

Applying the Heritage Overlay

Planning Practice Note 1

AUGUST 2018

This practice note provides guidance about the use of the Heritage Overlay.

What places should be included in the Heritage Overlay?

- Any place that has been listed on the Australian Heritage Council's now closed Register of the National Estate.
- Any place that has been referred by the Heritage Council for consideration for an amendment to the planning scheme.
- Places listed on the National Trust Heritage Register of the National Trust of Australia (Victoria), provided the significance of the place can be shown to justify the application of the overlay.
- Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Places listed on the former *Register of the National Estate* or on the *National Trust Heritage Register* of the National Trust of Australia (Victoria) do not have statutory protection unless they are protected in the planning scheme.

The heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay. The documentation for each place shall include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria.

What are recognised heritage criteria?

The following recognised heritage criteria shall be used for the assessment of the heritage value of the heritage place. These model criteria have been broadly adopted by heritage jurisdictions across Australia and should be used for all new heritage assessment work.

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).

Criterion C: Potential to yield information that will contribute to understanding our cultural or natural history (research potential).

Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).

Criterion E: Importance in exhibiting particular aesthetic characteristics (aesthetic significance).

Criterion F: Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).



Criterion G: Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).

Criterion H: Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

The adoption of the above criteria does not diminish heritage assessment work undertaken before 2012 using older versions of criteria.

The thresholds to be applied in the assessment of significance shall be 'State Significance' and 'Local Significance'. 'Local Significance' includes those places that are important to a particular community or locality. Letter gradings (for example, "A", "B", "C") should not be used.

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis.

Places of significance for historical or social reasons

Planning is about managing the environment and its changes. An appropriate test for a potential heritage place to pass in order to apply the Heritage Overlay is that it has 'something' to be managed. This 'something' is usually tangible but it may, for example, be an absence of built form or the presence of some other special characteristic. If such things are present, there will be something to manage and the Heritage Overlay may be applied.

If not, a commemorative plaque is an appropriate way of signifying the importance of the place to the local community.

Group, thematic and serial listings

Places that share a common history and/or significance, but which do not adjoin each other or form a geographical grouping may be considered for treatment as a single heritage place. Each place that forms part of the group might share a common statement of significance; a single entry in the Heritage Overlay Schedule and a single Heritage Overlay number.

This approach has been taken to the listing of Chicory Kilns on Phillip Island in the Bass Coast Planning Scheme. The kilns are dispersed across the island but share a common significance. Group listing of the kilns also draws attention to the fact that the kilns are not just important on an individual basis but are collectively significant as a group.

The group approach has also been used for the former Rosella Factory Complex in the Yarra Planning Scheme. This important factory complex had become fragmented through replacement development making it hard to justify a precinct listing. The group listing, with a single Heritage Overlay number, has meant that the extent and significance of the complex can still be appreciated.

Writing a statement of significance

For every heritage place (that is, a precinct or individual place) a statement of significance must be prepared using the format of 'What is significant?'; 'How is it significant?' and 'Why is it significant?'

What is significant? – This section should be brief, usually no more than one paragraph or a series of dot points. There should be no doubt about the elements of the place that are under discussion. The paragraph should identify features or elements that are significant about the place, for example, house, outbuildings, garden, plantings, ruins, archaeological sites, interiors as a guide to future decision makers. Clarification could also be made of elements that are not significant. This may guide or provide the basis for an incorporated plan which identifies works that may be exempt from the need for a planning permit.

How is it significant? – Using the heritage criteria above, a sentence should be included to the effect that the place is important. This could be because of its historical significance, its rarity, its research potential, its representativeness, its aesthetic significance, its technical significance and/or its associative significance. The sentence should indicate the threshold for which the place is considered important.

Why is it significant? – The importance of the place needs to be justified against the heritage criteria listed above. A separate point or paragraph should be used for each criterion satisfied. The relevant criterion reference should be inserted in brackets after each point or paragraph, for example "(Criterion G)". An example statement of significance has been prepared for guidance, see **Appendix A**.



