

Heritage Council Determination

Determination date	3 October 2024
Place/Object name	Convent of Mercy and Academy of Mary Immaculate ('the Place')
Location	88 Nicholson Street, Fitzroy, City of Yarra, Wurundjeri Country
VHR number	H0507
Category	Registered Place
Relevant Legislative provision/s	Amendment to the Victorian Heritage Register in accordance with Section 62 of the <i>Heritage Act 2017</i>

DETERMINATION

The Heritage Council of Victoria determined on **3 October 2024**, in accordance with section 62 of the *Heritage Act 2017*, the above Place is to be amended in the Victorian Heritage Register. The Heritage Council determined to make the following amendments as outlined in the Executive Director's recommendation:

- including additional land in accordance with the extent of registration provided as **Attachment 1** to this determination; and
- the reasons why the place/object type is included in the Victorian Heritage Register are amended based on the Heritage Council criteria provided as **Attachment 2** to this determination; and
- determining categories of works or activities which may be carried out in relation to the Place for which a permit is not required ('permit exemptions') in accordance with **Attachment 3** to this determination.

BACKGROUND

The State-level cultural heritage significance of the Place was recognised in 1982 by its inclusion in the (former) Register of Historic Buildings.

On 20 June 2024 the Executive Director made and accepted an application to amend the registration of the Convent of Mercy and Academy of Mary Immaculate to ensure its inclusion in the Victorian Heritage Register is consistent with current practices under the *Heritage Act 2017*.

On 15 July 2024 the Executive Director made the Recommendation the Heritage Council. The Recommendation was publicly advertised on 19 July 2024 for a period of 60 days.

SECTION 44 SUBMISSIONS

One submission, pursuant to section 44 of the *Heritage Act 2017*, was received by the Heritage Council during the public advertisement of the Executive Director's Recommendation:

- Lovell Chen Architects and Heritage Consultants, on behalf of Andrew Baker of Academy of Mary Immaculate, made a submission in support of the Executive Director's Recommendation (dated 16 September 2024) with suggested minor amendments to the Recommendation. No hearing was requested. Suggestions related to:
 - clarification of wording and information in the Recommendation in relation to the statement of significance; and
 - clarification of wording in the information provided in the 'history' section of the Recommendation; and
 - clarification of the description of the place provided in the recommendation.

THE ABOVE SUBMISSION WAS PROVIDED TO THE EXECUTIVE DIRECTOR FOR CONSIDERATION. THE EXECUTIVE DIRECTOR'S RESPONSE ON THE ABOVE SUGGESTIONS WAS PROVIDED TO THE HERITAGE COUNCIL.

REASONS FOR EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director recommended to the Heritage Council that the registration be amended, because in accordance with section 40(4)(c)(i) and (ii) of the *Heritage Act 2017*:

- (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.

Executive Director's assessment and summary under section (40)(4)(c)(i) of the *Heritage Act 2017*

- If any of the land were developed, there is potential for the development to impact upon the original and early school buildings and sustainably 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 Convent of Mercy and Academy of Mary Immaculate for over 150 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.

Executive Director's assessment and summary under section 40(4)(c)(ii) of the *Heritage Act 2017*

- The current extent is limited to the footprint of a select number of nineteenth-century buildings. It is considered insufficient to protect, conserve, and understand the relationship between the assortment of buildings in the complex.
- Including an area of land around the place will enable potential change immediately adjacent to the place (for example new additions) to be managed under an approvals process.
- Inclusion of an area of land around the building will also enable works that could potentially impact on the conservation of the building, such as drainage and paving, to be managed under the approvals process.

HERITAGE COUNCIL'S FINDINGS

The Heritage Council's decision was reached having considered the information included in the Recommendation, the section 44 submission received in response to the Recommendation and the Executive Director's response to the suggestions provided within the section 44 submission.

The Heritage Council accepts the Executive Director's agreement to the suggested changes outlined in the Executive Director's response to the section 44 submission with respect to amendments to the statement of significance, history and description, and additional corrections raised with the Executive Director by the Yarra City Council.

