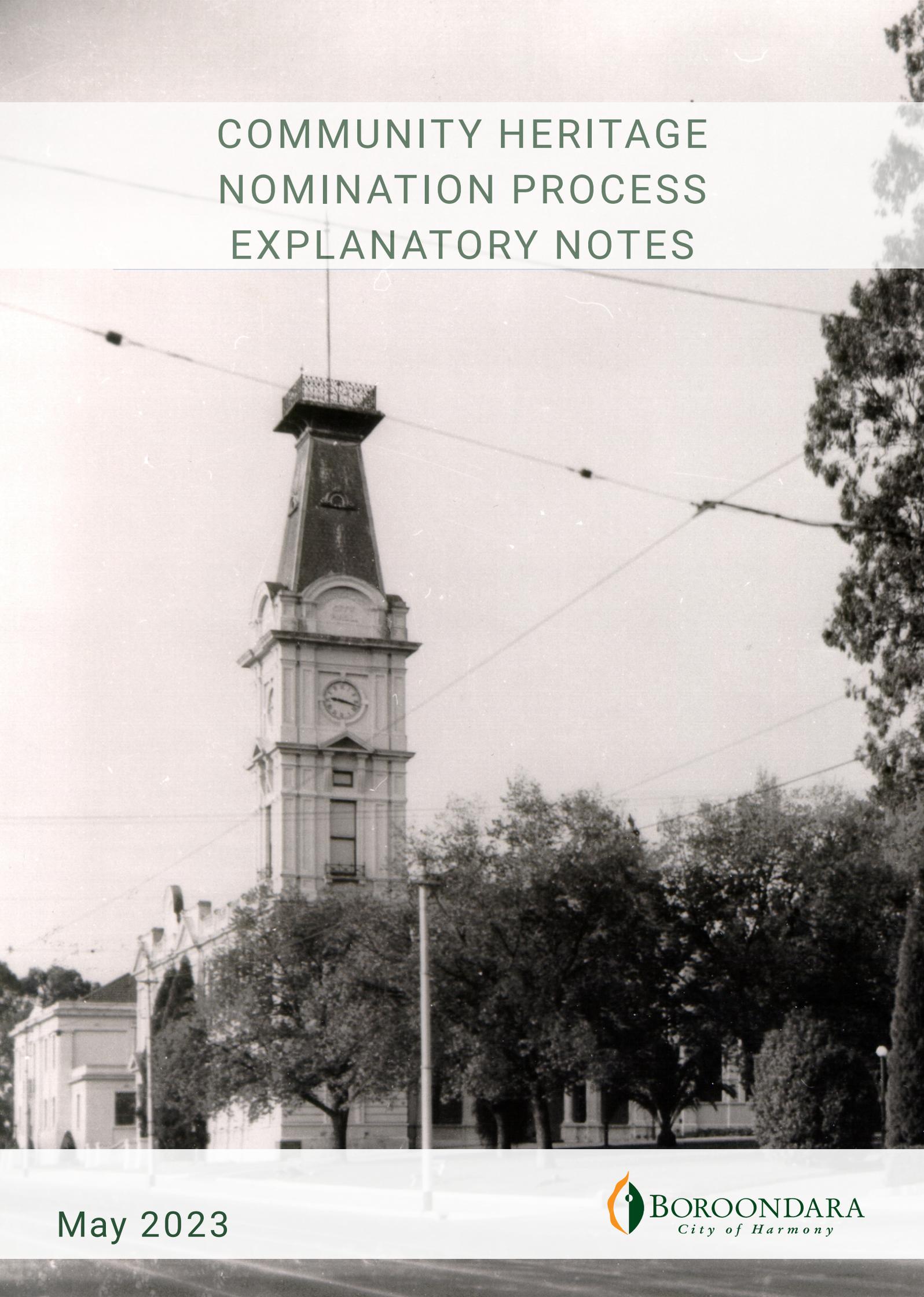


COMMUNITY HERITAGE NOMINATION PROCESS EXPLANATORY NOTES



May 2023



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INTRODUCTION

Council has adopted a formal process for accepting, considering and processing nominations of possible heritage places by members of the community.

The nomination process provides a clear framework to determine which community nominations are accepted for assessment and how the assessment of nominated places will be progressed.