The explanatory report for an amendment that includes a place in the Heritage Overlay (or other supporting documentation accompanying a planning scheme amendment) should:

- state whether the place is a precinct or an individual place
- identify if further controls allowed by the schedule to the overlay are required such as external paint controls or tree controls (the identification of further controls should be based on the explanation of why a heritage place is significant).

Incorporating, saving and displaying statements of significance

A statement of significance must be incorporated in the planning scheme for each heritage place included in the schedule to the Heritage Overlay after 31 July 2018. This requirement does not apply to a heritage place included in the schedule by an amendment prepared or authorised by the Minister for Planning under section 8(1)(b) or section 8A(4) of the *Planning and Environment Act 1987* before 31 October 2018.

However, a statement of significance may be incorporated for any heritage place included in the schedule before 31 July 2018 or by an amendment that the exemption applies to.

If a statement of significance is incorporated in the planning scheme, the name of the statement must be specified in the schedule to the overlay.

All statements of significance (incorporated or otherwise) should be securely stored in the HERMES heritage database.

Where a planning scheme amendment has resulted in the inclusion of, or amendments to, places in the Heritage Overlay, the strategic justification (that is, the heritage study documentation and statements of significance) needs to be updated. A statement of significance that has been incorporated into the planning scheme can only be changed by an amendment to the planning scheme. If the heritage place does not have a statement of significance that has been incorporated, then any changes should be entered into the department's HERMES heritage database.

Where a place (either a precinct or individual place) is included in the Heritage Overlay, the statement of significance for that place should be publicly viewable through the department's Victorian Heritage Database.

Additional resources may be required

When introducing the Heritage Overlay, a council should consider the resources required to administer the heritage controls and to provide assistance and advice to affected property owners. This might include providing community access to a heritage adviser or other technical or financial assistance.

Drafting the Heritage Overlay schedule

What is a heritage place?

A heritage place could include a site, area, building, group of buildings, structure, archaeological site, tree, garden, geological formation, fossil site, habitat or other place of natural or cultural significance and its associated land. It cannot include movable or portable objects such as machinery within a factory or furniture within a house.

What is the planning scheme map reference number?

In column one of the schedule, the Planning Scheme Map Reference prefix should read HO1, HO2, HO3 and so on. Each heritage place in the schedule will have its own identifying number. The planning scheme maps should also record these numbers as a cross reference between the maps and the schedule.

Street numbers and location descriptions

Street numbers and locality addresses should be included for properties wherever possible. Where a street address is not available, plan of subdivision details (for example, Lot 1 of PS12345) should be used. Avoid using Crown Allotment details, Certificate of Title details or obscure location descriptions if possible.

How should the Heritage Overlay schedule be arranged?

There are three preferred options for arranging the schedule:

- Heritage places may be arranged in ascending numerical order by their planning scheme map reference number (eg HO1, HO2, HO3 and so on).
- Heritage places may be grouped according to their suburb, town or location and then arranged alphabetically by street address within each grouping.
- All places may be listed alphabetically by their street address irrespective of their location.

Use the method which most assists users of the planning scheme to find the relevant property by a simple search through the schedule.



An example of a schedule to the Heritage Overlay is included at **Appendix B**.

Application requirements

The schedule allows for application requirements to be specified.

Incorporated plan

Clause 43.01-3 of the Heritage Overlay allows an incorporated plan to be prepared to identify works to a heritage place that are exempt from the need for a planning permit. To do so, the plan must be specified in the schedule to the overlay and must also be listed in the schedule to Clause 72.04.

Statements of significance

Where a statement of significance is incorporated in the planning scheme, it must be given a title which includes the name of the heritage place or if there is no name specified, the full address of the heritage place. The title of the statement of significance must be specified in the schedule to the overlay. The title of the statement must also be listed in the schedule to Clause 72.04.

Heritage design guidelines

Where detailed heritage design guidelines have been prepared for a heritage place, they may be incorporated into the planning scheme. The title of the incorporated document must be specified in the schedule to the overlay and must also be listed in the schedule to Clause 72.04.

