

Advocacy Guide No. 3

Submitting to a Planning Permit
Application for places protected by
a Heritage Overlay





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Introduction

About this Advocacy Guide

The purpose of this guide is to provide a broad overview of the processes for commenting on an application for a planning permit to change a place protected by a Heritage Overlay. This guide is not intended to be an exhaustive resource regarding Heritage Overlay Permit Applications and it is advised readers also consult government published guidelines, such as the [Heritage Information Pack](#) by the Heritage Council of Victoria.

About the National Trust's Advocacy Toolkits

The National Trust Advocacy Toolkit is a series of free online resources and guides, developed by the National Trust of Australia (Victoria) to support community members to advocate for the protection of places of cultural heritage significance.

Cultural Heritage: Refers to the qualities of a society that are valued and passed on to future generations. Cultural heritage can be tangible and intangible, built and environmental, an object and a practise. Cultural heritage is not a frozen example in time, it is dynamic and adaptive, it is valued because it carries meaning, with qualities shared across communities and social barriers.

OBTAINING INDEPENDENT LEGAL ADVICE

This publication is intended only to provide a summary and general overview of relevant matters. It is not intended to be comprehensive nor does it constitute legal advice. While care has been taken to ensure the content is current, we do not guarantee its currency. You should seek legal or other professional advice before acting or relying on any of the content.

Produced and published by the
National Trust of Australia (Victoria)
ABN: 61 004 356 192
Publication date: January 2026
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Cover image: Barwon Park by @commonwanderer.

Heritage Protection in Victoria



Heritage protection in Victoria operates at two primary levels: local and state. Most heritage places hold significance for local communities and are best protected through local government mechanisms. These places may be included in a Heritage Overlay within the local Planning Scheme, which is administered by Local councils.

A much smaller proportion of places and objects are significant at the State level, as they contribute to the broader narrative of Victoria's history, and have significance beyond their local or regional context. Places and objects with State-level cultural heritage significance may be eligible for inclusion in the [Victorian Heritage Register](#) under the Heritage Act.

[Heritage Victoria](#) and the [Heritage Council of Victoria](#) are two separate entities that administer the Heritage Act 2017 for all Victorians.

- **Heritage Victoria** is the Victorian State Government agency responsible for protecting places and objects of State heritage significance. It administers the *Heritage Act 2017*, and makes recommendations for what should and should not be included in the Victorian Heritage Register. It has responsibilities for land-based and maritime archaeology. It also assesses permit applications for works on places included in the Victorian Heritage Register.
- **The Heritage Council of Victoria** is an independent statutory body that provides advice on heritage matters, determines what is included in the Victorian Heritage Register, holds permit and registration reviews, and promotes public understanding of Victoria's cultural heritage.
- **The National Trust of Australia (Victoria) (NTAV)** is a non-government-organisation, we are a community based, not-for-profit that advocates for protecting heritage and provides independent advice to our members and the public.

➤ To better understand the role of these organisations, and the wider heritage protection system including Heritage Overlays, [click here](#).



McCrae Homestead

Heritage Overlays

Each local government municipality has a Planning Scheme, which sets out objectives, policies, and controls for the use, development, and protection of land within the municipality. Important heritage places, including houses, buildings, gardens, cultural landscapes, and trees, may be protected in a Planning Scheme through a **Heritage Overlay**.



Tip:

- You can find out if a Heritage Overlay protects land by searching the address on the Victorian Government's online planning map, at mapshare.vic.gov.au/vicplan.

Planning Permits

The *Planning & Environment Act 1987* regulates the use, development, and protection of land in Victoria. Responsible authorities (usually local councils) have the power to grant or refuse planning permits for land uses, new buildings, alterations to existing buildings and demolition.

In Victoria, a planning permit is official permission from the local council to use or develop land in a particular way.

