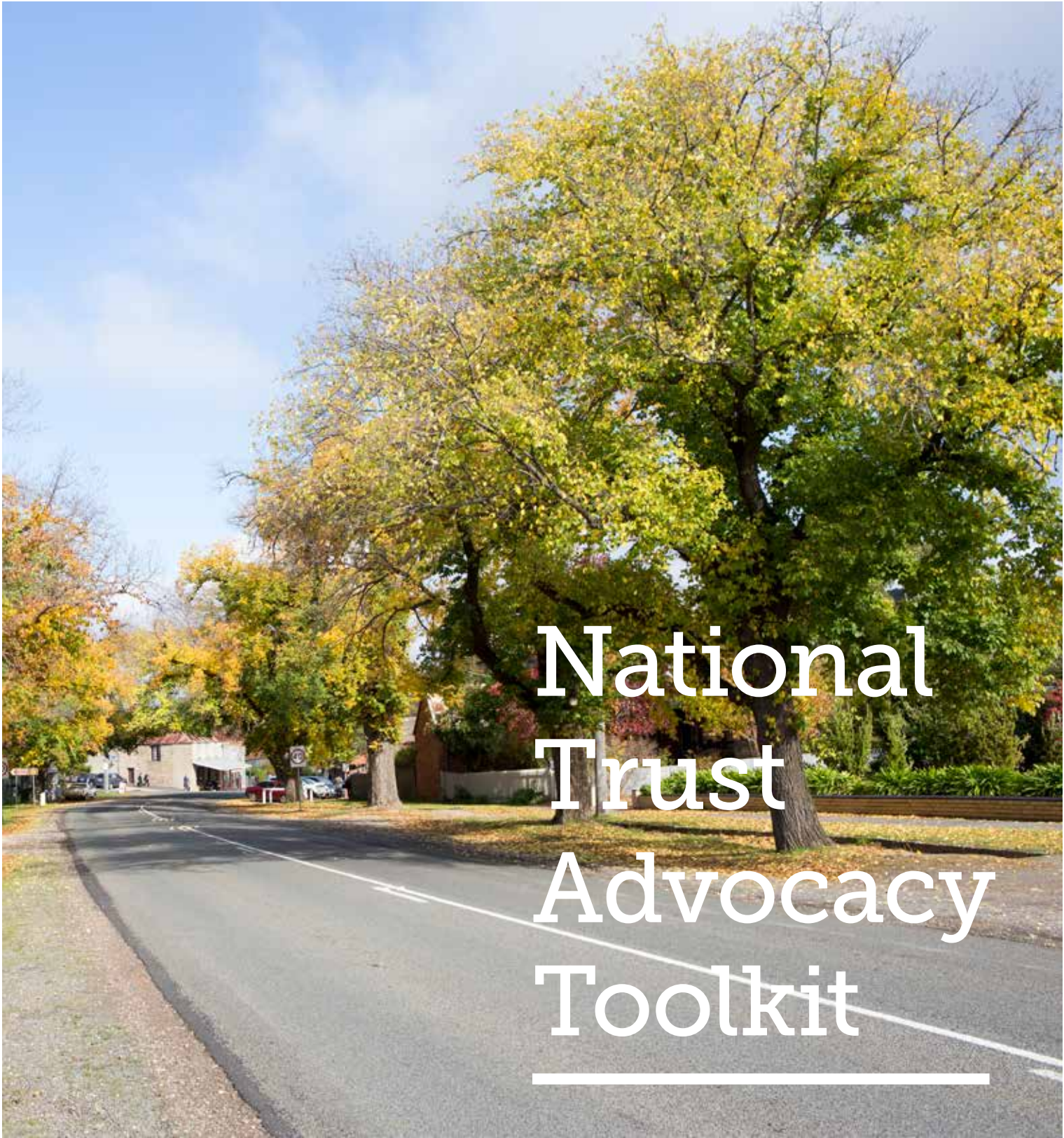




National Trust Advocacy Toolkit

Advocacy Guide No. 3:

Objecting to an Application for a Planning Permit
for properties covered by a Heritage Overlay

About the National Trust of Australia (Victoria)

The National Trust of Australia (Victoria) is the state's leading independent heritage advocacy organisation. We advocate for the recognition, protection, and celebration of our diverse natural, cultural, social, and Indigenous heritage in our cities and regions.

The National Trust's vision is for our diverse heritage to be protected and respected, contributing to strong, vibrant and prosperous communities.