Applying external painting controls

External painting controls over particular heritage places can be applied in the schedule by including a 'yes' in the External Paint Controls Apply? column.

Applying internal alterations controls

Internal alteration controls over specified buildings can be applied in the schedule by including a 'yes' in the Internal Alteration Controls Apply? column. This provision should be applied sparingly and on a selective basis to special interiors of high significance. The statement of significance for the heritage place should explain what is significant about the interior and why it is important.

Applying tree controls

The schedule can apply tree controls over heritage places. The tree controls could apply to the whole of a heritage place (for example, over a house site or an area) or a tree or group of trees could be specifically nominated as the heritage place.

Tree controls are applied by including a 'yes' in the Tree Controls Apply? column. Tree controls should only be applied where there has been a proper

assessment. The statement of significance for the heritage place should identify the particular trees that are significant (under "What is significant?") and why the tree or trees are important.

If only one, or a few trees within a large property are considered significant, the 'Tree Controls Apply' column can be qualified with the relevant details. A planning permit would then only be required to remove, destroy or lop the trees that were specifically identified in the column.

This control is designed to protect trees that are of intrinsic significance (such as trees that are included on the National Trust Heritage Register), or trees that contribute to the significance of a heritage place (for example, trees that contribute to the significance of a garden or area). The control is not meant to protect trees for their amenity value. See *Planning Practice Note 7 – Vegetation Protection in Urban Areas* for alternative methods of vegetation protection.

Outbuildings and fences

Councils may consider that certain outbuildings and/or fences on heritage sites are significant and can therefore require that these be subject to the notice and review requirements of the *Planning and Environment Act 1987*. This is achieved by including the word 'yes' in the column headed 'Outbuildings or fences which are not exempt under Clause 43.01-4?'.

It is helpful to landowners and users of the planning scheme if the column in the schedule identifies the particular outbuildings and/or fences that are considered to be significant. The statement of significance for the heritage place should also identify the particular outbuildings and/or fences that are significant (under "What is significant?") and why they are important.

How should places in the Victorian Heritage Register be treated in the schedule and map?

Section 56 of the *Heritage Act 2017* (Heritage Act) requires that the Minister for Planning must 'prepare and approve an amendment to any planning scheme applying to a place which is included or amended in the Heritage Register to identify the inclusion or amendment of that place in the Heritage Register'. This is intended as an alert to planning scheme users of restrictions that might apply to land under the Heritage Act.

Planning authorities should not amend the schedule or maps as they relate to places in the Victorian Heritage Register and certainly not without the prior approval of Heritage Victoria. This is to ensure that



planning schemes accurately reflect the Heritage Register as required by the Heritage Act.

Under Clause 43.01-2, places on the Victorian Heritage Register are subject to the requirements of the Heritage Act and not the planning provisions of the Heritage Overlay. Where Places included in the Victorian Heritage Register are listed in the schedule, a dash should be recorded in columns three (external paint controls), four (internal alteration controls), five (tree controls) and six (outbuildings and fences) to avoid any possible confusion as to whether planning provisions apply to these properties. In column seven ('Included on the Victorian Heritage Register ...') the reference number of the property on the Victorian Heritage Register should be included as an aid to users of the planning scheme.

Allowing a prohibited use of a heritage place

It is possible to make a prohibited use permissible at a specific place by including a 'yes' in the Prohibited uses may be permitted? column.

This provision should not be applied to significant areas because it might result in the de facto rezoning of a large area. The provision should only be applied to specific places. For example, the provision might be used for a redundant church, warehouse or other large building complex where it is considered that the normally available range of permissible uses is insufficient to provide for the future conservation of the building. Currently this provision applies in the metropolitan area of Melbourne to places that are included on the Victorian Heritage Register.

Aboriginal heritage places

Scarred trees, stone arrangements and other places significant for their Aboriginal associations can be identified by including a 'yes' in the Aboriginal Heritage Place? column. As with any place listed in the Schedule to the Heritage Overlay, supporting justification is expected to apply this provision.