Acceptance of nominations is based on whether new information about a nominated place's potential heritage significance is available. This will ensure nominated places have the highest chance of being included in the Heritage Overlay. It will also avoid inappropriate and unwarranted repeat assessments of properties or unsubstantiated nominations being lodged.

Council's approach to community heritage nominations is driven by a strong commitment to customer service to provide clarity and transparency to owners and the community. This includes informing property owners throughout the process, the relevant considerations and processing heritage assessments in a timely manner.

The nomination process also recognises that despite the comprehensive nature and successes of the Municipal-Wide Heritage Gap Study some properties worthy of protection may have been missed or critical information may not have been available at the time of the study.

These Process Explanatory Notes provide additional information and detail to be read in conjunction with the process flow chart (p.5). The notes are structured around the following parts:

- Background
- Nomination process flow chart
- Lodgement and initial review
- Consideration of new information
- Implementation processes
- Notification of property owners and nominators
- Planning Scheme amendment process
- Consideration of grading changes

BACKGROUND

MUNICIPAL WIDE HERITAGE GAP STUDY

In 2016, Council resolved to undertake the MWHGS - a proactive and comprehensive suburb-based heritage study that would assess all areas not included in the Heritage Overlay at the time. The assessment of suburbs was prioritised through the newly adopted Heritage Action Plan 2016.

The suburbs of Balwyn, Balwyn North, Deepdene and Surrey Hills were not included in the MWHGS as they had been subject to recent heritage studies.

Completed in late 2022, the MWHGS allowed Council to protect more than 5,000 additional properties through inclusion in the Heritage Overlay. Together with the approximately 10,000 properties already protected prior to the study, only the Cities of Yarra and Port Phillip have more properties included in Heritage Overlays.

COMMUNITY REQUESTS FOR HERITAGE PROTECTION

In the later stages of the MWHGS, Council started receiving increasing numbers of requests from community members and community groups to protect additional properties or streets through the Heritage Overlay.

Many of these requests related to properties, streets or areas already considered and assessed through the MWHGS. The heritage significance of some nominated places had already been tested through a planning scheme amendment process which found they did not meet the required threshold for heritage protection. In many instances, nominations were lodged in response to a specific planning permit application, a property being for sale or due to general concern about change occurring in the area.

In the absence of a formal nomination process and a clear framework for consideration, such nominations were dealt with on an ad-hoc basis. This resulted in an inefficient way of identifying and managing possible heritage places.

Like previous experience, Council was again facing challenges in getting support from the Minister for Planning and their department with several interim Heritage Overlay and authorisation requests for places nominated by community members being refused.

The increasing number of nominations also meant that other important strategic planning work was delayed while the ad-hoc heritage assessments were prioritised.

A more strategic, coordinated and transparent process was required to manage heritage nominations.

PART 1 - THE NOMINATION PROCESS

The community heritage nomination process provides an efficient, consistent and transparent approach to considering and assessing nominations of places for heritage protection.

A clear framework allows Council to focus resources on those properties and precincts missed in previous studies or where new information is available. It ensures Council will pursue protection for those properties with the greatest chance of being successfully added to the Heritage Overlay. It also recognises the range of stakeholders potentially impacted including property owners and other residents. The process also increases the likelihood of support from the Victorian Planning Minister.

The process is based on the following key principles:

- The outcomes and recommendations of the Municipal Wide Heritage Gap Study as a primary consideration.
- A strong commitment to customer experience by keeping the property owner(s) and nominator(s) informed throughout the process.
- Heritage nominations will be processed as quickly as possible to provide certainty to both property owners and the community.
- Provision of clear information to all parties explaining the steps to be followed and the considerations which apply to assessing nominations for properties to be included in a Heritage Overlay.

