

Statement of Recommendation from the Executive Director, Heritage Victoria

Avoca Primary School, H1622

118 Barnett Street Avoca, Pyrenees Shire

Dja Dja Wurrung Country



Executive Director recommendation

I recommend to the Heritage Council of Victoria (Heritage Council) that Avoca Primary School, located at 118 Barnett Street Avoca in the Victorian Heritage Register (VHR) be amended.

In accordance with section 62 of the *Heritage Act 2017* (the Act), I suggest that the Heritage Council determine:

- to include additional land in the VHR (section 49(1)(d)(i) and (ii) of the Act); and
- that the proposed categories of works or activities which may be carried out in relation to the place for which a permit is not required (specific permit exemptions) would not harm the cultural heritage significance of the place (section 49(3)(a) of the Act); and
- amend the reasons why the place is included in the VHR based on the Heritage Council criteria (section 49(3)(b) of the Act).



STEVEN AVERY

Executive Director, Heritage Victoria

Date of recommendation: 18 March 2024

The process from here

1. The Heritage Council publishes the Executive Director's recommendation (section 41)

The Heritage Council will publish the Executive Director's recommendation on its website for a period of 60 days.

2. Making a submission to the Heritage Council (sections 44 and 45)

Within the 60-day publication period, any person or body may make a written submission to the Heritage Council. This submission can support the recommendation, or object to the recommendation and a hearing can be requested in relation to the submission. Information about making a submission and submission forms are available on the Heritage Council's website.

3. Heritage Council determination (sections 46, 46A and 49)

The Heritage Council is an independent statutory body. It is responsible for making the final determination to include or not include the place or object in the VHR or amend a place or object already in the VHR.

If no submissions are received the Heritage Council must make a determination within 40 days of the publication closing date.

If submissions are received, the Heritage Council may decide to hold a hearing in relation to the submission. The Heritage Council must conduct a hearing if the submission is made by a person or body with a real or substantial interest in the place or object. If a hearing does take place, the Heritage Council must make a determination within 90 days after the completion of the hearing.

4. Obligations of owners of places and objects (sections 42, 42A, 42B, 42C, 42D and 43)

The owner of a place or object which is the subject of a recommendation to the Heritage Council has certain obligations under the Act. These relate to advising the Executive Director in writing of any works or activities that are being carried out, proposed or planned for the place or object.

The owner also has an obligation to provide a copy of this statement of recommendation to any potential purchasers of the place or object before entering into a contract.

5. Further information

The relevant sections of the Act are provided at Appendix 1.

History

The first school building in Avoca was built by the headteacher George Cook from wood and canvas in 1856. In 1857 a new school building was opened, with an initial enrolment of 33 children. Within ten years enrolments at this National School had increased to 125 students who were accommodated in cramped and uncomfortable conditions. The heat during summer was described as ‘pestiferous and unwholesome’.

When the *Education Act 1872* was passed, introducing free, secular and compulsory education, the Avoca school became a State School, and the National School building, located on Rutherford Street within view of the current Avoca Primary School, was eventually sold to the Church of England.

A new school building for the State School was completed in 1878. It was designed by Henry Robert Bastow, the chief architect and surveyor of the Education Department, to cater for an expected enrolment of 324 pupils. The design was intended to reduce heat and improve ventilation during Victorian summers, while not compromising on natural light.