The standard permit requirements of Clause 43.01-1 of the Heritage Overlay apply to Aboriginal heritage places included in the schedule. Clause 43.01-10 reminds a responsible authority that the requirements of the *Aboriginal Heritage Act 2006* apply to these places.

How are heritage precincts and areas treated?

Significant precincts and areas should be identified in the schedule and be mapped.

How are individual buildings, trees or properties of significance located within significant areas treated?

The provisions applying to individual buildings and structures are the same as the provisions applying to areas, so there is no need to separately schedule and map a significant building, feature or property located within a significant area.

The only instance where an individual property within a significant area should be scheduled and mapped is where it is proposed that a different requirement should apply. For example, external painting controls may be justified for an individual building of significance but not over the heritage precinct surrounding the building.

Alternatively, tree controls may be justified for a specific tree or property within a significant precinct but not over the whole precinct. In such situations the individual property or tree should be both scheduled and mapped.

Significant buildings or structures within a significant precinct can be identified through a local planning policy.

Curtilages and Heritage Overlay polygons

The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item. The land surrounding the heritage item is known as a 'curtilage' and will be shown as a polygon on the Heritage Overlay map. In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property (for example, a suburban dwelling and its allotment).

However, there will be occasions where the curtilage and the Heritage Overlay polygon should be reduced in size as the land is of no significance. Reducing the curtilage and the polygon will have the potential benefit of lessening the number of planning permits that are required with advantages to both the landowner and the responsible authority. Examples of situations where a reduction in the curtilage and polygon may be appropriate include:

- A homestead on a large farm or pastoral property where it is only the house and/or outbuildings that is important. In most cases with large rural properties, the inclusion of large areas of surrounding farmland is unlikely to have any positive heritage benefits or outcomes.



- A significant tree on an otherwise unimportant property.
- A horse trough, fountain or monument in a road reservation.
- A grandstand or shelter in a large but otherwise unimportant public park.

Suggested steps in establishing a curtilage and polygon include:

1. Review the heritage study documentation and ask the question 'What is significant?'. The polygon should capture those elements of the place that are significant. If there are multiple elements that are widely dispersed on the property, one option may be to have multiple polygons which share the same Heritage Overlay number.
2. In addition to capturing the elements that are significant, it is almost always necessary to include a curtilage (see definition above) to:
 - retain the setting or context of the significant building, structure, tree or feature
 - regulate development (including subdivision) in proximity to the significant building, tree or feature.
3. Where possible, uncomplicated and easily recognised boundaries (such as a fence line) leave little room for potential dispute in terms of the land affected by any future Overlay.
4. Use aerial photos where they exist to assist in identifying a reduced curtilage.
5. Where access is possible, 'ground truthing' may be of assistance.

6. Explain the basis for the reduced curtilage polygon in the heritage study documentation
7. Where questions might arise in the future as to the extent of the polygon shown on the planning scheme map, use the entry in the Schedule to the Heritage Overlay (i.e. column two) to specify the area covered by the polygon. For example:

"The heritage place is the Moreton Bay Fig Tree and land beneath and beyond the canopy of the tree and extending for a distance of five metres from the canopy edge."

Mapping heritage places

All heritage places must be both scheduled and mapped.

In each case, care should be taken to ensure that there is an accurate correlation between the Heritage Overlay schedule and the Heritage Overlay map.

The need for care is exemplified by the fact that the Heritage Overlay map will be the determining factor in any dispute as to whether a control applies (for example, in cases where there is conflict between the Heritage Overlay map and the property description or address in the Heritage Overlay schedule).

Councils are encouraged to review their planning schemes to ensure that all heritage places are correctly mapped and that there are no discrepancies between how places are identified in the Heritage Overlay schedule and Heritage Overlay maps.

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APPENDIX A. Example statement of significance

GUMNUT PLANNING SCHEME

Wombat Flats Precinct Statement of Significance

Heritage Place: Wombat Flats Precinct	PS ref no: HO26
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[Insert photo and or map, if applicable]

What is significant?

The following features contribute to the significance of the precinct:

The houses constructed from c.1855 to c.1910, as shown on the precinct map.