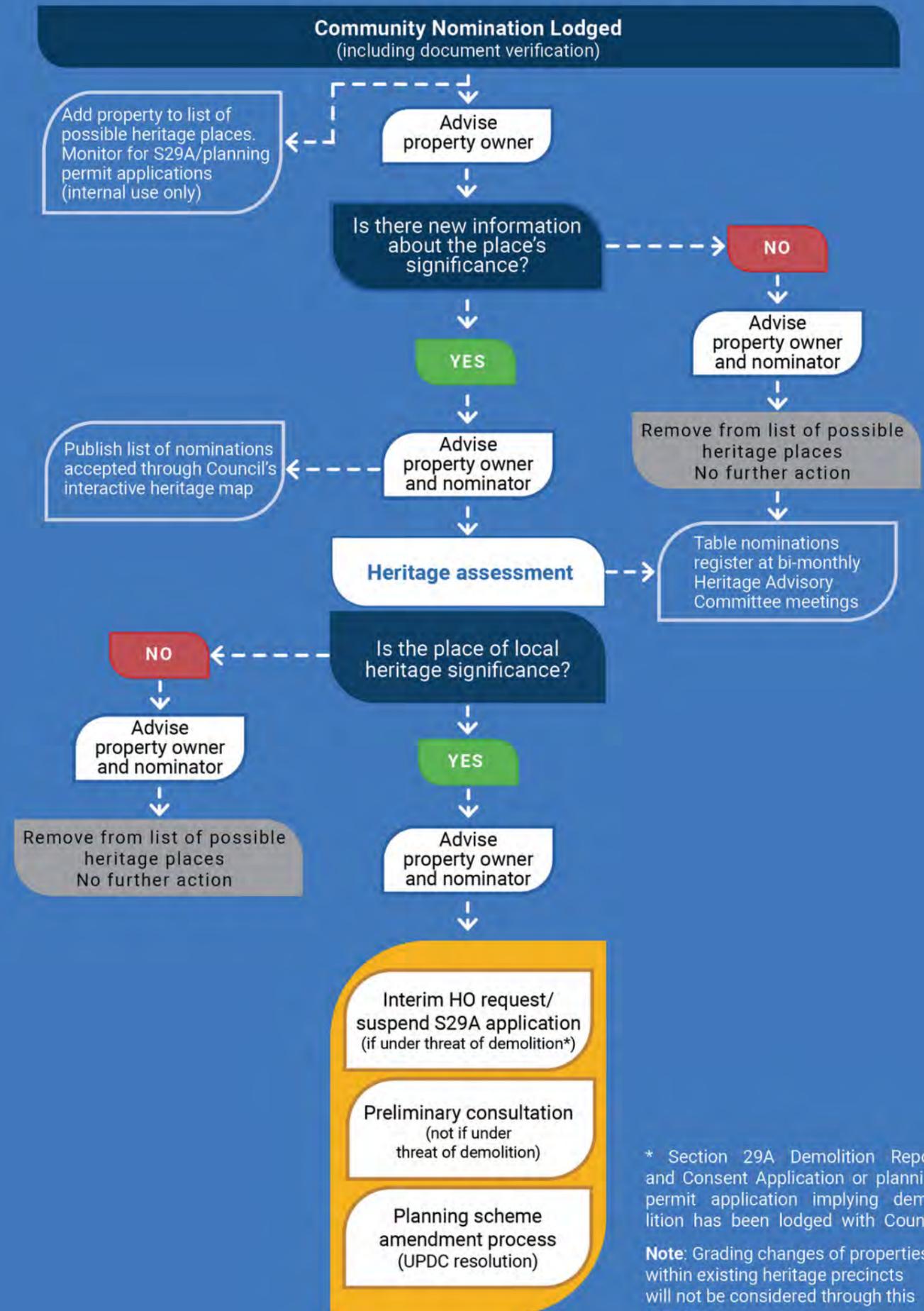
The flow chart on the opposite pages sets out the overall process and must be read in conjunction with these explanatory notes.

Parts 2 to 5 of these Explanatory Notes provide a detailed discussion of the process including the eligibility criterion and stages of the nomination process.

Part 6 provides an overview of the planning scheme amendment process (permanent and interim Heritage Overlay) which is required to formally include a property in the Heritage Overlay under the Boroondara Planning Scheme.

Implementation of the process relies on appropriate heritage resourcing including designated senior and support heritage staff and budget to fund heritage experts, assessments and planning scheme amendments.

COMMUNITY HERITAGE NOMINATION PROCESS



* Section 29A Demolition Report and Consent Application or planning permit application implying demolition has been lodged with Council

Note: Grading changes of properties within existing heritage precincts will not be considered through this process.