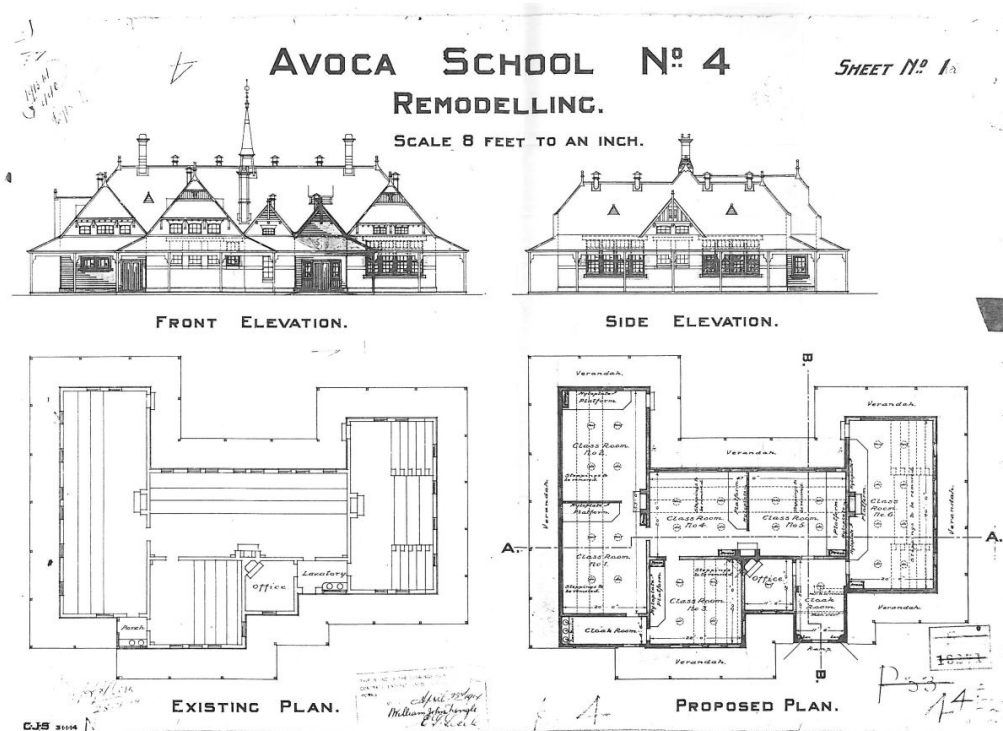
Avoca Primary School is a single storey, asymmetrical, red brick building with simple cream brick banding and a high pitched, tent-like slate roof. The building is encircled by verandahs, which both shade the walls and provide shelter for the children on hot days. These verandahs become extensions of the main roof, but at a lower pitch. The main hip roof, with central fleche and slender chimneys, is intersected by hip and gable roofs, incorporating jerkin-head roofs, decorative gable ventilators and timber brackets. Some of the windows continue above the verandah and appear as triple lights.

Avoca Primary School was the second school built to this design. The first, Horsham State School, had additions made in 1880 which deviated from the original plan. Avoca Primary School is therefore the earliest extant building that fully illustrates Bastow’s vision. The design became known as the Horsham-Avoca model and was an advancement in responding to the local climate.

There were some alterations to Avoca Primary School in the early 1910s, including the internal division of classrooms, the creation of cloakrooms by infilling two sections of the verandah and changes to windows. There has also been the addition of roof vents and window changes. Otherwise the building remains substantially intact.

The Horsham-Avoca model was a popular template for about 25 Victorian school buildings, ranging from single room schoolhouses to buildings accommodating over 600 students. Refer to Table 1: Schools in the Horsham-Avoca model. Many variations occurred, including the exclusion of verandahs in full or part, but such elements as wide eaves, high triple lights and auxiliary skillions were retained. The last of the Horsham-Avoca type was Swan Hill Primary School constructed in 1901.

Historical images



Plans for remodelling Avoca Primary School, 1914. Note the subdivision of classrooms, and the new cloak rooms which encroach on the verandah. Despite these changes, the key elements of the Horsham-Avoca model remain clearly readable in the building's fabric.
Source: Public Records Office Victoria, VPRS 795/P0000, 4.



Avoca Primary School, c. 1974-1984. Photographer: John T. Collins. Source: State Library of Victoria (J.T. Collins collection)

**Table 1:
Schools in the Horsham-Avoca model**

School No.	Name	Date
298	Horsham	1876
4	Avoca*	1877
415	Macedon	1879
1410	Kerang	1881
1469	Shepparton	1881
2256	Benalla East	1882
136	Clunes South	1882
755	Gordons	1882
690	Illowa	1882
794	Wedderburn	1882
123	California Gully*	1883
668	Cardigan* (H0763)	1883
856	Toongabbie	1883
981	Kangaroo Flat	1884
432	Mooroopna	1884
795	Rochester	1885
2258	Lower Homebush	1887
2586	Malvern *	1887
2890	Brunswick West	1888
1334	Warracknabeal	1888
2831	Serviceton	1889
2915	Mildura	1890
2667	Echuca East	1891
1548	Natimuk	1891
1142	Swan Hill	1901

* = school building is in the Victorian Heritage Register

Note that many of these school buildings have been significantly altered or demolished.



Horsham State School, the first school built in the Horsham-Avoca model. Unknown photographer. Source: Horsham Historical Society.



Swan Hill State School, the last school building constructed of the Horsham-Avoca type. Unknown photographer, c 1910. Source: State Library of Victoria.



Cardigan State School, designed for 72 students, was one of the smallest schools designed in the Horsham-Avoca model. It is listed in the VHR. Photographer: John T. Collins. Source: State Library of Victoria (J.T. Collins collection).

Selected bibliography

Blake L J (ed) (1973) *Vision and Realisation: A Centenary History of State Education in Victoria*, The Government Printer, Melbourne.

