

EXCLUSION DETERMINATION REVIEWS

This protocol outlines the Heritage Council's process for conducting reviews into Executive Director decisions to make or refuse to make an Exclusion Determination, under s.36E of the *Heritage Act 2017* (the Act). Exclusion Determination 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.

Note on using the HCV Hub for Exclusion Determination Reviews:

The HCV Hub is the Heritage Council of Victoria's online platform for interested persons to lodge forms and submissions 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, material will be circulated and made available to participants via the HCV Hub. Where a person or organisation is unable to access the HCV Hub for the purpose of lodging forms and submissions, 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 an Exclusion Determination Review

- 1.1 Pursuant to s.36C of the Act, after considering an application for an exclusion determination in relation to a place or object, the Executive Director must—
 - (a) make an exclusion determination as specified in an application, if the Executive Director is satisfied that the place or object has no reasonable prospect of inclusion in the Heritage Register [s.36C(1)(a)]; or
 - (b) make an exclusion determination in relation to part of the place or object, if the Executive Director is satisfied that the part of the place or object has no reasonable prospect of inclusion in the Heritage Register [s.36C(1)(b)]; or
 - (c) refuse to make the exclusion determination if the Executive Director is not so satisfied as mentioned in paragraph (a) or (b) [s.36C(1)(c)]
- 1.2 If the Executive Director makes or refuses to make an exclusion determination in relation to a place or object or part of a place or object, a person with a real and substantial interest in the place or object or the part of the place or object, in writing, may request the Heritage Council to review the Executive Director's decision [s.36E(1)].
- 1.3 If the Executive Director refuses to make an exclusion determination in relation to a place or object or part of a place or object, the applicant for the exclusion determination, in writing, may request the Heritage Council to review the Executive Director's decision [s.36E(3)].
- 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 made within 28 days after the written notice of the Executive Director's decision is given [s.36E(2)(a)].
- 1.6 The request to the Heritage Council must be accompanied by the prescribed fee, as set out in the *Heritage Regulations 2017* [s.36E(2)(b)].

2. The Exclusion Determination Review

- 2.1 At least three (3) members of the Heritage Council will conduct the Exclusion Determination Review (the Committee).
- 2.2 **Request for Information**
 - 2.2.1 Following receipt of a request for a review, the Heritage Council, in writing, may request that the Executive Director provide specified information in relation to the Executive Director's decision [s.36E(5)].
 - 2.2.2 The Executive Director must provide any information requested under s.36E(5) [s.36E(6)].

3. Determination of the Exclusion Determination Review

- 3.1 In determining an application under section 36E for review of a decision of the Executive Director to make, or refuse to make, an exclusion determination, the Heritage Council may—
- (a) affirm the decision under review [s.36F(1)(a)]; or
 - (b) set aside the decision under review and make another decision in substitution for it [s.36F(1)(b)]; or
 - (c) set aside the decision under review and remit the matter for reconsideration by the Executive Director in accordance with any directions or recommendations [s.36F(1)(c)].
- 3.2 The Heritage Council must determine a review of a decision by the Executive Director within 40 days of receiving a request for review [s.36F(2)].
- 3.3 The Heritage Council must give the applicant for review written notice of the outcome of a review within 7 days of the review, including a written statement of reasons for its decision [s.36F(3)].
- 3.4 In addition to the notice under subsection (3), the Heritage Council must give written notice of the outcome of a review to—
- (a) the owner of the place or object or the part of the place or object [s.36F(4)(a)]; and
 - (b) the applicant for the exclusion determination concerned (if they are not notified under subsection (3)) [s.36F(4)(b)]; and
 - (c) the responsible authority for the area in which the place or object or the part of the place or object is situated and, if the responsible authority is not a municipal council, the relevant municipal council [s.36F(4)(c)]; and
 - (d) the Executive Director [s.36F(4)(d)].
- 3.5 A copy of the determination will be made available through the Heritage Council's website and Australian Legal Information Institute's Victorian Law Resources at www.austlii.edu.au.
- 3.6 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)