PART 2 - LODGEMENT & DOCUMENT VERIFICATION

Nominations must be lodged using the online nomination form at

www.boroondara.vic.gov.au/heritage-nominations

Using the online form, the nominator will be required to provide the following mandatory information:

- Personal contact details (name, address, email and phone number).
- Supporting information and documentary evidence to support the nomination.
- Information about whether the place is under imminent threat (as relevant and where available).
- Proof of identity

Officers will review the application (with advice from Council’s heritage consultant as required) to ensure it is complete and supported by the required documents.

If a nomination is incomplete, it will not be accepted and the nominator will be advised in writing.



PART 3 - CONSIDERATION OF NEW INFORMATION

The key consideration in determining whether a nomination is accepted for detailed assessment is whether new information is available about the place's potential heritage significance.

New information or documentary evidence must be provided to support the nomination. Nominations without supporting information or documentary evidence cannot be considered.

In assessing the information provided in support of a nomination, Council will consider whether:

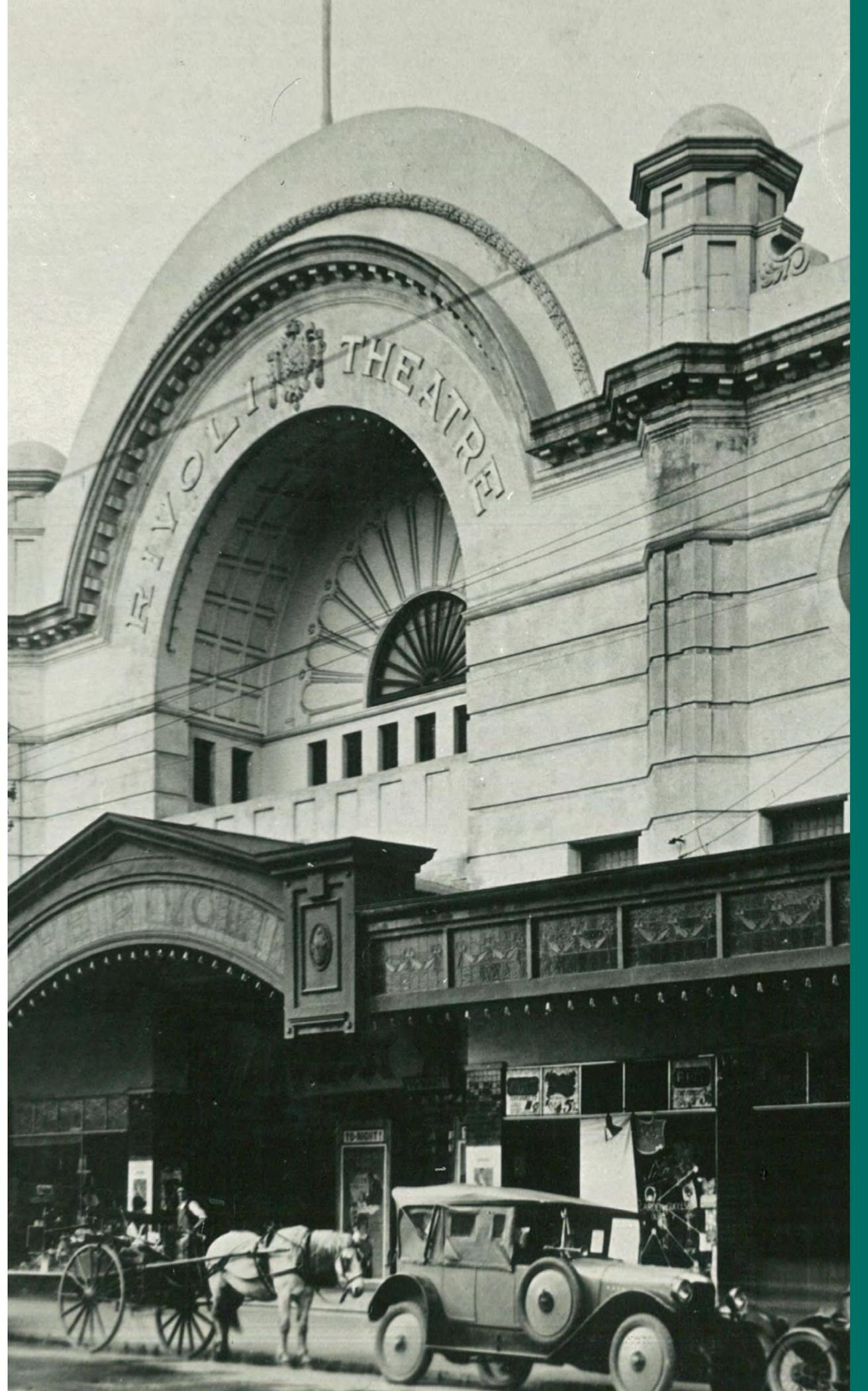
- the nominated place was subject to previous documented assessments (including as part of heritage studies) by Council's heritage consultant.
- the information clearly substantiates the potential heritage significance of the nominated property under any of the [recognised heritage criteria](#) (Appendix 1).
- the information provides a different perspective on the place's potential heritage value and significance.
- the information is likely to change any previous recommendations to not include a place in the Heritage Overlay.