Burchell L (1980) *Victorian schools: a study in colonial government architecture, 1837-1900*, Melbourne University Press, Melbourne.

Jacobs and Twigg (1995), *Avoca Shire Heritage Study*, Pyrenees Shire, Victoria.

Peterson R (1993) *Historic Government Schools: a Comparative Study June 1993*, Department of Planning and Development, Melbourne.

Further information

Traditional Owner Information

The place is located on the traditional land of the Dja Dja Wurrung people. Under the *Aboriginal Heritage Act 2006*, the Registered Aboriginal Party for this land is the Dja Dja Wurrung Clans Aboriginal Corporation.

Victorian Aboriginal Heritage Register

The place is not included in the Victorian Aboriginal Heritage Register.

Integrity

The intactness of the place is very good. There were some alterations to Avoca Primary School in the early 1910s, including the internal division of classrooms, the creation of cloakrooms by infilling two sections of the verandah, and changes to windows. There has also been the addition of roof vents and window changes, as well as the removal of the stepped classroom floors. Otherwise, the building remains substantially intact and can be easily recognised as the Horsham-Avoca model.

Intactness

The intactness of the place is very good. There were some alterations to Avoca Primary School in the early 1910s, including the internal division of classrooms, the removal of the stepped classroom floors, the creation of cloakrooms by infilling two sections of the verandah, and changes to windows. There has also been the addition of roof vents and window changes. Otherwise, the building remains substantially intact and can be easily recognised as the Horsham-Avoca model.

Condition

The condition of the place is very good.

Note: The condition of a place or object does not influence the assessment of its cultural heritage significance. A place or object may be in very poor condition and still be of very high cultural heritage significance. Alternatively, a place or object may be in excellent condition but be of low cultural heritage significance.

Amendment recommendation

State-level cultural heritage significance of the place

The cultural heritage significance of the Avoca Primary School was recognised when it was included in the Register of Government Buildings in 1982. Its State-level cultural heritage significance was confirmed in 1998, when it was transferred to the Victorian Heritage Register.

Amendment application

On 30 October 2023 the Executive Director made and accepted an application to amend the registration of the place to ensure it is consistent with current practices under the Act.

Additional land

The Executive Director recommends that the Heritage Council amend this registration because in accordance with section 40(4)(c):

- (i) the State level cultural heritage significance of the place would be substantially less if the additional land or any part of the additional land which is or has been used in conjunction with the place were developed; or
- (ii) the additional land surrounds the place and is important to the protection or conservation of the place; or contributes to the understanding of the place.

Assessment under section 40(4)(c)(i)

- If any of the land were developed, there is potential for the development to impact upon the school building and substantially reduce the State-level cultural heritage significance of the place.
- The land proposed for inclusion both is and has been used in conjunction with the Avoca Primary School for over 145 years.
- The inclusion of additional land will ensure that all change is managed through an approvals process which is consistent across the entirety of this place and would provide certainty for all parties.

Assessment under section 40(4)(c)(ii)

- The current extent is limited to the footprint of the Avoca Primary School and is insufficient to protect, conserve and allow for a proper understanding of the place.
- Including an area of land around the buildings will enable potential change immediately adjacent to the building (for example, new additions) to be managed under a permit process.
- Inclusion of an area of land around the buildings will also enable works and activities that could potentially impact on the conservation of the building, such as drainage and paving, to be managed under an approvals process.

Amending the Heritage Council Criteria

This place is currently registered on the basis of the following Criteria:

The Executive Director recommends that the place is registered on the basis of the following Criteria:

Criterion A (Historical Significance)

Criterion D (Architectural Significance)

Criterion D (Architectural Significance)

Avoca Primary School is currently registered under Criteria A and D. It is proposed that Criterion A be removed.

Avoca Primary School is currently listed as having historical significance as an “important landmark in the town, which reflects the growth that occurred in the region during the gold rush period”. Though the place has historical significance at the local level, its historical significance does not reach the state level test for Criterion A.

Avoca Primary School’s significance is better reflected under Criterion D. Avoca Primary School’s architectural significance is clear as a largely intact example of the Horsham-Avoca model, an influential school design replicated across Victoria. It is the earliest version of the design which clearly shows the key elements which characterised the Horsham-Avoca Model.

Change of name

The current name of the place in the VHR is Primary School No. 4. It is proposed to change the name to ‘Avoca Primary School’ to reflect current conventions for listing Primary Schools in the VHR. Primary School No. 4 will be recorded as an alternative name.

Statutory requirements under section 40

Terms of the recommendation (section 40(3)(a))

The Executive Director recommends that the registration of Avoca Primary School in the VHR is amended.