You might need one if you want to build, extend, demolish, subdivide, or change the use of land or buildings in a place — for example, turning a shop into a café, building extra units on a property, or making changes to a heritage building.

The purpose of a Planning permit is to make sure the proposal complies with the local planning rules, protects neighbours' rights, and considers things like heritage, environment, traffic, and design.

Planning permits are different from a building permit, which deals with the construction and safety of the actual building work. A planning permit is about what you can do on the land, while a building permit is about how it is built.

Routine works like extensions, fences, or solar panels often do not need planning permits and depending on the different zones or overlays that apply to a given place, different types of works will trigger the need for a planning permit.

Works that require a planning permit under the Heritage Overlay

If a Heritage Overlay protects a place, a planning permit is usually required to:

- Subdivide the land.
- Demolish or remove a significant building or part of a significant building.
- Construct a new building.
- Externally alter or extend a significant building.
- Install services/solar/rainwater tank/fence **if** they will be visible from the street.
- Remove or lop specified trees **if** tree controls apply.
- Paint external surfaces of significant buildings **if** external paint controls apply.
- Alter significant internal features **if** internal alteration controls apply. (It is rare for heritage controls to apply to the interior of a building located in a Heritage Overlay.)



Image by Milivoj Kuhar on Unsplash

Permit Exemptions

Certain works are specifically exempt from requiring a planning permit including:

- Routine maintenance as long as it does not change the appearance or materials of the protected place i.e. re-painting with the same colours where paint controls apply.
- Some minor works if they will not be visible from the street.

Advertised planning permit applications

The planning system in Victoria recognises that the way people use and develop their properties can affect surrounding residents and the wider community.

Planning permit applications are often advertised to surrounding properties before a decision is made and anyone affected by the proposal can make a submission regarding the proposed works.

Notification procedures may include:

- the erection of a signage on the subject land
- letters sent to neighbouring owners, occupiers and interested parties
- a notice published in the local newspaper
- making the planning application available online on Council's website

Tips

- The website 'PlanningAlerts' also allows you to sign up to alerts for planning applications affecting specific properties. This service can be helpful if you want to be notified if a planning application is lodged for a particular place. Visit the Planning Alerts website at: www.planningalerts.org.au
- A formal notice regarding the advertised permit application will usually include the reasons why a permit is required – eg heritage, car parking, land use, etc. You can contact the local council's planning department for more information if the reasons are not clear to you.



Where no Heritage Overlay is in place

Not all places of heritage significance are protected. If a property does not have a Heritage Overlay, a planning permit may not be required to alter or demolish it and instead, the owner will only need a building permit.

Building permits are not publicly advertised and cannot be submitted on by external parties.

If you think an unprotected place of heritage significance may be under threat, you should contact the local council.

Tip

- A local council may decide to add a place to the Heritage Overlay by undertaking a Planning Scheme Amendment. See "Advocacy Guide No. 5: Heritage Overlay Planning Scheme Amendments" for more information about steps you can take to influence and support councils to protect local heritage.

Making a Submission

The public notification period for an advertised planning permit application usually lasts a minimum of 14 days. Council cannot decide on the permit application until the notice period has ended.

Council must consider all submissions received up until the time a decision is made. Lodging an objection does not mean that a proposal will be automatically refused.

View the planning permit application

Usually, the notice of a permit application will advise where the permit documents can be viewed online. If not, check the “Advertised Permits” section of the relevant council’s website. You can usually search for a permit application by entering the address of the place or the permit number, which will be listed on the permit notice.

A planning application may include plans, elevations, and written details explaining the proposal.

Prepare your submission

A submission usually takes the form of a letter, sometimes with supporting documentation attached.