Nominators are not required to provide a detailed report or heritage assessment from a heritage consultant. However, if such a report was available, it would assist Council in determining whether a further heritage assessment is warranted.

Council will notify the owner when a nomination has been received (following the initial review being undertaken to ensure the nomination contains the required information). The owner will be provided with the information on what grounds the nomination was made and the process to be followed.

Both the owner and nominator will be advised in writing, if the nomination is accepted and a heritage assessment is being undertaken (following the initial review). The written notification of a nomination will explain the next steps in the process and possible timing (where known).

Where a nomination is not accepted, the nominator will be provided with an explanation as to why it was not considered new information.



PART 4 - IMPLEMENTATION PROCESS

Once a nomination is lodged Council will:

- Undertake an initial review to ensure the application is genuine and accompanied by all the required information.
- Add the property to Council's internal list of possible heritage places (immediately following the initial review) to allow monitoring for any Report & Consent demolition application under Section 29A under the *Building Act 1993* or planning permit application implying demolition.
- Notify the affected property owner that a nomination has been received following the initial review.
- Review the supporting information provided to determine whether it can be considered new information.

If the information is considered new, Council will:

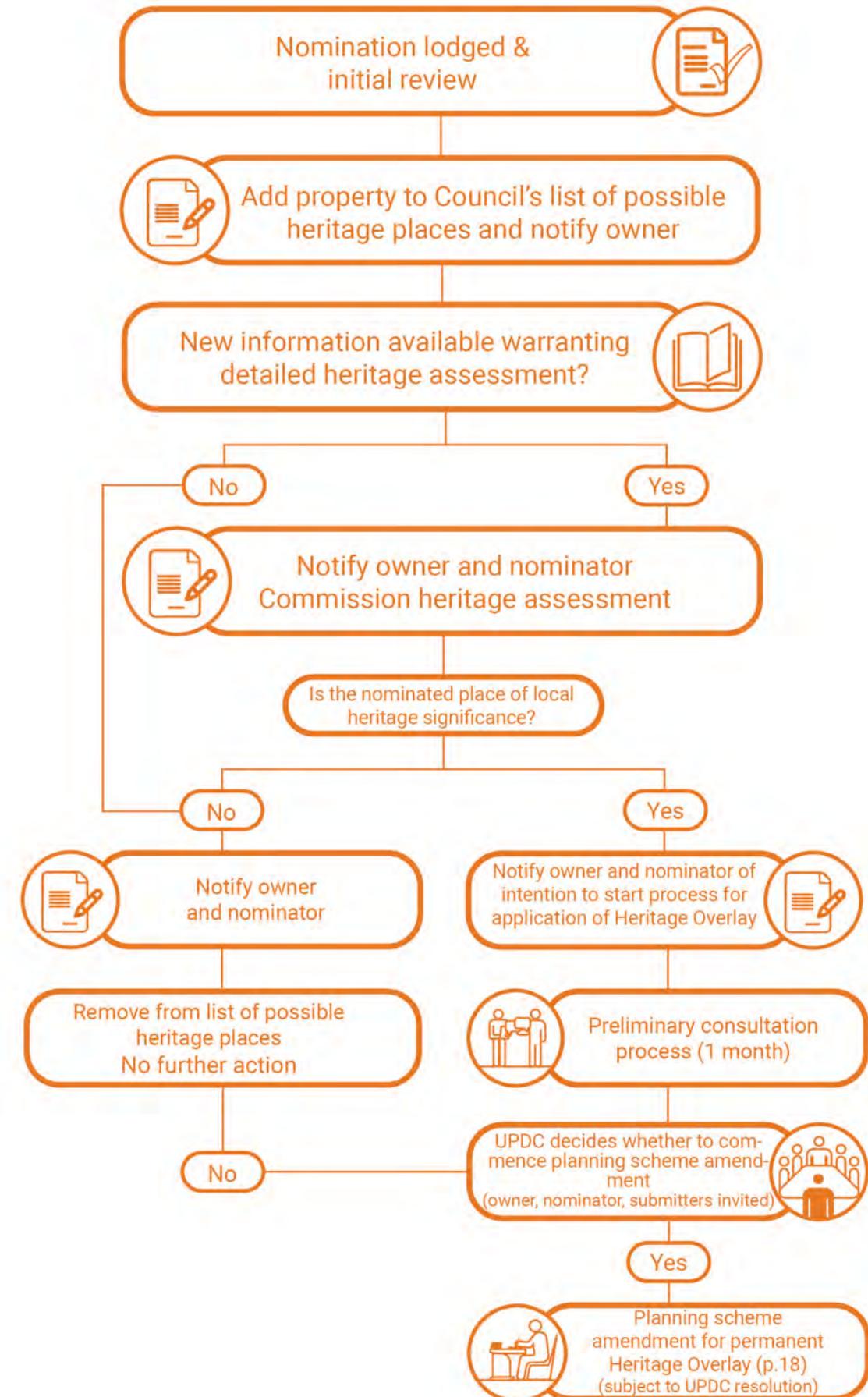
- Notify the property owner and nominator that the nomination has been formally accepted.
- Commission Council's heritage consultant to carry out a heritage assessment of the place to determine whether it warrants inclusion in the Heritage Overlay and prepare relevant documentation as required.