Information to identify the place or object (section 40(3)(b))

Number: H1622

Category: Registered Place.

Name: Avoca Primary School

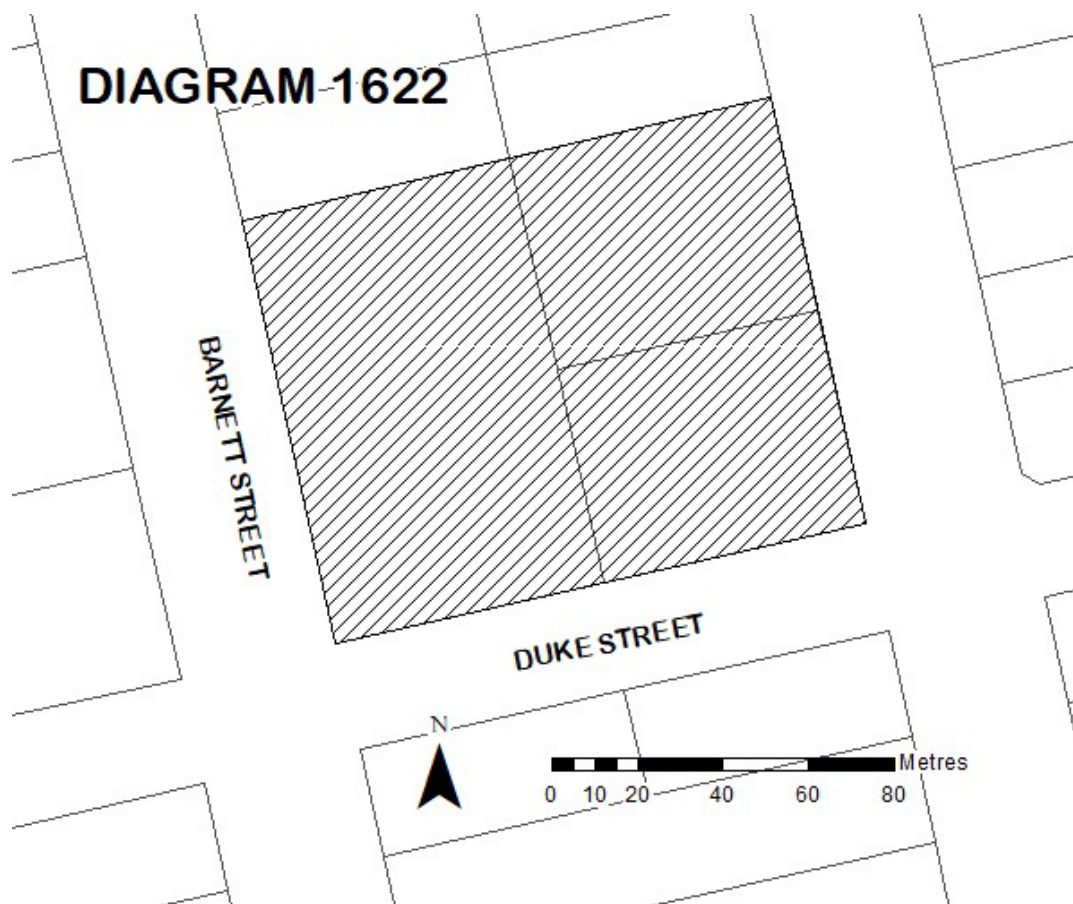
Location: 118 Barnett Street Avoca

Municipality: Pyrenees Shire

Proposed extent of registration

The Executive Director recommends that the extent of registration for Avoca Primary School be gazetted as:

All of the place shown hatched on Diagram 1622 encompassing all of Crown Allotments 5, 6 and 7 Section 27A Township of Avoca.



Aerial Photo of the Place Showing Proposed extent of registration



Note: This aerial view provides a visual representation of the place. It is not a precise representation of the recommended extent of registration. Due to distortions associated with aerial photography some elements of the place may appear as though they are outside the extent of registration.

Rationale for the extent of registration

The recommended extent of registration comprises all of Allotments 5, 6 and 7, Section 27A Township of Avoca.

The picturesque nature of the architectural composition means that whilst the building has a primary façade, facing Barnett Street, the building was intended to be viewed from all sides including Duke Street and Boyce Street. The building is setback by between 30 and 40 metres from each of these surrounding streets. North of the building are the school grounds consisting of open space and minor shade structures, sheds and water tanks.

Most of the building is located on Allotment 5, however portions of the eastern side of the building are located on Allotments 6 and 7.