The Heritage Council finds that the amendment to include additional land in the Heritage Register accords with the reasons set out in section 40(4)(c)(i) and (ii) of the *Heritage Act 2017* and ensures the protection and conservation of the Place.

The Heritage Council finds that the reasons why the place is included in the Victorian Heritage Register are to be amended based on the Heritage Council's criteria.

The Heritage Council finds 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.



Professor Philip Goad
Chair, Heritage Council of Victoria

Attachment 1

Extent of Registration

All of the place shown hatched on Diagram 507 encompassing all of Lot 1 on Title Plan 758835, Lot 1,2,3,4 and 5 on Title Plan 23195, Lot 1 on Title Plan 707025, Lot 1 on Title Plan 354127 and Lot 1 on Title Plan 966253.



Rationale for the extent of registration

The recommended extent of registration comprises all of the land belonging to the school, including the nineteenth, twentieth century and twenty-first century buildings. This extent captures the growth of the convent and the school through buildings from different periods.

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 land, plantings, fences, all buildings (exteriors, interiors and fixtures) is proposed for inclusion in the Victorian Heritage Register. A permit or permit exemption from Heritage Victoria is required for any works within the proposed extent of registration, apart from those identities in the categories of works or activities for permit exemptions in this recommendation.

Attachment 2

Amending the Heritage Council Criteria

This place is currently registered on the basis of the following Heritage Council criteria:

- Criterion A (Historical Significance)
- Criterion D (Architectural Significance)
- Criterion G (Social Significance)

The Executive Director recommended that the place is registered on the basis of the following Heritage Council criteria:

- Criterion A (Historical Significance)
- Criterion D (Architectural Significance)
- Criterion H (Association with a Person of Importance)

Criterion G is being removed as it is considered that the associations with the Sisters of Mercy are best assessed under Criterion H. It is not considered that the Convent of Mercy and Academy of Mary Immaculate has a social significance that is relevant to the broader Victorian Community.

Attachment 3

Permit exemptions

The categories of works or activities which may be carried out in relation to the Place for which a permit is not required ('permit exemptions') to be included, pursuant to section 49(3)(a) of the *Heritage Act 2017* as follows:

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.

The registered place is located within the declared World Heritage Environs Area for the Royal Exhibition Building and Carlton Gardens. In accordance with the permit considerations set out in the *Heritage Act 2017*, proposed works to the registered place must consider:

1. The effect of the works on the World Heritage values of the Royal Exhibition Building and Carlton Gardens; and
2. The approved "World Heritage Environs Area Strategy Plan: Royal Exhibition Building and Carlton Gardens" (Department of Planning and Community Development, 2009).
3. The Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* and Environment Protection and Biodiversity Conservation Regulations 2000, as they relate to actions that may impact on World Heritage values, must also be considered.

The below exemptions refer to area of greater sensitivity and an area of lesser sensitivity as defined by the above 'Areas of sensitivity plan'.

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.

Places of worship: In some circumstances, you can alter a place of worship to accommodate religious practices without a permit, but you must notify the Executive Director of Heritage Victoria before you start the works or activities at least 20 business days before the works or activities are to commence.

Subdivision/consolidation: Permit exemptions exist for some subdivisions and consolidations. If the subdivision or consolidation is in accordance with a planning permit granted under Part 4 of the Planning and Environment Act 1987 and the application for the planning permit was referred to the Executive Director of Heritage Victoria as a determining referral authority, a permit is not required.

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 Convent of Mercy and Academy of Mary Immaculate 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

Area of greater sensitivity

1. Removal or change to non-original fit out, fixtures and fittings provided there are no works to or impact on original or early fabric.
2. Like for like repair and maintenance.

Area of lesser sensitivity

3. All internal alterations, including to fit out, floor layout, plant and equipment.
4. Like for repair and maintenance to the external building envelope.
5. Demolition of buildings within the area of lesser sensitivity, provided there is no impact on buildings in the area of greater sensitivity.