

Local government's role in heritage protection – An introduction for councillors



Acknowledgement

We acknowledge the Traditional Owners of the Country that we call Victoria, as the original custodians of Victoria's land and waters, and acknowledge the importance and significance of Aboriginal cultural heritage. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of Aboriginal culture and traditional practices.

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The importance of heritage to local government

'Our heritage is a part of who we are. It's what we inherit, appreciate today and think is important to protect and pass on to future generations.' Heritage Council of Victoria, *What is heritage?*, 2022

Many different types of places and objects can have heritage values, including:

an individual building or site



a tree or garden



a bridge



a heritage precinct



an industrial building or factory



a dry stone wall



Heritage is important to local government because:

- it sits at the heart of community identity, contributing to a 'sense of place'
- it provides continuity within our ever-changing built and natural environment
- heritage places are tangible reminders of our connection to the past
- heritage contributes to tourism, economic prosperity and environmental sustainability.

'Places of cultural significance enrich people's lives...telling us about who we are and the past that has formed us...They are irreplaceable and precious.' The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013

Victorians overwhelmingly value their history, their cultural heritage and their heritage assets. Heritage is part of what makes a municipality distinctive and attracts people to the area. Heritage assets are integral to tourism promotion and economic prosperity. Of all the heritage places protected in Victoria, **90%** are protected at the local level.

Top 5 Tips to get the most out of your local heritage

1

Champion heritage! Acknowledge and celebrate the contribution of heritage to your neighbourhood character, liveability and community identity. Promote heritage through communication channels, incorporate it into events, programs or design awards and ensure heritage is a key consideration in your Council Plan.

2

Promote an organisational understanding of heritage across your council. Heritage protection is the responsibility of planners, engineers, asset managers and others. Regular heritage awareness sessions will ensure continuity of knowledge among staff. The preparation and regular review of a council-wide Heritage Strategy will help deliver an aligned organisational understanding.

3

Use your heritage advisor! Procure expert heritage advice from a qualified heritage specialist. They can help all council staff (not just planners) and community members to understand, manage and promote cultural heritage in your community.

4

Lead the community by example. Demonstrate best-practice heritage management of your own local heritage assets, from community halls to parks and gardens.

5

Support owners and managers of heritage assets to encourage compliance and achieve best-practice management and good conservation outcomes. Providing access to free heritage advice and a grants scheme are examples of cost-effective ways to provide support and gain promotional opportunities.

What types of heritage issues does local government deal with?

Heritage studies and planning scheme amendments

Councils have a statutory responsibility to prepare and complete heritage studies across their municipality to identify what is of heritage value. Identified places are subject to a rigorous planning scheme amendment process, often with an independent review panel, to include them in the Heritage Overlay. This process does take time and resources and may be met with community opposition but it ensures council meets its duty to conserve places of special cultural value.

Regularly conducting and reviewing heritage studies and undertaking planning scheme amendments avoids council exposure to reputational and financial risk.



Planning permit applications

As the responsible authority, councils regularly make decisions on planning and subdivision permit applications. Places in the Heritage Overlay are likely to require a planning permit for external changes or extensions. Interiors are very rarely subject to local heritage controls, but some places may have controls over the garden or particular trees. Landscape features such as dry stone walls or farm buildings require consideration and careful design solutions in major development and subdivision proposals.

Councils must consider the Statement of Significance for the place and understand what parts contribute to the significance to ensure the place is not adversely affected by the proposed works. Expert advice from council's heritage advisor will assist in making an informed decision.



Interim Heritage Overlays

Occasionally, a council is required to 'report and consent' under section 29A of the *Building Act 1993* for demolition of a building or structure identified as potentially of heritage significance but with no protection in place. Section 29B allows for suspension of the demolition application if an application is made to the Minister within 15 business days to amend the planning scheme by introducing an interim Heritage Overlay. This gives temporary protection to the building while it is determined whether permanent protection is warranted.

Interim Heritage Overlays can be costly and time consuming if prepared on an ad-hoc basis in a reactive way. Councils can avoid these situations by having high-quality, current and comprehensive heritage studies and up-to-date Heritage Overlay schedules.



Maintenance and management of council-owned heritage assets

Demonstrating best-practice heritage management allows councils to lead by example and educate the community about the process.