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Cover: Maldon streetscape,
photograph by Jessica Hood.

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.

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Introduction

About this Advocacy Guide

The National Trust Advocacy Toolkit is a free online resource developed by the National Trust of Australia (Victoria) to support communities to advocate for the protection of places of cultural heritage significance. The purpose of this Advocacy Guide is to provide a broad overview of the processes for objecting to an application for a planning permit for properties covered by a Heritage Overlay.

About Planning Permits

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

The use, development and protection of land in Victoria is regulated by the *Planning & Environment Act 1987*. Responsible authorities (usually local councils) have the power to grant or refuse permits—sometimes known as Planning Permits.

About Heritage Overlays and Planning Permits

Each municipality has a Planning Scheme, which sets out objectives, policies, and controls for the use, development, and protection of land within a municipality. The importance of heritage places, including houses, buildings, gardens, cultural landscapes, and trees, may be recognised in a Planning Scheme by a Heritage Overlay.

 Find out if a Heritage Overlay is in place through the Victorian Government's online planning map, at mapshare.maps.vic.gov.au/vicplan/

Where a Heritage Overlay is in place

If an applicant wants to demolish or alter a building which is protected by a Heritage Overlay, they will need to apply for a permit from the relevant council. This provides an opportunity for neighbours, residents and other interested parties to object to the permit application.

Where no Heritage Overlay is in place

Not all places of heritage significance are currently protected by Heritage Overlays. If a property does not have a Heritage Overlay, a Planning Permit may not be required to alter or demolish it.

If you think a place of heritage significance may be under threat, find out whether it is protected by a Heritage Overlay. To do this:

- contact the relevant council and ask to speak to the planner on duty, or
- look up the property on the Victorian Government's online planning map (above).

If a place isn't protected by a Heritage Overlay, a person may apply to the local council for a Building Permit to demolish it, even if it seems to have historical or architectural value. A Building Permit is different from a Planning Permit. There is no requirement for Building Permits allowing the demolition of a building to be advertised to neighbours and residents, so often the first time that residents become aware of demolition or proposed buildings and works is when demolition or work begins. By this point, there usually is nothing that the council can do to stop the demolition from taking place.

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

Getting notice of an application for a Planning Permit

Councils usually advertise applications for a Planning Permit, to provide anyone who may be affected by an application with an opportunity to object. This may occur through:

- the erection of a sign(s) on the subject land
- letters sent to neighbouring owners and occupiers
- a notice published in the local newspaper
- making the planning application available online on Council's website, or
- a combination of the above.

The notice period usually lasts a minimum of 14 days but it can be longer. Council must consider all objections received up until the time a decision is made, even if this takes longer than 14 days.

Council cannot decide on the permit application until the notice period has ended.

The website PlanningAlerts also allows you to sign up to alerts for planning applications for specific properties. This service can be helpful if you think an owner might be planning a development, or a property is sold to a new owner and you want to be notified if a planning application is lodged.

Visit the PlanningAlerts website at www.planningalerts.org.au/.

Good design should complement existing heritage buildings or conservation areas by respecting historic character, by adapting it or by contrasting with it without overwhelming heritage values.

Good Design + Heritage, Office of the Victorian Government Architect, 2016

Objecting to an application for a Planning Permit

Follow these steps to review a permit application and submit an objection.

1. View the application for a Planning Permit

Start with your local council. Usually the notice of permit application will advise whether the permit application can be viewed online or can only be viewed at the council office. If not, check the building and planning section of the relevant council's website.

2. Objecting to the Planning Permit application

If you believe you will be adversely affected by the granting of a Planning Permit, you can lodge a formal objection with the relevant council.

The objection must:

- Be in writing, and include your name, address and contact phone number, as well as the address of the subject property, and the Planning Application number. You can submit an objection in writing either by post or by email.
- Briefly state the grounds for your objections. These may include how you are adversely affected by the permit application, the adverse effects of the permit application and the significance of the place (for example the heritage value, or contribution to the streetscape and wider precinct).

As part of an objection you may include suggestions for changes to an application that address some or all your concerns.

Examples of arguments which may be considered **relevant** in relation to heritage places:

- If the plans would have a negative impact on the heritage significance of a historic building or streetscape, you can point to specific aspects of the plans which would have this impact.
- If trees which contribute the heritage significance of the Heritage Overlay are proposed to be removed, you can argue that this would be detrimental to the heritage significance of the place and/or wider heritage precinct.

