



31 August 2015

Heritage Act Review  
c/- Heritage Victoria  
GPO Box 2392  
Melbourne Vic 3001

**Ask for:** Natalie Walker  
**Phone:** 9932 1096  
**Our Ref:** A1975950

Dear Sir/Madam,

### **Review of the Heritage Act 1995**

I refer to the letter received from Mr Tim Smith, Executive Director Heritage Victoria regarding the review of the *Heritage Act 1995*.

Council welcomes the opportunity to provide feedback on this matter and hopes the attached comments provide valuable input to the review.

In summary, it is considered that many facets of Heritage Victoria's responsibilities could be improved to provide greater heritage protection and administered more effectively if Heritage Victoria sat within the existing planning framework 'umbrella' and did not sit independently of the existing planning regime. Heritage Victoria should become a 'determining referral authority' at Clause 66 and subjected to the associated statutory processes and timelines. An integrated approach to the administration of the *Heritage Act 1995* and the *Planning and Environment Act 1987* (P&E Act) is essential to ensure protection for historic places and objects of both state and local significance.

Overlap and potential conflict between the Heritage Council and Council actions could be reduced if Heritage Victoria was responsible for decision making on 'heritage only' applications. Where there are other permit triggers (such as a Design and Development Overlay or flooding overlays), Councils are best placed to decide on applications as part of a holistic approach. They have requisite local knowledge and a contextual understanding to make a more informed and balanced decision of matters requiring consideration of competing policy issues.

Specific comments on a number of the proposed changes are included as an attachment.

If you wish to discuss this submission further please contact Natalie Walker, Director Strategic Development on 9932 1096 or email [nwalker@hobsonsabay.vic.gov.au](mailto:nwalker@hobsonsabay.vic.gov.au).

Yours sincerely,

Chris Eddy  
Chief Executive Officer

## **Improving Heritage Registration Processes**

### *Streamline heritage registration processes*

*There are currently four separate registration processes under the Heritage Act 1995. It is proposed to provide a single heritage registration process that involves:*

- a) a recommendation from the Executive Director of Heritage Victoria to the Heritage Council*
- b) public submissions invited on the recommendation with submitters invited to be heard by the Heritage Council prior to a decision being made*
- c) a Heritage Council hearing, if required, and determination on whether to include the place or object in the Victorian Heritage Register*
- d) timeframes to be applied to steps in the registration process.*

A clear and easy to follow registration process is required. Presently the process is a time consuming and sometimes costly exercise. The current process could be improved by the designation of a suitably qualified contact officer/s who is available to meet with persons submitting the application, inspect the site, possesses the specialist knowledge and expertise to be able to discuss the salient points of the application. The contact officer would provide advice on those elements which are significant and will facilitate the passage of the application. Assistance limited to phone and email is not satisfactory.

### *Reform the heritage nomination process*

*Heritage Victoria receives a large number of nominations for places and objects that are unlikely to be of sufficient heritage significance to warrant inclusion on the Register. It is proposed that:*

- a) the Executive Director will have discretion to reject a nomination which has no reasonable case for inclusion in the Register*
- b) a nomination will lapse after 30 days if any requested additional information is not provided by the nominator*
- c) the nominator will be able to appeal against a decision of the Executive Director to reject a nomination*
- d) a nomination appeal will to be heard by a committee of the Heritage Council consisting of one or more members*
- e) to specify that places and objects cannot be re-nominated for five years if the nomination has been rejected or if the Heritage Council determines not to register a place or object; an exception will apply if significant new information is presented that was not available at the time the decision was made*
- f) apply timeframes to all steps in the nomination process*

The nomination process also requires reform to ensure it is timely. It is Council's experience that delays in implementing the protection of a heritage place for inclusion



in the Register can have a detrimental impact on the heritage place. Council's invest substantial resources to support a nomination and regularly find that the time taken by Heritage Victoria to determine a nomination can result in the loss of heritage fabric.

*Provide for heritage area designation (cultural landscapes and urban precincts)*

*The Act does not adequately provide for the recognition of large scale heritage areas and cultural landscapes. It is proposed:*

- a) to provide a definition of "heritage area"*
- b) the Heritage Council will develop, revise and publish from time to time, the assessment criteria to be used in considering whether a heritage area is of State level significance*
- c) submissions will be invited on an accepted nomination for a heritage area*
- d) the Executive Director will consider submissions and complete a recommendation to the Heritage Council*
- e) the Heritage Council will determine whether or not to designate a heritage area as being of State significance*
- f) require the decision of the Heritage Council to be referred to the relevant planning authority/authorities for consideration of an amendment to the planning scheme*

The proposal to provide for heritage area designation (cultural landscapes and urban precincts) is problematic as it may be anomalous with the heritage provision of a Council's planning scheme. Ideally, Heritage Victoria would consult and work with Council when designating such precincts to ensure a unified approach. However it has been Council's experience that its input is ignored. In one instance Heritage Victoria sought Council's input on an application and then approved during the period that had been allowed to submit comments. Subjecting the designation of heritage place to the scrutiny of an Amendment and Panel process ensures transparency and affords all parties an opportunity to input to the process.