The use and maintenance of council assets, from town and community halls to bridges and botanic gardens, is core business for councils. There must be good intra-council knowledge of the heritage status of council assets, whether local, state or national. Regardless of municipal exemptions, a heritage specialist (such as a heritage advisor) or council planning specialist should be consulted early in any project planning to ensure best-practice heritage management is followed.



Demolition by neglect

Owners sometimes fail to maintain their heritage asset, allowing it to deteriorate until demolition is proposed. This may be deliberate or driven by other pressures on the owner.

Unless action is taken by the municipal council, the irreversible loss of a heritage place may occur, exposing councils to reputational risk.

Strategies to prevent this include encouraging adaptive reuse of sites and providing financial incentives.

The *Planning and Environment Act 1987* also now enables planning schemes to make provision to deter or prevent people from benefitting from the unlawful demolition of heritage buildings or allowing them to fall into disrepair.



Illegal works

Unauthorised works may cause the permanent loss or damage to parts of a place that are significant and valued.

Unauthorised works may include development, demolition, works under the guise of 'maintenance', or failure to comply with the conditions of a planning permit. Councils have a statutory responsibility to enforce the planning scheme and take action where needed.

Resourcing council enforcement officers sufficiently will assist in the deterrence of unauthorised works. Proactively ensuring the community and property owners have access to clear information on appropriate and permitted works to heritage assets will reduce the likelihood of unauthorised works due to ignorance.

