is responsible for the major development;
* An administrative office head within the meaning of section 4(1) of the *Public Administration Act 2004* who is responsible for the major development.

‘Public authority’ and ‘government asset manager’ have specific meanings under the Heritage Act.

**Which projects qualify**

An exclusion can only be sought for a ‘major development’. A major development is defined as:

The carrying out of one or more, or an interrelated series of one or more, activities including the following activities, the cost of which is more than $5 million—

* the construction, alteration or extension of a building or transport infrastructure;
* the construction or the carrying out of works;
* the demolition or removal of a building, transport infrastructure or works;
* the subdivision or consolidation of land, airspace or buildings;
* the installation or provision, or operation of, facilities or services;
* the relocation, deepening or widening of a waterway.;

**Who can prepare an exclusion application**

Only qualified people can prepare an application for an exclusion determination. They must be:

* a person who is suitably qualified and experienced in identifying and assessing the cultural heritage significance of places, objects or land;
* a person or a member of a class of persons approved by the executive director for the purposes of this regulation.

## Content of application

Applications should be a comprehensive assessment of the cultural heritage values of the place or object. Applications should also provide reasons why the place or object is *not* of state-level cultural heritage significance and address each of the [Heritage Council assessment criteria](https://heritagecouncil.vic.gov.au/heritage-protection/criteria-and-thresholds-for-inclusion/).

It is in the interests of the applicant to provide a robust assessment because:

* Exclusion determinations are eligible for review by any person with a real or substantial interest in the place or object; and
* A nomination may still be accepted for the excluded place or object if it contains new information about the cultural heritage that was not addressed in the exclusion assessment.

## What if the place has been nominated already?

The nomination is taken to be withdrawn to the extent that it overlaps with the exclusion application.

In deciding whether to make an exclusion determination, the Executive Director of Heritage Victoria must have regard to information provided in the original nomination.

## Notification of decision

Within 14 days of making a determination on an exclusion application, the Executive Director must give notice, including decision reasons, to:

* The applicant
* The owner of the place or object
* The responsible authority and municipal council.

In the case that the executive director makes an exclusion determination, the executive director must within 14 days:

* Publish a notice in a newspaper circulating generally in the area in which the place or object is situated.
* Make the exclusion determination available on the internet site of the department for at least 14 days.
* Include with these publications a statement that a person with a real or substantial interest has the right to request a review of the decision.

## Application fee

The application fee is 480 fee units – $7,632 in 2023-24.

# Review of determinations

The executive director’s determination can be subject to review by the Heritage Council of Victoria. Review applications must be made on the prescribed form through the [HCVHub portal](https://application-hub.app.planning.vic.gov.au/hc) and accompanied by the prescribed fee. A review request must be made within 28 days after the written notice of the executive director’s decision is given.

The Heritage Council must determine a review within 40 days of receiving the request.

## Who can request a review?

* The applicant
* Any person with a real of substantial interest in the place or object.

## Review fee

Fee for applicant to request a review is 960 fee units –$15,264 in 2023-24.

Fee for a person with real or substantial interest to request a review –$397.50 in 2023-24.

# Questions or queries

If you have any questions about the exclusion provisions, please contact the Heritage Victoria Policy Team at heritage.policy@delwp.vic.gov.au.

If you would like to have a pre-application discussion about a future application, please contact the assessments team at heritage.registrations@delwp.vic.gov.au.