

ARCHAEOLOGICAL VALUE HEARINGS

This protocol outlines the Heritage Council's process for conducting Archaeological Value Hearings under section 132(2)(a) of the *Heritage Act 2017* (the Act). Archaeological Value Hearings will ordinarily follow the steps set out below, although they may be subject to change at the direction of the Heritage Council. Timeframes for hearings and any related hearing submissions will be set at the direction of the Heritage Council.

1. Submission on an archaeological value recommendation

- 1.1 The owner/s or government asset manager of a place may make a written submission to the Heritage Council in relation to a recommendation made by the Executive Director to approve the place subject to the recommendation as a site of archaeological value for the purposes of inclusion in the Victorian Heritage Inventory [section 131(2)(b)(ii) of the Act].
- 1.2 A written submission should be made using *Heritage Council Form 1 – Archaeological Value Submission to the Heritage Council* at: <https://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>. Submissions must be lodged with the Heritage Council within 28 days of notice of the recommendation [section 131(2)(b)(iii)].
- 1.3 The Heritage Council must only consider submissions relating to the issues of whether or not a place is a site of archaeological value [section 132(3)].
- 1.4 At the time of making a submission to the Heritage Council pursuant to section 131(2)(b)(ii) of the Act, the owner or the government asset manager of a place may request that the Heritage Council hold a hearing in relation to a recommendation.
- 1.5 The Heritage Council may conduct a hearing in relation to the recommendation or consider any submissions and the recommendation without a hearing [section 132(2)].

2. Hearing

2.1 Hearing notification & directions

- 2.1.1 If the Heritage Council determines to conduct a hearing, it will notify the following people and organisations that a hearing will be held:
 - (i) The Executive Director, Heritage Victoria;
 - (ii) The owner/s or government asset manager of the place subject to the recommendation;
 - (iii) The relevant authority for the area in which the place is situated and, if the responsible authority is not a municipal council, the relevant municipal council
- 2.1.2 The Heritage Council may issue written directions on procedural matters prior to a hearing to ensure the efficient and effective running of the hearing [section 247(1)].
- 2.1.3 For complex matters, the Heritage Council may schedule a Directions Hearing to assist in managing the hearing process (for example to determine the number of hearing submitters, whether evidence is to be called, time required for presentation of verbal submissions etc.). Detail on the conduct of Directions Hearings can be found at *Heritage Council Protocol 5: Directions Hearings* at <http://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>.
- 2.1.4 The Heritage Council may refuse to hear any person who fails to comply with a direction of the Heritage Council [section 247(2)].

2.2 Request to participate in an archaeological value hearing

- 2.2.1 Any person wishing to participate in the hearing must, by the date specified by the Heritage Council, complete and return *Heritage Council Form J – Archaeological Value Hearing Participation Form* (see <https://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>). A timetable for the hearing will be prepared and circulated on the basis of information provided in this form.
- 2.2.2 All Form Js received by the specified date will be circulated by the Hearings Manager to all other people participating in the hearing and may also be obtained by members of the public through the provisions of the *Freedom of Information Act 1982*.
- 2.2.3 If a person does not complete and return Form J by the specified date, the Heritage Council will consider that the person does not wish to participate in the hearing process, may not circulate Hearing Submissions to them, and may not provide them with an opportunity to be heard at the hearing.

2.3 Hearing submissions

2.3.1 Following the receipt of Form Js, the Heritage Council will issue directions setting out its requirements for the receipt and circulation of any hearing submissions.

2.3.2 Submissions to the hearing may include:

(i) **Detailed hearing submission, photographs, audio-visual material**

If a person intends to advance any arguments or make any points at the hearing that are beyond what is included in either their Form I or Form J, that person should provide a detailed written submission on the Executive Director's recommendation (known as a Hearing Submission) at the direction of the Heritage Council.

If a person intends to present any photographic or audio-visual material to the Heritage Council (including material that may be used for the purposes of any powerpoint, photographic or audio-visual presentation at the hearing), that person must provide that material at the direction of the Heritage Council.

Hearing submissions, photographs and audio-visual material will be circulated by the Hearings Manager to all other people participating in the hearing and may also be obtained by members of the public through the provisions of the *Freedom of Information Act 1982*.

A Hearing submission must relate to whether or not the place (or part thereof) is a site of archaeological value (this should include a consideration of the Heritage Council's *Policy: Determining sites of archaeological value*, adopted 7 February 2019), in accordance with section 130(2) of the Act.

Note: specific development proposals that may affect the place in the future are generally not relevant.

Hearing submissions should be emailed to the Heritage Council Secretariat at heritage.council@delwp.vic.gov.au

(ii) **Evidence**

If a person proposes to call a witness to provide evidence at the hearing, a written statement of that evidence must be provided with their hearing submission.

Further details relating to the evidence and conduct of experts can be found at *Heritage Council Protocol 6: Expert Evidence* (see: <http://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>).

(iii) **Submissions in reply**

People participating in the hearing process may have an opportunity to respond to other submissions and in writing prior to the hearing. The Heritage Council will issue directions setting out its requirements for the receipt and circulation of any submissions in reply.

Submissions in reply received will be circulated by the Hearings Manager prior to the hearing and may also be obtained by members of the public through the provisions of the *Freedom of Information Act 1982*.

2.4 Other hearing-related correspondence

- 2.4.1 Other hearing-related correspondence received will be circulated to other hearing participants, unless it is of a purely administrative nature.