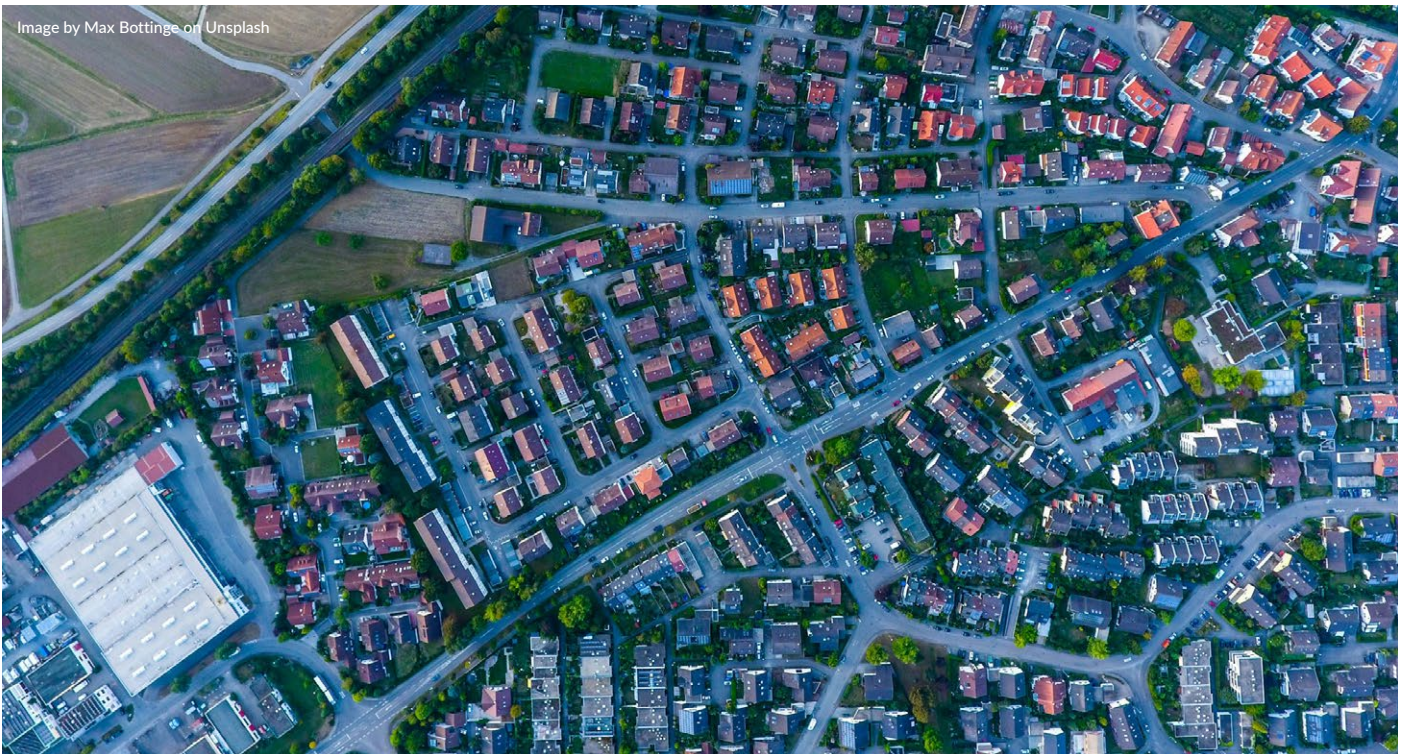
The council’s website should provide information of where and how submissions can be lodged.

Tips

- Some councils include information about places with a Heritage Overlay on the [Victorian Heritage Database](#). You can search for the place and check if the Statement of Significance is provided. This is a succinct summary of what is significant about the place, and why it is significant. Prepare your submission with it in mind.
- Consider whether the granting of this permit has the potential to cause harm to the cultural heritage significance of the place. Your submission will be more effective if you can focus on this, such as by referencing the reason(s) for cultural heritage significance as set out in the statement of significance and the possible effect of the proposed works.
- Read through the relevant [Planning Scheme](#) and find policies or clauses which support your argument, or which contradict the permit application. List the policies in your objection and describe how they relate to the permit application.