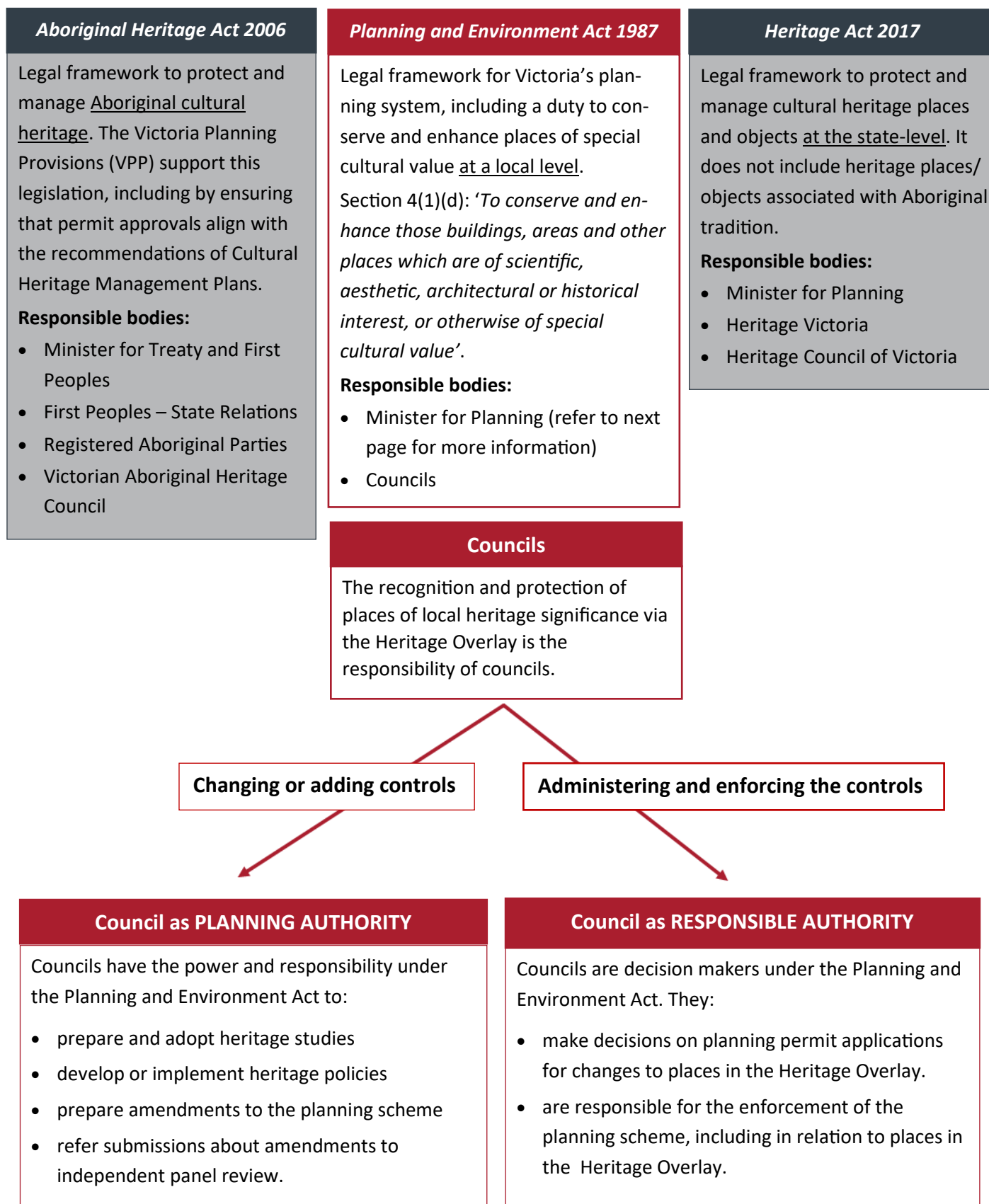


Overview of heritage protection and legislation in Victoria

Heritage in Victoria is primarily managed under three Acts.

Different governing bodies are responsible for different types of heritage protection.

This document focuses primarily on heritage protection under the Planning and Environment Act.



Local government responsibilities

186,000 plus = the number of properties protected by the Heritage Overlay across Victoria in 2019.

Locally significant places are protected via the Heritage Overlay at clause 43.01 of the planning scheme. Clause 52.33 specifically protects post boxes and dry stone walls. Councils are responsible for proposing what to include in the Heritage Overlay and making decisions about changes to places in the Heritage Overlay.

This is supported by state planning policy at clause 15.03-1S, in all planning schemes, which states that planning should, among other things:

- *'Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.'*
- *'Provide for the conservation and enhancement of those places ... of special cultural value.'*
- *'Encourage appropriate development that respects places with identified heritage values and creates a worthy legacy for future generations.'*

The Minister for Planning is also bound by these objectives but has different powers and responsibilities.

Council responsibilities	Minister for Planning responsibilities
<ul style="list-style-type: none">• Prepares, consults with the community and adopts heritage studies to identify and assess places of local significance, consistent with a council Heritage Strategy.• Prepares and progresses planning scheme amendments.• Regularly reviews and improves heritage provisions (local policies, schedules and controls) as part of planning scheme review cycle.• Assesses and determines planning permit applications triggered by the Heritage Overlay.• Enforces compliance with planning permits and stops and pursues the reversal of unauthorised works.	<ul style="list-style-type: none">• Authorises municipal councils to prepare amendments to planning schemes.• Approves amendments to planning schemes.• May prepare an amendment to a planning scheme.*• May take responsibility for a planning permit application being assessed by council.*• May take responsibility for a planning permit application before the Victorian Civil and Administrative Tribunal (VCAT).* <p>* Powers only used in certain circumstances.</p>

What are the risks?

Financial risk

Where heritage is overlooked, not adequately managed or funded by a council, there is significant financial risk to councils, owners and communities alike. Councils that do not proactively manage their heritage by allocating sufficient skilled resources and funds can suffer wasted time and costs at a higher number of VCAT or planning panel hearings, defending inadequate action. The cost of legal representation and wasted officer work is substantial. Additionally, Council-owned or managed heritage assets become significantly more costly to repair over time if not properly maintained.

Risk of enforcement and compliance action

Councils may risk enforcement and compliance action by the relevant authority if obligations, for example under the *Heritage Act 2017* or the *Aboriginal Heritage Act 2006*, are not met. A council failing to meet its obligations can result in costly enforcement fines and reparation works.

Risks to the public

When heritage assets are neglected and become derelict as a result of inadequate protection, management or maintenance, there may be a direct risk to the safety of the public.

Reputational risk

Communities expect their council to protect significant heritage places and assets and make good decisions about changes to heritage places. Councils must also look after their own heritage assets, including buildings, parks, monuments and gardens. Councils may experience criticism in the press and negative social media attention if a heritage place is demolished, inappropriately developed or if council heritage assets are not maintained.

Case studies

Merri-bek City Council (formerly Moreland) Bluestone Policy

Bluestone is a part of Merri-bek's landscape and history. Bluestone quarries provided the local material for bridges, laneways, kerb and guttering, as well as houses, churches, municipal buildings and the iconic Pentridge Prison. The municipality contains 67.2 kilometres of bluestone laneways, of which at least 20 kilometres are in the Heritage Overlay.