- The overall consistency of housing form (hipped roofs, single storey wall heights), materials and detailing (weatherboard, face brick or stucco external cladding, corrugated metal roofs, wide verandahs facing the street, brick chimneys), and siting (generous and consistent front and side setbacks).
- Streetscape materials such as bluestone kerb and channel and concrete footpaths. Features that do not contribute to the significance of this place include non-original alterations and additions to the contributory buildings shown on the precinct map and the houses at 32, 24 & 36 Wattle Avenue.

Contributory buildings:

Wattle Avenue: 3,5,7,9,11,13,15,17,19

Myrtle Street: 7,11,12

Features that do not contribute to the significance of this place include non-original alterations and additions to the contributory buildings shown on the precinct map and the houses at 32, 24 & 36 Wattle Avenue.

How is it significant?

The Wombat Flats Precinct is of local, historic and aesthetic significance to Gumnut Shire.

Why is it significant?

Historically, the precinct demonstrates how the gold rush encouraged the residential development of this area in the mid-nineteenth century. The later Victorian and Edwardian housing demonstrates the next stage of development, which resulted from the establishment of improved transport links and industries such as the Butterscotch Factory in near-by Lilly Pilly Street. (Criterion A)

The precinct is significant for the way it demonstrates the key phases of development prior to World War I, characterised by mid to late Victorian era housing, supplemented by Edwardian infill, set within a nineteenth century subdivision with a regular allotment pattern. It is representative of the way residential areas in Gumnut developed during this era. (Criterion D)

The mid to late Victorian and Federation/Edwardian houses with characteristic form, materials and detailing are complemented by traditional public realm materials such as concrete footpaths and bluestone kerb and channel. (Criterion E)

Primary source

[Insert applicable study and/or citation, if applicable]

[Insert grading table for large precincts]

Number	Address	Grade
7	Wattle Avenue	Contributory

This document is an incorporated document in the Gumnut Planning Scheme pursuant to section 6(2)(j) of the Planning and Environment Act 1987



APPENDIX B. Example schedule to the Heritage Overlay

GUMNUT PLANNING SCHEME

SCHEDULE TO CLAUSE 43.01 HERITAGE OVERLAY

1.0 Application requirements

None specified.

2.0 Heritage places

The requirements of this overlay apply to both the heritage place and its associated land.

PS map ref	Heritage Place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
HO1	House 1 Albert Street, Belmont	Yes	No	No	Yes, front fence	No	No	No
HO2	Althol House 57 Albert Street, Belmont	-	-	-	-	Yes Ref No H456	Yes	No
HO3	Moreton Bay Fig Tree 26 Bryant Street, Ceres The heritage place is the Moreton Bay Fig Tree and land beneath the canopy edge of the tree for a distance of five metres from the canopy edge	No	No	Yes	No	No	No	No
HO4	Barwon River Bridge Station Street, Geelong	-	-	-	-	Yes Ref No H789	No	No
HO5	William Street Precinct William Street, Geelong	Yes	No	No	No	No	No	No
	Incorporated plan: William Street Precinct permit exemptions							
	Statement of significance:							

Heritage places listed in the schedule before 31 July 2018 are not required to include a statement of significance

An incorporated plan, statement of significance and design guidelines are listed in column 2, under the relevant heritage place name



GUMNUT PLANNING SCHEME

PS map ref	Heritage Place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
	Williams Street Precinct Statement of Significance Heritage design guidelines: William Street Precinct streetscape design guidelines							
HO6	Wombat Flats Precinct 1-35 & 2-36 Wattle Avenue and 1-29 & 2-30 Blue Gum Statement of significance: Wombat Flats Precinct Statement of Significance	No	No	No	No	No	No	No
HO7	Mount Rothwell Stone Arrangement Mount Rothwell Station Little River-Ripley, Little River Statement of significance: Mount Rothwell Stone Arrangement Statement of Significance	No	No	No	No	No	No	Yes

A statement of significance is listed in column 2, under the relevant heritage place name