2.5 Adjournments

- 2.5.1 If any person wishes to request an adjournment of the scheduled hearing an application should be made as soon as practicable, in writing, in the form Heritage Council Hearings Form E – Request for Adjournment (see: <http://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>). The Heritage Council will circulate your form and seek the views of all hearing participants prior to ruling on any adjournment request.
- 2.5.2 The Heritage Council will determine whether the adjournment will be granted [section 253].
- 2.5.3 The Heritage Council may, on its own initiative, adjourn a hearing if it considers an adjournment necessary [section 253].

2.6 Site inspection

- 2.6.1 The Heritage Council may conduct a site inspection prior to, during, or following the hearing.
- 2.6.2 Ordinarily site inspections will be unaccompanied, except for the Hearings Manager. A representative of the owner may be in attendance if it is necessary to obtain access or for security reasons.

2.7 Additional information

- 2.7.1 The Heritage Council may seek additional information from any person at any stage of the hearing process [section 253].
- 2.7.2 Additional information received by the Heritage Council will be made available to all other hearing participants and an opportunity may be afforded to provide comment on the further information within a specified period of time.

2.8 Withdrawals

- 2.8.1 A 'withdrawal' is written notification from a person advising:
- i) that they either no longer wish to participate in a hearing process or
 - ii) that they wish to withdraw their request for a hearing or
 - iii) that they wish to withdraw any previous submissions made on the Executive Director's recommendation.
- 2.8.2 A person who wishes to withdraw from the process must advise the Heritage Council as soon as practicable.
- 2.8.3 Where a submission had caused a hearing, the withdrawal of that submission may result in the hearing not being held. If the hearing is cancelled, the Heritage Council will make a decision on the Executive Director's recommendation after a consideration of any written submissions received.

3. At the hearing

- 3.1 A Committee of at least three (3) members of the Heritage Council will conduct the hearing.
- 3.2 All hearings are open to the public and the media. Members of the media must identify themselves to the Committee prior to the commencement of the hearing.
- 3.3 Photography, as well as the video or audio recording of proceedings, is prohibited unless specifically approved by the Committee in advance.
- 3.4 All people participating in the hearing are expected to treat others with respect and adhere to any directions of the Committee. The Committee may refuse to hear any person who fails to comply with a direction of the Committee [section 247(2)].
- 3.5 A person who is participating in the hearing may be represented by another person (e.g. a legal representative).
- 3.6 The order in which the Committee will hear verbal submissions and evidence is as follows:
- (i) The Executive Director
 - (ii) The relevant authority for the area in which the place is situated
 - (iii) If the responsible authority is not a municipal council, the relevant municipal council
 - (iv) The Owner/s

A right of reply will only be afforded at the discretion of the Committee.

3.7 Verbal submissions

- 3.7.1 Verbal submissions should be concise and directed to the main arguments of the written material lodged and the matters outlined in 2.3 of this protocol. The lengthy restatement of points made by previous speakers should be avoided. Submitters should adhere to the time allocated in the circulated timetable.
- 3.7.2 The Committee may ask questions of any submitter.
- 3.7.3 Direct questioning of submitters or their advocates by others is not permitted. Questions of clarification may be allowed at the discretion of the Committee.

3.8 Evidence

- 3.8.1 A person may call a witness (including an expert witness) at the hearing where a written statement of evidence from that witness has previously been received and circulated to all people participating in the hearing.
- 3.8.2 Witnesses will be made available for cross-examination by other people participating in the hearing.
- 3.8.3 The conduct of expert witnesses is outlined in Heritage Council Protocol 6: Expert Evidence (see: <http://heritagecouncil.vic.gov.au/registrations-reviews/documents-for-registrations-and-reviews/>).

3.9 New material

- 3.9.1 Given the procedure of circulating hearing submissions, evidence and submissions in reply prior to the hearing, new written or visual material (including photographic evidence, plans, maps or PowerPoint presentations) will not be allowed at the hearing except with the leave of the Committee.
- 3.9.2 In some circumstances the allowance of new material may be grounds for an adjournment and/or an opportunity to respond to the new material in writing.

3.10 Adjournments

- 3.10.1 An adjournment may be sought at the hearing. In considering the request, the Committee will have regard to the reasons given for any request and the views of other hearing participants.
- 3.10.2 The Committee will determine whether the adjournment will be granted [section 253].
- 3.10.3 The Committee may, on its own initiative, adjourn a hearing if it considers an adjournment necessary [section 253].

4. After the hearing

- 4.1 The Committee must make a determination on the Executive Director's recommendation within 90 days of concluding the hearing [section 133(2)(b)].
- 4.2 The Committee must make one of the following determinations:
- (i) approve the recommendation [section 133(1)(a)]
 - (ii) approve the recommendation in relation to part of the place recommended [section 133(1)(b)]
 - (iii) refuse to approve the recommendation
- 4.3 A report detailing the reasons for the Committee's decision will be provided to all people who participated in the hearing and will be made available through the Heritage Council's website and Australian Legal Information Institute's Victorian Law Resources at www.austlii.edu.au/au/vic.
- 4.4 Each person participating in the hearing is to bear their own costs. The Heritage Council is not able to award costs and determinations will not address any claims for costs.

5. Further reference

- (i) *Heritage Act 2017* (<https://heritagecouncil.vic.gov.au/heritage-protection/>)
- (ii) Policy: Determining sites of archaeological value (<https://heritagecouncil.vic.gov.au/heritage-protection/heritage-policy-and-guidance/>)
- (iii) Heritage Council Hearings Manager (phone (03) 8508 1656 or email: heritage.council@delwp.vic.gov.au)