Newer development is grouped between the eastern facade of the building and Boyce Street and whilst it currently obscures views of the building and impacts on its setting it is not attached to the 1878 building and does not impact its fabric.

It is recommended that the whole of these allotments be registered to ensure all future development that may impact the fabric or setting of the building can be managed through an approval process. Proposed specific exemptions are intended to remove the need for approvals for change or demolition to structures within the extent constructed after 1990.

The recommended extent of the registration is the same as the nominated extent of registration.

It should be noted that everything included in the proposed extent of registration including all of the 1878 brick school building, the land, all soft and hard landscape features, plantings, all other buildings (exteriors, interiors and fixtures) is proposed for inclusion in the VHR. A permit or permit exemption from Heritage Victoria is required for any works within the proposed extent of registration, apart from those identified in the categories of works or activities in this recommendation.

Summary of cultural heritage significance (section 40(4)(a))

Statement of significance

What is significant?

Avoca Primary School, a single storey, asymmetrical brick and slate roofed school erected in 1878 to the designs of architect Henry Robert Bastow.

How is it significant?

Avoca Primary School is of architectural significance to the State of Victoria. It satisfies the following criterion for inclusion in the Victorian Heritage Register:

Criterion D

Importance in demonstrating the principal characteristics of a class of cultural places and objects

Why is it significant?

The Avoca Primary School is architecturally significant as the earliest substantially intact example of the Horsham-Avoca school model designed by architect Henry Robert Bastow. The design incorporates verandahs and a highly innovative tent-like roof, showing a sensitivity to the Australian climate. About twenty-five schools of this type were built in Victoria, varying in size from one room to schools accommodating about 500 pupils. Though Horsham Primary School was built earlier, substantial alterations to that building mean that Avoca Primary School is now the earliest building to clearly reflect the design of the Horsham-Avoca model. [Criterion D]

The school's fine and distinctive architectural qualities are also evident in such elements as the highly developed use of red and cream banded brickwork; the high pitched, tent-like slate roof; the encircling verandahs which become extensions of the main roof but at a lower pitch; the central fleche and slender chimneys; the intersecting hip and gable roofs, incorporating jerkin-head roofs; and the decorative gable ventilators and timber brackets. [Criterion D]

Recommended permit exemptions under section 38

Introduction

A [heritage permit](#) is required for all works and activities undertaken in relation to VHR places and objects. Certain works and activities are [exempt from a heritage permit](#), if the proposed works will not harm the cultural heritage significance of the heritage place or object.

Permit Policy

It is recommended that a Conservation Management Plan is utilised to manage the place in a manner which respects its cultural heritage significance.

Permit Exemptions

General Exemptions

General exemptions apply to all places and objects included in the VHR. General exemptions have been designed to allow everyday activities, maintenance and changes to your property, which do not harm its cultural heritage significance, to proceed without the need to obtain approvals under the Act.

Specific exemptions may also apply to your registered place or object. If applicable, these are listed below. Specific exemptions are tailored to the conservation and management needs of an individual registered place or object and set out works and activities that are exempt from the requirements of a permit. Specific exemptions prevail if they conflict with general exemptions.

Find out more about heritage permit exemptions [here](#)

Specific Exemptions

The works and activities below are not considered to cause harm to the cultural heritage significance of the Place or object name subject to the following guidelines and conditions:

Guidelines

1. Where there is an inconsistency between permit exemptions specific to the registered place or object ('specific exemptions') established in accordance with either section 49(3) or section 92(3) of the Act and general exemptions established in accordance with section 92(1) of the Act specific exemptions will prevail to the extent of any inconsistency.
2. In specific exemptions, words have the same meaning as in the Act, unless otherwise indicated. Where there is an inconsistency between specific exemptions and the Act, the Act will prevail to the extent of any inconsistency.
3. Nothing in specific exemptions obviates the responsibility of a proponent to obtain the consent of the owner of the registered place or object, or if the registered place or object is situated on Crown Land the land manager as defined in the *Crown Land (Reserves) Act 1978*, prior to undertaking works or activities in accordance with specific exemptions.
4. If a Cultural Heritage Management Plan in accordance with the *Aboriginal Heritage Act 2006* is required for works covered by specific exemptions, specific exemptions will apply only if the Cultural Heritage Management Plan has been approved prior to works or activities commencing. Where there is an inconsistency between specific exemptions and a Cultural Heritage Management Plan for the relevant works and activities, Heritage Victoria must be contacted for advice on the appropriate approval pathway.
5. Specific exemptions do not constitute approvals, authorisations or exemptions under any other legislation, Local Government, State Government or Commonwealth Government requirements, including but not limited to the *Planning and Environment Act 1987*, the *Aboriginal Heritage Act 2006*, and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Nothing in this declaration exempts owners or their agents from the responsibility to obtain relevant planning, building or environmental approvals from the responsible authority where applicable.
6. Care should be taken when working with heritage buildings and objects, as historic fabric may contain dangerous and poisonous materials (for example lead paint and asbestos). Appropriate personal protective equipment should be worn

at all times. If you are unsure, seek advice from a qualified heritage architect, heritage consultant or local Council heritage advisor.