If a place is assessed as meeting at least one of the HERCON Criteria, inclusion of the place in a Heritage Overlay on a permanent basis will progress in accordance with Council's standard process, including:

- 1-month preliminary consultation with affected property owners/occupiers and other interested parties (including the nominator) seeking feedback on the draft heritage assessment.
- Upon completion of the preliminary consultation prepare a report for consideration by the UPDC whether to adopt the study and commence a planning scheme amendment to apply the Heritage Overlay permanently to the recommended properties.

If a place is not considered to meet the threshold for inclusion in the Heritage Overlay, Council will notify the affected property owner(s) and nominator to advise of the outcomes of the heritage assessment. No further action will be taken.

The flow chart on the opposite page outlines the steps and decision points for nominated places.



PLACES UNDER THREAT OF DEMOLITION

Where a nominated property is under threat of demolition, Council will follow a more streamlined process to ensure the building can be adequately protected.

A place is considered ‘under threat’ of demolition where the following has been lodged with Council:

- A Report and Consent Application for demolition under Section 29A of the *Building Act 1993*; or
- A planning permit application implying full or partial demolition.

Places advertised as ‘for sale’ are not considered to be under threat of demolition until one of the above applications is lodged with Council.

Where a nominated place is under threat of demolition Council will commission an urgent heritage assessment (within 15 business days from the S29A lodgement date) to determine whether the property warrants inclusion in a Heritage Overlay.

If the assessment concludes that the nominated place is of local heritage significance, Council will:

- Lodge a request under Section 20(4) of the *Planning and Environment Act 1987* to include the property in an interim Heritage Overlay (where supported by the heritage consultant’s assessment).
- Suspend consideration of the S29A demolition application.
- Prepare an UPDC report to commence the formal amendment process for a permanent Heritage Overlay. Property owner(s), nominator(s) and broader community (incl. adjoining property owners/occupiers, community groups, historical societies) will be invited to the relevant UPDC meeting and can address the UPDC, if they wish. No preliminary consultation will be carried out to facilitate a timely decision.