*Ensure the Heritage Inventory is effective and transparent*

*There are a number of issues relating to the operation of the Heritage Inventory. It is proposed to:*

- a) introduce a significance threshold for archaeological sites, or change the age threshold for automatic inclusion of archaeological sites in the Inventory from 50 to 75 years (consistent with the historic shipwreck age threshold)*
- b) provide for archaeological sites and shipwrecks less than 75 years of age, but which are of cultural heritage significance, to be included in the Inventory at the direction of the Heritage Council*
- c) enable the Executive Director to remove from the Inventory archaeological sites — regardless of age — that are considered to be of low or no heritage significance*
- d) require notification to the owner and the relevant local council when an archaeological site is included or removed from the Inventory*

*e) only require owners to obtain consent for works and activities impacting archaeological sites on the Inventory.*

Heritage Victoria should be required to work closely with Councils when assessing sites and Council's views should be considered and formally responded to in this process. Notification at the completion of the process is insufficient and unsatisfactory.

*Specify a significance threshold for the Heritage Register*

It has been Council's experience that gradings are ineffective. They were challenged at the Victorian Civil and Administrative Tribunal (VCAT) and generally did not achieve a positive outcome for the heritage listed place.

*Streamline the amendment or removal of a place or object from the Heritage Register*

*The Act currently allows a place or object to be amended or removed from the Register in the same manner it was registered. A streamlined process is proposed for the Heritage Council, on the recommendation of the Executive Director, to:*

- a) remove a registration as part of a permit issued under the Act for the total demolition of a place, once that permit has been executed and all conditions satisfied*
- b) amend a registration in accordance with a subdivision permit issued for the place once that permit has been executed and all conditions satisfied, and where (1) no heritage fabric remains within the land proposed to be removed from the Register, and (2) development of the land proposed to be removed from the Register is unlikely to negatively impact on the heritage values of the remaining registered place*
- c) remove a registration where a place or object has been totally destroyed accidentally or by a natural event and where the identified heritage values of the lost place can no longer be appreciated*

Council expends considerable resources on the preparation of Conservation Management Plans (CMP) to justify the retention of places on the Heritage Register. Heritage Victoria should be required to work closely with Councils when considering the removal or amendment of a place or object from the Register and Council's views should be formally responded to in this process as part of this process.

*Clarify exemptions in new registrations*

*Currently permit exemptions for works or activities to a place or object can be granted at the time of registration. It is proposed to only allow for the exemption of activities and works in the registration process which do not negatively impact the identified cultural heritage significance of a place or object.*

Exemptions should only be permitted where they are consistent with a CMP prepared by a suitably qualified Heritage Architect which has been submitted and approved as part of the registration process.



## **Simplifying Heritage Permit and Consent Processes**

### *Provide a greater role for local government in permit processes*

The permit and consent process could be improved by alignment with the statutory processes of the P&E Act. Heritage Victoria should be designated as a determining referral authority under the P&E Act and included as determining referral authority at Clause 66 of the Planning Scheme. This would ensure the provision of timely and clear advice and facilitate Council's decision making. It has been Council's experience that the current 'dual' process, which requires a permit from both Heritage Victoria and Council, can result in irreversible negative impacts on the Heritage Overlay, Heritage Policies and Heritage Precinct because the existing context is ignored by Heritage Victoria.

### *Provide for a "one-stop-shop" for subdivision applications*

Council strongly supports Heritage Victoria becoming a determining referral authority under the P&E Act.

### *Remove "undue financial hardship" considerations in permit determinations*

Hobsons Bay supports the removal of the 'undue financial hardship' provisions but seeks clarification of what constitutes 'reasonable or economic use'.

### *Prescribe information to accompany a permit or consent application and implement timeframes for further information requests*

As discussed previously, Hobsons Bay strongly supports the alignment of the application process with the regulatory processes of the P&E Act.

### *Provide for amendment of permit applications and permits*

As discussed previously, Hobsons Bay strongly supports the alignment of the application process with the regulatory processes of the P&E Act.

### *Ensure the Victorian Civil and Administrative Tribunal (VCAT) has appropriate expertise to consider referred matters*

Hobsons Bay strongly supports this matter. It recommends that there should be at least two members with heritage experience at hearings or panels and their selection should be from a register of qualified registered heritage architects with various experience in local government.

### *Provide for consistent decision-making on review*

Hobsons Bay considers that the views of Councils should be addressed in the review process.

### *Clarify permit exemptions*

A CMP requirement would resolve this issue. Alternatively works exempt from a permit should be determined by an independent heritage architect.

#### *Clarify liturgical permit exemptions*

Exemptions should be deleted. These works should be controlled and assessed by independent heritage architects.

#### *Introduce a fee for lodging a permit appeal*

The fee structure should be aligned with the existing VCAT planning appeals process.

#### *Introduce a fee for amending permits*

The fee structure should be aligned with fee structure under the *Planning and Environment (Fees) Interim Regulations 2012*.

### **Strengthen Compliance and Enforcement Measures**

#### *Increase maximum penalties for unauthorised works and infringements notices*

Enforcement action taken by Heritage Victoria must be undertaken by working closely with Councils.

#### *Provide for VCAT to hear covenant disputes*

As discussed previously, it is recommended that there be at least two members with heritage experience and the selection should be from a register of qualified registered heritage architects.

#### *Improve operation of the Heritage Fund*

While this may increase the transparency of the activities of the Heritage Fund, it provides no clarity regarding eligibility and selection criteria.

#### *Clarify the constitution and role of Heritage Council Registration and Permit Committees*

While this may create a more responsive Heritage Council and increase transparency in relation to registration and permit hearings the selection criteria remains unclear.

#### *Other changes*

It is suggested that education and information sessions be organised regularly to keep owners, real estate agents, and other interested parties up to date with the Heritage Act requirements.