7. The presence of unsafe materials (for example asbestos, lead paint etc) at a registered place or object does not automatically exempt remedial works or activities in accordance with this category. Approvals under Part 5 of the *Heritage Act 2017* must be obtained to undertake works or activities that are not expressly exempted by the below specific exemptions.
8. All works should be informed by a Conservation Management Plan prepared for the place or object. The Executive Director is not bound by any Conservation Management Plan and permits still must be obtained for works suggested in any Conservation Management Plan.

Conditions

1. All works or activities permitted under specific exemptions must be planned and carried out in a manner which prevents harm to the registered place or object. Harm includes moving, removing or damaging any part of the registered place or object that contributes to its cultural heritage significance.
2. If during the carrying out of works or activities in accordance with specific exemptions original or previously hidden or inaccessible details of the registered place are revealed relating to its cultural heritage significance, including but not limited to historical archaeological remains, such as features, deposits or artefacts, then works must cease and Heritage Victoria notified as soon as possible.
3. If during the carrying out of works or activities in accordance with specific exemptions any Aboriginal cultural heritage is discovered or exposed at any time, all works must cease and the Secretary (as defined in the *Aboriginal Heritage Act 2006*) must be contacted immediately to ascertain requirements under the *Aboriginal Heritage Act 2006*.
4. If during the carrying out of works or activities in accordance with specific exemptions any munitions or other potentially explosive artefacts are discovered, Victoria Police is to be immediately alerted and the site is to be immediately cleared of all personnel.
5. If during the carrying out of works or activities in accordance with specific exemptions any suspected human remains are found the works or activities must cease. The remains must be left in place and protected from harm or damage. Victoria Police and the State Coroner's Office must be notified immediately. If there are reasonable grounds to believe that the remains are Aboriginal, the State Emergency Control Centre must be immediately notified on 1300 888 544, and, as required under s.17(3)(b) of the *Aboriginal Heritage Act 2006*, all details about the location and nature of the human remains must be provided to the Secretary (as defined in the *Aboriginal Heritage Act 2006*).

Exempt works and activities

1. Buildings constructed or moved to the site post 1990
 - (a) All internal works.
 - (b) Removal or demolition.
2. Landscape/ outdoor areas
 - a) Installation and replacement of shade sail fabric and supporting structure.
 - b) Replacement of outdoor learning area, playground equipment and outdoor furniture in the same locations.
 - c) Removal of sandpit and shelter shed on the southern site boundary and construction of an inclusive play space.
 - d) Pruning of all trees to ensure safety.
 - e) Removal, replacement and installation of new ground surfacing treatments (for example, asphalt, safety matting) provided it is not within five metres of significant buildings.

Existing registration details

Statement of Significance

What is significant?

Avoca Primary School was built in 1878 to provide accommodation for the growing number of children in the region. From the 1850s the growth of Avoca was greatly affected by the gold rush and the subsequent establishment of deep lead mines in the vicinity ensured a stable population for a number of years. The primary school was designed by Henry Robert Bastow, the chief architect and surveyor of the Education Department to cater for an expected enrolment of 324 pupils. Located near the original National School of 1856, it was built by Joseph Jarvis for 2,243 pounds.

The Avoca School is a single storey, asymmetrical, red brick building with simple cream brick banding and a high pitched, tent-like slate roof. The building is encircled by verandahs, which both shade the walls and provide shelter for the children. These verandahs become extensions of the main roof, but at a lower pitch. The main hip roof, with central fleche and slender chimneys, is intersected by hip and gable roofs, incorporating jerkin-head roofs, decorative gable ventilators and timber brackets. Some of the windows continue above the verandah and appear as triple lights.

Some alterations were made to the building in 1914, including the internal division of two classrooms, the creation of cloakrooms by infilling two sections of the verandah and changes to windows. Otherwise the building remains substantially intact.

How is it significant?

Avoca Primary School is of architectural and historical significance to the State of Victoria.

Why is it significant?

