

ARCHAEOLOGICAL CONSENT REVIEWS

This protocol outlines the Heritage Council's process for conducting Archaeological Consent Reviews (Consent Reviews) under s.126 of the *Heritage Act 2017* (the Act). Consent Reviews 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. Hearings will not be held into Consent Reviews.

Note on using the HCV Hub for Consent Reviews:

The HCV Hub is the Heritage Council of Victoria's online platform for interested persons to lodge forms and material to the Heritage Council in relation to its regulatory processes conducted pursuant to the *Heritage Act 2017*. All forms and review-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 material will be made available to review participants via the HCV Hub. Where a person or organisation is unable to access the HCV Hub for the purpose of lodging forms etc, 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. Request for a Consent Review

- 1.1 Under s.124(4) of the Heritage Act, the Executive Director may issue a consent to allow a person to undertake certain activities in respect of an archaeological site or artefact.
- 1.2 The Heritage Council may, on request, review a decision by the Executive Director to refuse to issue a consent or to impose terms and conditions on a consent [s.126(1)].
- 1.3 The following people may request the Heritage Council to review the Executive Director's decision:
 - (i) the person to whom the consent was issued or refused [s.126(1)(a)]
 - (ii) the owner of the site or artefact [s.126(1)(b)]
 - (iii) a government asset manager in respect of the site or artefact [s.126(1)(c)].
- 1.4 The request to the Heritage Council must be made by a person or entity that meets the definition of legal person, being a person (or entity) who enjoys, and is subject to, rights and duties at law.
- 1.5 The request to the Heritage Council must be in writing (see *Heritage Council Form H – Request for a Consent Review* available on the HCV Hub) and must be lodged within 28 days of the Executive Director's determination [s.126(2)(b)]. For the request to be valid, it must be accompanied by the prescribed fee.

2. The Consent Review

- 2.1 At least three (3) members of the Heritage Council will conduct the Consent Review (the Committee).
- 2.2 **Notification**
- 221 Upon receipt of a Consent Review request, the following people and organisations will be notified that a review will be held by the Committee:
 - (i) the Executive Director, Heritage Victoria;
 - (ii) the consent applicant;
 - (iii) the owner or government asset manager of the place or artefact;
 - (iv) the responsible authority for the area in which the place or object is located and, if the responsible authority is not a municipal council, the relevant municipal council;
 - (v) any person who the Heritage Council allows in order to inform itself.

2.3 Request for Information

- 2.3.1 The Committee will request the Executive Director to provide all information used in determining the terms and conditions of the consent or the refusal of the consent [s.126(3)].
- 2.3.2 The Committee will also provide the opportunity for others identified at 2.2.1 above to provide additional information that will assist the Committee in undertaking its Consent Review.
- 2.3.3 Information requested by the Committee must be provided within 21 days of the information request being made.
- 2.3.4 Information received by the Committee will be circulated to all those identified at 2.2.1 above and those people and organisations will be provided with a further 7 days in which to respond to matters raised in the further information.
- 2.3.5 If in the process of obtaining the additional information the Committee receives new information from the consent applicant that the Committee considers is material, the Heritage Council must remit the matter to the Executive Director for reconsideration [s.126(6)].

2.4 Meeting of the Committee

- 2.4.1 If the Committee considers it necessary, it will ask those people and organisations identified at 2.2.1 above to attend a meeting of the Committee.
- 2.4.2 The meeting will provide an opportunity for the Committee to directly ask questions of affected parties to assist the Committee in completing its review.
- 2.4.3 The meeting is not a hearing and will be informal. It will not involve the presentation of submissions or evidence and will not provide an opportunity for direct questioning between the attendees.

2.5 Matters to be Considered

- 2.5.1 The relevant matters to be considered in a Consent Review are those outlined in s.124(3) and s.124(7) of the Act.
- 2.5.2 Section 124(3) requires a consideration of:
 - (a) Any relevant archaeological, historical or other research; and
 - (b) The potential of the site or archaeological artefact to contribute to such knowledge.
- 2.5.3 Relevant policies prepared and adopted by the Executive Director in accordance with s.19(f) to guide consent decision-making will be considered when undertaking the review.
- 2.5.4 Section 124(7) identifies the terms and conditions a consent may be subject to:
 - (a) That the activity authorised by the consent be supervised by a person with appropriate professional qualifications and skills as specified in the consent.
 - (b) That archaeological artefacts found in the course of the activity authorised by the consent are to be conserved and curated in a way specified in the consent.
 - (c) Any other terms and conditions considered fit.

2.6 Site Inspection

- 2.6.1 The Heritage Council may conduct a site inspection as part of the Consent Review.
- 2.6.2 Ordinarily site inspections will be unaccompanied, except for the Hearings Coordinator. A representative of the owner may be in attendance if it is necessary to obtain access or for security reasons.

2.7 Withdrawals

- 2.7.1 A 'withdrawal' is a written notification from the person requesting the review that they no longer wish for the Committee to conduct a Consent Review.
- 2.7.2 The Committee must be notified of the withdrawal in writing as soon as practicable.
- 2.7.3 On receipt of notification of a withdrawal, the Committee will cease the Consent Review and the Executive Director's original determination will stand.

3. Determination of the Consent Review

- 3.1 The Committee must make a determination on the Consent Review within 60 days of the Consent Review request being made [s.126(7)].
- 3.2 In determining the Consent Review, the Committee may:
- (a) Affirm the determination of the Executive Director [s.126(5)(a)]
 - (b) Set aside the determination of the Executive Director and make another determination in substitution for it [s.126(5)(b)]
 - (c) Set aside the determination and remit the matter for reconsideration by the Executive Director in accordance with any directions or recommendations [s.126(5)(c)]
- 3.3 If the Committee determines under subsection 126(5)(b) to set aside the determination of the Executive Director and substitute it with a determination to issue the consent, the Executive Director must issue the consent within 5 business days of the Committee's determination.
- 3.4 A copy of the Committee's determination will be provided to all people and organisations involved in the matter 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.
- 3.5 Each person participating in the review is to bear their own costs. The Heritage Council is not able to award costs and determinations will not address any claims for costs.

4. Further Reference

- (i) *Heritage Act 2017* (<https://www.legislation.vic.gov.au/in-force/acts/heritage-act-2017/007>)
- (ii) Heritage Council Hearings Manager (phone (03) 8572 7949 or email heritage.council@transport.vic.gov.au)