In 2011, a new council policy was instigated to concrete all non-heritage-listed bluestone laneways. The decision was based on a strong engineering preference for concrete and dominated by cost and ease of construction. However, the policy provoked widespread community backlash, with 90% of residents voting to retain all bluestone laneways in a 2012 council survey because the laneways are valued, regardless of whether or not they are included in the Heritage Overlay. Furthermore, the policy would have destroyed bluestone fabric in areas of potential heritage significance that had not yet been assessed and considered for inclusion in the Heritage Overlay.

In 2013, the council reversed its policy and voted to maintain the 'entire bluestone laneways network'. Council now renews laneways using the same stones and makes footpath crossings smooth with cut stone.

Learnings:

- Public assets can be highly valued, even if not heritage listed, so community consultation is essential.
- Ensure there is an organisation-wide understanding of heritage.
- Heritage strategies and reviews are essential to understanding where gaps may be in Heritage Overlays and what the current community values.

Dahua Epping Development Pty Ltd v Whittlesea CC — VCAT decision

This is a large and complex subdivision proposal affecting a number of early, rural heritage farmsteads connected in a cohesive linear precinct along one road, in a precinct structure plan area in the City of Whittlesea.

In 2020, two permit applications were lodged for the staged subdivision of land into 205 residential lots, four super lots and open space reserves. The applications included vegetation removal and the demolition of buildings and fabric in the Heritage Overlay, including dry stone walls. At appeal, VCAT found that despite the proposed retention of four heritage farmhouses, it was not satisfied that the overall design constituted an acceptable response. VCAT agreed with the council's evidence that insufficient regard was given to other significant heritage fabric, including outbuildings, dry stone walls and other works associated with the farmhouses. VCAT was not satisfied that the removal of heritage fabric was appropriate and concluded that the subdivision layout was not designed to provide for its retention. No permits were issued.

The case demonstrates how good heritage outcomes can be achieved with current and comprehensive heritage studies that are translated into the Heritage Overlay and planning scheme policies. The council was able to rely on detailed heritage assessments and robust policies to provide appropriate evidence to support its position.

Learnings:

- Heritage can be successfully defended with high-quality, comprehensive research and assessment by qualified experts.
- Large-scale developments must consider heritage conservation outcomes from the outset, providing certainty for all stakeholders, reducing planning approval delays and delivering community heritage results.

Esme Johnston House

In 1928 Esme Johnston designed her own distinctive Tudor-style house. The property was first identified in 1986 as being of potential local significance but no heritage controls were applied. Subsequent heritage studies undertaken by the council in 1999 and 2005 did not re-assess the potential individual heritage value of the property.

In 2011, the property changed ownership and a demolition request followed. This triggered a public campaign to protect the house. The campaign generated costly and time consuming assessments of the site's significance at both local and state government level and ultimately resulted in its inclusion in the Heritage Overlay in 2020.

The owners spent hundreds of thousands of dollars fighting their case. A similar amount of money was spent by the council on the case.

Learnings:

- Failure to support heritage assessments in the early stages or progress planning scheme amendments may result in the need to conduct an eleventh hour assessment at a much higher price.
- The cost of defending reactive assessments is a significant burden on owners, councils and taxpayers alike.
- Completing full and proper assessments of places of potential significance and pursuing appropriate planning scheme amendments provides certainty to current property owners, potential owners and the community.