Examples of arguments which are generally considered **not relevant** to heritage issues are:

- Devaluation of property.
- Neighbourhood amenity issues such as traffic and carparking.
- Personal grievances such as disputes between neighbours.
- Arguments about overlooking or overshadowing.

Such matters could be relevant to other planning considerations the council must consider but these are not “heritage issues”.

Extra things you can do to make your objection to an application for a Permit Application clear are:

- Include a summary of your arguments at or near the top of your objection.
- Write your objection using dot points so it is easy to follow.
- Read through the Planning Scheme and find policies which support your argument, or which contradict the permit application. List them in your objection and describe how they relate to the permit application. To find out which planning controls apply to the relevant property, you can search the Government’s Interactive Planning Scheme Map (see above) and create a “Planning Property Report”. This will provide links to the relevant parts of the planning scheme to consider in your objection.
- If possible, suggest changes to the proposal which would result in a better heritage outcome. Think about what outcome you would be unwilling to accept, versus what you would be willing to compromise on. It can be helpful to suggest a reasonable compromise to achieve a mutually agreeable result. For example, would you be willing to accept a reduction in height? Or an increased setback from the street? Be specific.

Group objections

Community groups, or groups of residents with similar concerns, can make objections together. This could be an existing group, or one which is formed specifically to object to an application for a Planning Permit. The group should nominate a person to receive correspondence on the group’s behalf.

However, while it may be easier to provide one group objection it is beneficial for each person to also lodge their own objection. This is because an objection

submitted from a group is only counted as one objection.

3. Submit your objection to the relevant council by the deadline

Meeting the council deadline for objections secures your rights in a future review of the decision on the permit application.

The advertising period is usually 14 days but can be longer. Council must consider all objections received up until the time a decision is made, even if this is longer than the 14 days. However, make sure you make an objection within the 14-day notice period to ensure council considers your objection.

The amount of change to a place and its use should be guided by the cultural significance of the place and its appropriate interpretation.

The Burra Charter
(The Australia ICOMOS Charter for Places of Cultural Significance, 2013)

Consultation meeting

After you submit an objection the council may call a community consultation meeting if a certain number of objections are lodged in relation to an application for a Planning Permit, or if there is strong community interest. The policies on this vary between councils. If the council decides to hold a public consultation meeting, all objectors will be invited to attend the meeting.

A consultation meeting is a forum for discussion which includes the owner or developer and the objectors. It may be a formal meeting at which all parties can speak, or an informal gathering in which planners, applicants and objectors circulate, examining the plans and discussing the issues. Either way, it is an opportunity for objectors to express their concerns and to provide the applicant with an opportunity to respond. Sometimes applicants may offer amendments to permit applications which respond to objector concerns. This can sometimes lead to objections being resolved.

Attendance at consultation meetings is not compulsory, but we recommend that you attend, because it is an opportunity to find out more about the permit application and ask questions, as well as negotiate changes.

Before you attend a community consultation meeting, again think about what outcome you would be unwilling to accept, versus what you would be willing to compromise on. It can be helpful to suggest a reasonable compromise to achieve a mutually agreeable result. For example, would you be willing to accept a reduction in height? Or an increased setback from the street? Be specific.

Council meeting

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.

The planning application is usually determined:

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

The procedures vary from council to council, so contact the relevant council to find out what their process is.

If the permit application goes to a council meeting you will have another opportunity to influence the outcome. As an objector, you should be notified when a permit application is added to the agenda for a council meeting.

Councillors often only receive a summary of submissions and not individual submissions. When the amendment 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, either in person, over the phone, or via email. 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 start with them.
- Attend the council meeting and make a verbal submission outlining your views. At some council meetings, submitters are required to register to speak prior to the meeting, so contact the relevant council to find out what the correct procedures are. Usually, verbal submissions are limited to a short amount of time (around 3 minutes). Make sure you have prepared by writing down your key points and stay focused on these.

Notice of decision

Once council has undertaken the required steps, it must decide whether to:

- grant a permit
- grant a permit subject to conditions, or
- refuse to grant a permit.

If you made an objection during the public notice period, you will receive personal notification of the council's decision. This is called the Notice of Decision (NOD). As an objector you will have 21 days to appeal to the Victorian Civil and Administrative Tribunal (VCAT) to seek a review of the decision from the date of the Notice of Decision.

You may also be able to be involved in a VCAT case brought by the permit applicant if council has refused the application.

Also consider whether you are prepared to make an appeal to VCAT if the planning authority's decision is not in your favour.

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

Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has.

Margaret Mead