

REGISTRATION HEARINGS

This protocol outlines the Heritage Council's process for conducting Registration Hearings under s.46A(1) and s.46A(2) of the *Heritage Act 2017* (the Act). Hearings will ordinarily follow the steps and timeframes set out below, although the steps and timeframes may be subject to change at the direction of the Heritage Council.

Note on using the HCV Hub for Registration Hearings:

The HCV Hub is the Heritage Council of Victoria's online platform for interested persons to lodge forms and submissions with the Heritage Council in relation to its regulatory processes conducted pursuant to the *Heritage Act 2017*. All forms, submissions and hearing-related material are to be lodged with the Heritage Council by way of the HCV Hub [<https://application-hub.app.planning.vic.gov.au/hc>]. In turn, all hearing-related material and correspondence will be made available to hearing participants via the HCV Hub. Where a person or organisation is unable to access the HCV Hub for the purpose of lodging forms and submissions, they should liaise with the Secretariat.

Where this protocol or the Act requires the 'lodgment' or 'submission' of forms etc. to be made 'in writing', this is to be done via the online forms on the HCV Hub.

1. Submission on a Registration Recommendation

- 1.1 The Heritage Council may conduct a hearing in relation to a recommendation made by the Executive Director under sections 37, 38 or 39 in any circumstances that the Heritage Council considers appropriate [s.46A(1)].
- 1.2 Anyone may make a written submission to the Heritage Council in relation to a recommendation made by the Executive Director to include or not include a place, object or land in the Victorian Heritage Register [s.44(1)].
- 1.3 A written submission must be made in the form prescribed by the Heritage Regulations [s.44(2)] (see *Heritage Council Form A – Submission to the Heritage Council* available on the HCV Hub). Submissions must be lodged with the Heritage Council within 60 days of notice of the recommendation [s.44(3)].
- 1.4 Submitters may also request a Heritage Council hearing in relation to a recommendation [s.44(5)]. The Heritage Council must conduct a hearing if a submission includes a request for a hearing, and the request is made by someone with a real or substantial interest in the place, object or land that is the subject of the submission [s.46A(2)(b)].

2. Before the 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 of the place, object or land subject to the recommendation;
 - (iii) the relevant Local Government Authority;
 - (iv) the National Trust;
 - (v) the person who nominated the place, object or land to the Victorian Heritage Register;
 - (vi) any person who, in making a submission in response to the Executive Director's recommendation to include or not include the place, object or land in the Heritage Register, indicated that they wished to participate in the hearing;
 - (vii) the person who requested the hearing; and
 - (viii) any person who the Heritage Council allows in order to inform itself.
- 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 [s.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, whether the hearing is to be conducted in person or via audio visual link 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 [s.247(2)].

2.2 Request to Participate in a Registration 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 B – Registration Hearing Participation Form* (available on the HCV Hub). A timetable for the hearing will be prepared and circulated on the basis of information provided in this form.

2.2.2 All Form Bs 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 B 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 Submission

2.3.1 The following documents must be lodged with the Heritage Council no later than 28 days prior to the hearing date.

(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 A or Form B, that person must provide a detailed written submission on the Executive Director's recommendation (known as a Hearing Submission).

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.

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 any or all of the following:

- (a) Whether or not the place (or part thereof) or object is of State-level cultural heritage significance (this should include a consideration of the *Heritage Council Criteria for the Assessment of Cultural Heritage Significance*, adopted 6 December 2012 and updated 1 December 2022), in accordance with s.11(1)(k) of the Act;
- (b) whether objects recommended as objects integral are integral to understanding the cultural heritage significance of the place;
- (c) the recommended extent of registration, which includes:
 - whether any recommended additional land is important to the protection or conservation of the place; or
 - whether the State-level cultural significance of the place would be substantially less if any recommended additional land or any part of the additional land were developed.
- (d) the categories of works/activities able to be carried out without the need for a permit (permit exemptions);
- (e) whether or not a registered place or object should be amended.

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

Hearing Submissions should be in A4. Plans and other diagrammatic information may be in A3.

(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.

If a person proposes to call an expert to provide evidence at the hearing, a written statement of the expert's evidence must be provided. 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/>).

Written evidence should be in A4. Plans and other diagrammatic information may be in A3.

(iii) **Without Prejudice Draft Permit Exemptions**

In relation to any hearing concerning a recommendation of the Executive Director that a place, object or land should not be included in the Victorian Heritage Register, the Executive Director must provide without prejudice draft permit exemptions, if any such exemptions are considered appropriate.