Image by Brooke Cagle on Unsplash



- Rather than objecting to the whole application, you can suggest changes to the proposal that would reduce the risk of harm or lead to a better heritage outcome. Your submission is more likely to be viewed as reasonable and balanced if you do this.
 - For example, you may recommend a permit condition that certain heritage elements be retained, or suggest a further setback on one side to maintain important sight lines.
- Be clear about what outcome you would be willing to accept, versus what you would not be willing to compromise on.
- Examples of arguments which are generally considered not relevant to heritage issues are:
 - Devaluation of property.
 - Neighbourhood amenity issues such as traffic and car parking.
 - Personal grievances such as disputes between neighbours.
 - Arguments about overlooking or overshadowing.
- These matters might be relevant planning matters for the council to consider but they are not “heritage issues”.

General style tips

- Be succinct - submissions which are concise and to the point will be received well. Edit your submission and ask someone to proofread it before you submit.
- Choose your best arguments - give your time to your strongest arguments and be ruthless in cutting out weaker points, which may take the focus away from your main argument.
- Avoid personal grievances - personal attacks on the character of the owner, special interest groups, or the property manager are not relevant to council's considerations and will distract attention from your genuine heritage concerns.
- Lodge your submission with council by the deadline. Meeting the council deadline for objections secures your rights to be involved in any future hearing to review the decision on the permit application.

Determination of Permit Applications

Once the advertising period has closed, a council planner prepares a report, which describes the proposal, the relevant policies in the Planning Scheme, the assessment process, a summary of objections, and a response to them. It may also include a recommendation to the council that the application be refused or approved with or without conditions.

The planning permit application is usually decided either:

- under delegation by council officers, or;
- at a council meeting (either the full council, or a committee of councillors) if the application is highly sensitive or has received a certain number of submissions.

The procedures vary from council to council, so contact the relevant council to find out their decision-making process.

Council Meetings

If the permit application goes to a council meeting, you will have another opportunity to influence the outcome. As a submitter, you should be notified of the date for the relevant council meeting when a decision will be made.

Councillors often only receive a summary of submissions rather than all the individual submissions. When the application goes to a council meeting, consider taking the following action:

- Contact councillors prior to the meeting to communicate your views and try to influence their decision. If your council has local wards, you may want to contact the councillors in the relevant ward to ask for a meeting to discuss your concerns. If there is a councillor who is known for an interest in heritage, you may want to contact them.
- Attend the council meeting when the application will be discussed and make a submission to the meeting outlining your views. Some councils require potential speakers to register their interest in speaking a week or so before a meeting, so contact the relevant council to find out the correct procedures. Usually, verbal submissions are limited to a short amount of time (around 3 minutes). Make sure you have prepared for speaking by writing down your key points and stay focused on these.

Notice of Decision

Once council has undertaken the required steps to consider a proposal, Council must decide to either:

- grant a permit for the proposal;
- grant a permit subject to conditions, or;
- refuse to grant a permit.

If you submitted during the formal public notice period, you will receive notification of the council's decision; this is called the Notice of Decision (NOD). The decision will either approve the proposed development subject to conditions or refuse the application for reasons, which are listed in the NOD.

If you disagree with council's decision, then submitters have 21 days from the date of the NOD to request council's decision be reviewed by the Victorian Civil and Administrative Tribunal (VCAT). *Note: Permit applicants have a longer period where they can appeal either council's decision or any of the permit conditions.*

If the permit applicant decides to appeal council's decision to refuse the application, submitters may also have the opportunity to be involved in a VCAT case. In this case, submitters will be notified of the applicants appeal and asked if they want to be involved in the formal VCAT hearing. Involvement is not compulsory.

To find out more about VCAT reviews, see "Advocacy Guide No. 4: Review of a Permit Decision at the Victorian Civil and Administrative Tribunal (VCAT)".



Como House by Jerome Cole