Avoca Primary School is of architectural significance as one of the first school buildings to incorporate verandahs in its design, showing a sensitivity to the Australian climate. The great tent-like form of the roof was highly innovative and the Avoca school was the first to demonstrate this distinctive form of the architect, Henry Bastow, since categorised as the Horsham-Avoca model. Although Horsham Primary School was designed in 1876, alterations made to the plan in 1880 deviated from the original concept and therefore Avoca most clearly shows Bastow's design intentions.

Avoca Primary School is of architectural significance as a precedent for a number of subsequent school buildings in Victoria. About twenty-five schools of this type were subsequently built, varying in size from one room to schools accommodating about 500 pupils. The last of this type was Swan Hill Primary School designed in 1901. Many variations occurred, including the exclusion of verandahs in full or part, but such elements as wide eaves, high triple lights and auxiliary skillions were retained.

Avoca Primary School is of historical significance as an important landmark in the town, which reflects the growth that occurred in the region during the gold rush period.

[Online Data Upgrade Project 2004]

Published Extent of Registration

Amendment of Register of Government Buildings

Avoca Shire

Primary School No. 4, Barnett Street, Avoca.

[Victoria Government Gazette No. G39 12 October 1988 p3086]

Transferred to the Victorian Heritage Register 23 May 1998 (2 years after the proclamation of the Heritage Act 1995 pursuant to the transitional provisions of the Act)

Appendix 1

Heritage Council determination (section 49)

The Heritage Council is an independent statutory body that will make a determination on this recommendation under section 49 of the Act. It will consider the recommendation after a period of 60 days from the date the notice of recommendation is published on its website under section 41.

Making a submission to the Heritage Council (section 44)

Within the period of 60 days, any person or body with a real and substantial interest in the place or object may make a submission to the Heritage Council regarding the recommendation and request a hearing in relation to that submission. Information about making a submission and submission forms are available on the Heritage Council's website. The owner can also make a submission about proposed permit exemptions (Section 40(4)(d)).

Consideration of submissions to the Heritage Council (section 46)

(1)The Heritage Council must consider—

- (a) any written submission made to it under section 44; and
- (b) any further information provided to the Heritage Council in response to a request under section 45.

Conduct of hearings by Heritage Council in relation to a recommendation (section 46A)

(1)The Heritage Council may conduct a hearing in relation to a recommendation under section 37, 38 or 39 in any circumstances that the Heritage Council considers appropriate.

(2)The Heritage Council must conduct a hearing if—

- (a) a submission made to it under section 44 includes a request for a hearing before the Heritage Council; and
- (b) the submission is made by a person or body with a real or substantial interest in the place, object or land that is the subject of the submission.

Determinations of the Heritage Council (section 49)

(1)After considering a recommendation that a place, object or land should or should not be included in the Heritage Register and any submissions in respect of the recommendation and conducting any hearing, the Heritage Council may—

- (a) determine that the place or object is of State-level cultural heritage significance and is to be included in the Heritage Register; or
- (ab) in the case of a place, determine that—
 - (i) part of the place is of State-level cultural heritage significance and is to be included in the Heritage Register; and
 - (ii) part of the place is not of State-level cultural heritage significance and is not to be included in the Heritage Register; or
- (ac) in the case of an object, determine that—
 - (i) part of the object is of State-level cultural heritage significance and is to be included in the Heritage Register; and
 - (ii) part of the object is not of State-level cultural heritage significance and is not to be included in the Heritage Register; or
- (b) determine that the place or object is not of State-level cultural heritage significance and is not to be included in the Heritage Register; or
- (c) in the case of a recommendation in respect of a place, determine that the place or part of the place is not to be included in the Heritage Register but—
 - (i) refer the recommendation and any submissions to the relevant planning authority or the Minister administering the **Planning and Environment Act 1987** to consider the inclusion of the place or part of the place in a planning scheme in accordance with the objectives set out in section 4(1)(d) of that Act; or