For the purposes of this protocol, it will be sufficient for the Executive Director to provide a 'standard form' of draft permit exemptions, rather than draft permit exemptions that are tailored to the nature and circumstances of the particular place, object or land.

Any without prejudice draft permit exemptions provided by the Executive Director will be circulated by the Hearings Manager to all hearing participants.

2.3.2 The Heritage Council's The Victorian Heritage Register Criteria and Threshold Guidelines is a key document in guiding decision-making on whether a place or object is of State-level cultural heritage significance. It should be addressed in Hearing Submissions and evidence provided in respect of the cultural heritage significance of the place or object. The guidelines are available at <https://heritagecouncil.vic.gov.au/heritage-protection/criteria-and-thresholds-for-inclusion/>.

2.3.3 The Heritage Council may, on occasion, request hard copies of hearing-related material.

2.4 Submissions in Reply

2.4.1 People participating in the hearing process will have an opportunity to respond to other submissions, evidence and draft permit exemptions in writing prior to the hearing. A Submission in Reply is not compulsory but it allows the opportunity to challenge the claims of others and to refine the matters in dispute prior to the hearing.

2.4.2 A Submission in Reply must be lodged with the Heritage Council 14 days prior to the hearing date.

2.4.3 Submissions in Reply 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*.

2.5 Other Hearing-Related Correspondence

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

2.6 Adjournments

2.6.1 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* (available on the HCV Hub). The Heritage Council may circulate your form and seek the views of all hearing participants prior to ruling on the adjournment request.

2.6.2 The Heritage Council will determine whether the adjournment will be granted [s.253].

2.6.3 The Heritage Council may, on its own initiative, adjourn a hearing if it considers an adjournment necessary [s.253].

2.7 Site Inspection

2.7.1 The Heritage Council may conduct a site inspection prior to, during, or following the hearing.

2.7.2 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.

2.8 Additional Information

2.8.1 The Heritage Council may seek additional information from any person at any stage of the hearings process [s.45]. Additional information received by the Heritage Council will be made available to all other hearing participants.

2.9 Withdrawals

2.9.1 A 'withdrawal' is written notification from a person advising that they either no longer wish to participate in a hearing process and/or that they wish to withdraw any previous submissions made on the Executive Director's recommendation.

2.9.2 A person who wishes to withdraw from the process must advise the Heritage Council as soon as practicable.

2.9.3 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 [s.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 nominator
- (iii) The local government authority
- (iv) The National Trust
- (v) Other persons
- (vi) The Owner

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 2.3.1(i) 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 [s.253].

3.10.3 The Committee may, on its own initiative, adjourn a hearing if it considers an adjournment necessary [s.253].

3.11 Additional Information

3.11.1 The Committee may seek additional information from any person to inform its decision-making [s.45].

3.11.2 Any requested further information received by the Committee will be circulated to all hearing participants and an opportunity may be afforded to provide comment on the further information within a specified period of time.

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 [s.49(2)(b)].

4.2 The Committee must make one of the following determinations:

- (i) Determine that the place or object, or part of the place or object, is of State-level cultural heritage significance and is to be included in the Heritage Register [s.49(1)(ab)–(ac)]; or
- (ii) Determine that the place or object, or part of the place or object, is not of State-level cultural heritage significance and is not to be included in the Heritage Register [s.49(1)(ab)–(ac)]; or
- (iii) Determine that a place or part of the place is not to be included in the Heritage Register but 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 [s.49(1)(c)(i)]; or
- (iv) 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 [s.49(1)(c)(ii)]; or
- (v) 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 [s.49(1)(ca)]; or
- (vi) 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—
 - 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
 - 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.

- 4.3 A copy of the Committee's determination 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 The Committee must give written notice of any determination made under section 49 in relation to a place, object or land, and of any works or activities which it has determined under section 49(3) may be carried out in relation to a place, object or land without a permit under Part 5, to—
- (a) the owner or government asset manager of the place, object or land; and
 - (b) the Executive Director.
- 4.5 A notice under subsection (1) must be given within 7 days after the day on which the determination is made.
- 4.6 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) The Victorian Heritage Register Criteria and Threshold Guidelines (<http://heritagecouncil.vic.gov.au/heritage-protection/criteria-and-thresholds-for-inclusion/>)
- (iii) Heritage Council Hearings Manager (phone (03) 8572 7949 or email heritage.council@transport.vic.gov.au)