Heritage misconceptions and facts

Misconception	Fact
<p><i>It is illegal to heritage list places, objects or sites in Victoria</i></p> <p><i>The listing of privately owned heritage places impinges on human and property rights</i></p>	<p>The protection, conservation and management of heritage assets are established in Victorian legislation, including the <i>Planning and Environment Act 1987</i>, <i>Heritage Act 2017</i> and <i>Aboriginal Heritage Act 2006</i>. The protection of Victoria's heritage places does not impinge on the rights of owners to use, enjoy and maintain their properties in accordance with the relevant legislation.</p>
<p><i>A heritage listing means alterations, renovations and extensions are not permitted.</i></p>	<p>Heritage controls do not treat places as museums but aim to manage change appropriately. At a local level, most places do not have interior controls, making a broad range of upgrades possible without planning approval.</p> <p>External changes and extensions to heritage places are likely to require approval but with early assistance from a heritage advisor and/or council planner, appropriate design is achievable.</p>
<p><i>A heritage listing will automatically devalue my property.</i></p>	<p>A heritage listing is one of a multitude of factors which may impact an individual property's value, and research has shown that heritage listing of itself does not necessarily have a negative impact on property values (see, for example, Impacts of heritage listing on residential property value, ACT Government Fact Sheet).</p> <p>Heritage Overlays, particularly over a group of properties, provide greater certainty regarding the level of change that can occur in the neighbourhood. This is highly valued and can contribute to increased property values.</p>
<p><i>Only Victorian and Edwardian-era buildings are worth heritage listing</i></p>	<p>Local heritage listing is based on a place's heritage values (historical, aesthetic, technical or social) and significance to the municipality. This means that many different types of places – from early 1850s cottages to Art Deco theatres to post-modern houses – may be worthy of heritage listing if they demonstrate these heritage values.</p>
<p><i>There is an obligation / expectation that owners will restore their property if it is included in the Heritage Overlay.</i></p>	<p>Council has no ability to enforce the restoration of a place included in a Heritage Overlay. Heritage controls are in place to ensure that the identified significance of a place is protected through any change.</p>
<p><i>Councils are powerless to stop demolition where heritage controls are not yet in place.</i></p>	<p>Section 29B of the Building Act allows for the suspension of a demolition application if a council makes an application to the Minister within 15 business days to amend the planning scheme by introducing an interim Heritage Overlay. This gives temporary protection to the building while it is determined whether permanent protection is warranted.</p>
<p><i>A heritage listing means owners can't make their property more sustainable or add items such as solar panels to my roof.</i></p>	<p>Heritage listing does not mean that you cannot add elements such as double glazing, solar panels or rainwater tanks to your building. It will control how or where these elements can be incorporated into the building, but with early assistance from a heritage advisor and/or council planner appropriate placement should be achievable.</p>

Further information

Department of Transport and Planning (DTP) – planning.vic.gov.au

The Minister for Planning is responsible for a range of functions, and in certain circumstances has the power to intervene on matters, associated with planning and heritage processes. These powers are provided for under the *Planning and Environment Act 1987*, the *Heritage Act 2017* and the *Victorian Civil and Administrative Tribunal Act 1998*. The Planning group within DTP coordinates the long-term vision for the spatial pattern of land use and built form in Victoria and enables integrated activity to unlock economic opportunity and optimise positive social and environmental outcomes for Victorians, including Victoria's local heritage.

Heritage Council of Victoria – heritagecouncil.vic.gov.au

The Heritage Council of Victoria is an independent statutory body that provides legal protection for places and objects of cultural heritage significance to the State of Victoria. Its role is to ensure that our diverse cultural heritage is enjoyed, managed and protected for current and future generations. The Heritage Council determines the places and objects that are added to or removed from the Victorian Heritage Register. It is also the review body for permit and archaeological consent decisions made by Heritage Victoria.

Municipal Association of Victoria – mav.asn.au

The Municipal Association of Victoria (MAV) is the legislated peak body for Victorian local government. The MAV advocates for the interests of local government, helps build council capacity and provides advice and support to councils.

Other relevant agencies and organisations

First Peoples – State Relations – firstpeoplesrelations.vic.gov.au

Heritage Victoria – heritage.vic.gov.au

Victorian Aboriginal Heritage Council – aboriginalheritagecouncil.vic.gov.au

Resources and references

Applying the Heritage Overlay, Planning Practice Note 1 – planning.vic.gov.au/_data/assets/pdf_file/0030/96555/PPN01-Applying-the-Heritage-Overlay.pdf

Local heritage protection provisions in the Planning and Environment Act 1987, Planning Practice Note 95 – www.planning.vic.gov.au/_data/assets/pdf_file/0024/573423/PPN95-Local-heritage-protection-provisions_May_2022.pdf

Municipal Heritage Strategies: A guide for councils – planning.vic.gov.au/_data/assets/pdf_file/0023/514940/Municipal-Heritage-Strategies-guide.pdf

Office of the Victorian Government Architect: Good Design + Heritage – ovga.vic.gov.au/good-design-heritage-issue-7

State of Heritage Review: Local Heritage 2020 – heritagecouncil.vic.gov.au/research-projects/the-state-of-heritage-review-local-heritage

For more information about Victoria's heritage and the importance of its protection also see the resources in the Heritage Information Pack – heritagecouncil.vic.gov.au/heritage-protection/heritage_info_pack/