- (ii) determine that it is more appropriate for steps to be taken under the **Planning and Environment Act 1987** or by any other means to protect or conserve the place or part of the place; or
- (ca) in the case of a recommendation in respect of an object nominated under section 27A, determine that the object, or part of the object, is to be included in the Heritage Register if it is integral to understanding the cultural heritage significance of a registered place or a place the Heritage Council has determined to be included in the Heritage Register; or
- (d) in the case of a recommendation in respect of additional land nominated under section 27B, determine that the additional land, or any part of the additional land, is to be included in the Heritage Register if—
 - (i) the State-level cultural heritage significance of the place, or part of the place, would be substantially less if the additional land or any part of the additional land which is or has been used in conjunction with the place were developed; or
 - (ii) the additional land or any part of the additional land surrounding the place, or part of the place, is important to the protection or conservation of the place or contributes to the understanding of the place.
- (2) The Heritage Council must make a determination under subsection (1)—
 - (a) within 40 days after the date on which written submissions may be made under section 44; or
 - (b) if any hearing is conducted, within 90 days after the completion of the hearing.
- (3) A determination made under subsection (1)(a), (ab), (ac), (ca) or (d)—
 - (a) may include categories of works or activities which may be carried out in relation to a place, object or land, or part of a place, object or land, for which a permit under this Act is not required, if the Heritage Council considers that the works or activities would not harm the cultural heritage significance of the place, object or land; and
 - (b) must include a statement of the reasons for the making of the determination.
- (4) If the Heritage Council determines to include a place, or part of a place, in the Heritage Register, the Heritage Council may also determine to include land that is not the subject of a nomination under section 27B in the Heritage Register as part of the place if—
 - (a) the land is ancillary to the place; and
 - (b) the person who owns the place, or part of the place—
 - (i) is the owner of the land; and
 - (ii) consents to its inclusion.
- (5) If a member of the Heritage Council makes a submission under section 44 in respect of a recommendation, the member must not take part in the consideration or determination of the Heritage Council.
- (6) The Heritage Council must notify the Executive Director of any determination under this section as soon as practicable after the determination.

Obligations of owners (section 42, 42A, 42B, 42C, 42D)

42 Obligations of owners—to advise of works, permits etc. on foot when statement of recommendation given

(1) The owner of a place, object or land to whom a statement of recommendation has been given must advise the Executive Director in writing of—

- (a) any works or activities that are being carried out in relation to the place, object or land at the time the statement is given; and

- (b) if the place, object or land is a place or additional land, any application for a planning permit or a building permit, or any application for an amendment to a planning permit or a building permit, that has been made in relation to the place or additional land but not determined at the time the statement is given; and
- (c) any works or activities that are proposed to be carried out in relation to the place, object or land at the time the statement is given.

(2) An advice under subsection (1) must be given within 10 days after the statement of recommendation is given under section 40.

42A Obligations of owners before determination or inclusion in the Heritage Register—to advise of permits

(1) This section applies if—

- (a) an owner of any of the following is given a statement of recommendation—
 - (i) a place or object nominated under section 27;
 - (ii) an object nominated under section 27A;
 - (iii) land nominated under section 27B; and
- (b) any of the following occurs within the statement of recommendation period in relation to the place, object or land—
 - (i) the making of an application for a planning permit or a building permit;
 - (ii) the making of an application for an amendment to a planning permit or a building permit;
 - (iii) the grant of a planning permit or building permit;
 - (iv) the grant of an amendment to a planning permit or building permit.

(2) The owner must advise the Executive Director in writing of—

- (a) the making of an application referred to in subsection (1)(b)(i) or (ii), within 10 days of the making of the application; or
- (b) a grant referred to in subsection (1)(b)(iii) or (iv), within 10 days of the owner becoming aware of the grant.

42B Obligations of owners before determination or inclusion in the Heritage Register—to advise of activities

(1) This section applies if—

- (a) an owner of a place, object or land is given a statement of recommendation; and
- (b) within the statement of recommendation period it is proposed that activities that could harm the place, object or land be carried out.

(2) The owner, not less than 10 days before carrying out the activities, must advise the Executive Director in writing of the proposal to do so.

42C Obligations of owners before determination or inclusion in the Heritage Register—to advise of proposal to dispose

(1) This section applies if—

- (a) an owner of a place, object or land is given a statement of recommendation; and
- (b) within the statement of recommendation period a proposal is made to dispose of the whole or any part of the place, object or land.

(2)The owner, within 10 days after entering into an agreement, arrangement or understanding for the disposal of the whole or any part of the place, object or land, must advise the Executive Director in writing of the proposal to do so.

42D Obligations of owners before determination or inclusion in the Heritage Register—requirement to give statement to purchaser

(1)This section applies if—

- (a) an owner of a place, object or land is given a statement of recommendation; and
- (b) the owner proposes to dispose of the whole or any part of the place, object or land within the statement of recommendation period.

(2)Before entering into an agreement, arrangement or understanding to dispose of the whole or any part of the place, object or land during the statement of recommendation period, the owner must give a copy of the statement of recommendation to the person who, under the proposed agreement, arrangement or understanding, is to acquire the place, object or land or part of the place, object or land.

Owners of places and objects must comply with obligations (section 43)

An owner of a place, object or land who is subject to an obligation under section 42, 42A, 42B, 42C or 42D must comply with that obligation.

Penalty: In the case of a natural person, 120 penalty units;
 In the case of a body corporate, 240 penalty units.