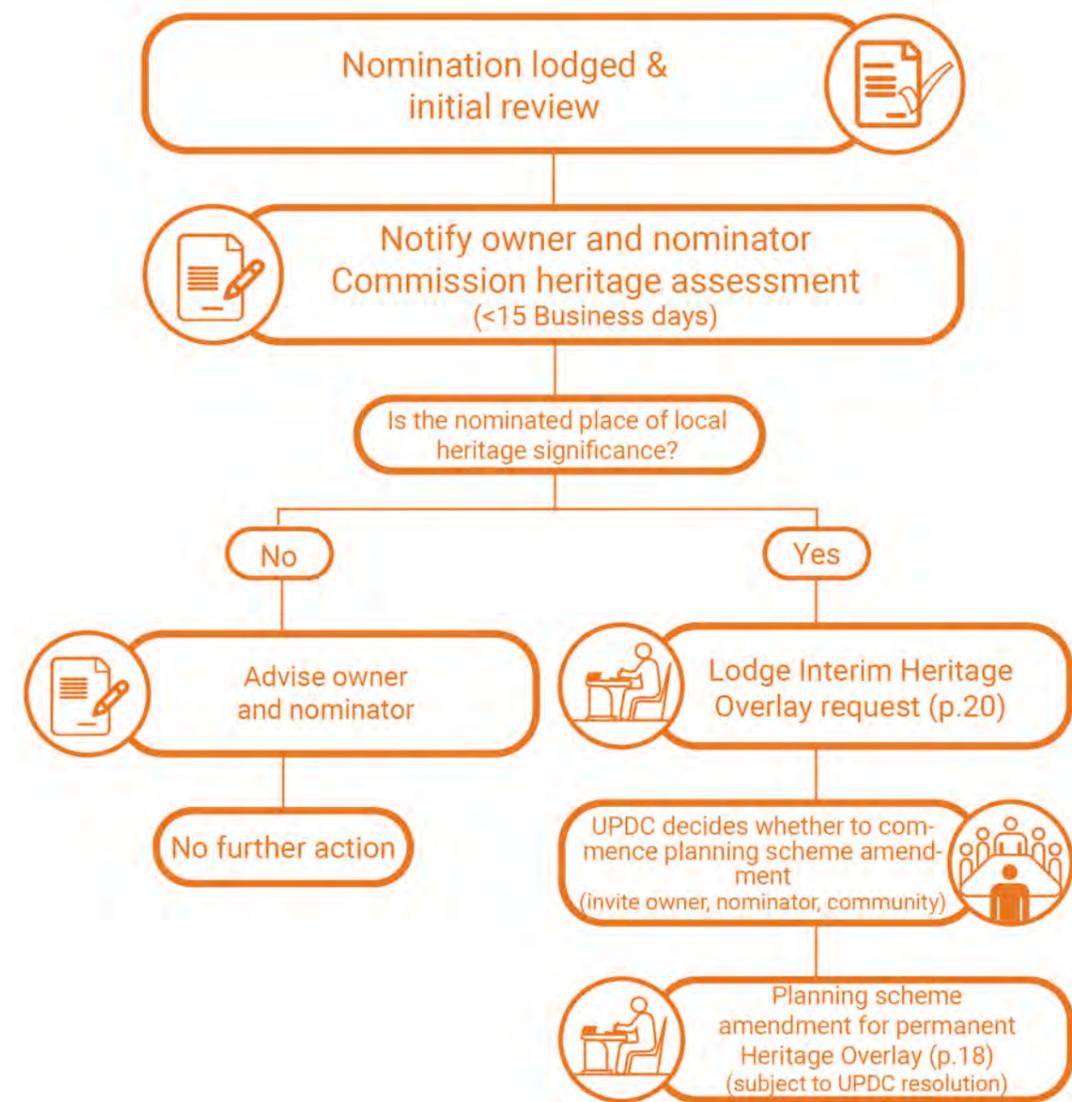
If the assessment concludes that the nominated place is not of local heritage significance, Council will:

- Consent to the demolition (which allows the issuing of a Building Permit to legally demolish the place)
- Write to the property owner and nominator advising of the outcomes of the assessment.

In those instances, Council will not pursue the inclusion of the property in the Heritage Overlay.

Where a nominated place is subject to a planning permit application, heritage matters can only be taken into consideration when an interim Heritage Overlay is approved by the Minister for Planning prior to a decision being made on the application.

The flow chart below outlines the steps and decision points for nominated places that are under threat of demolition.



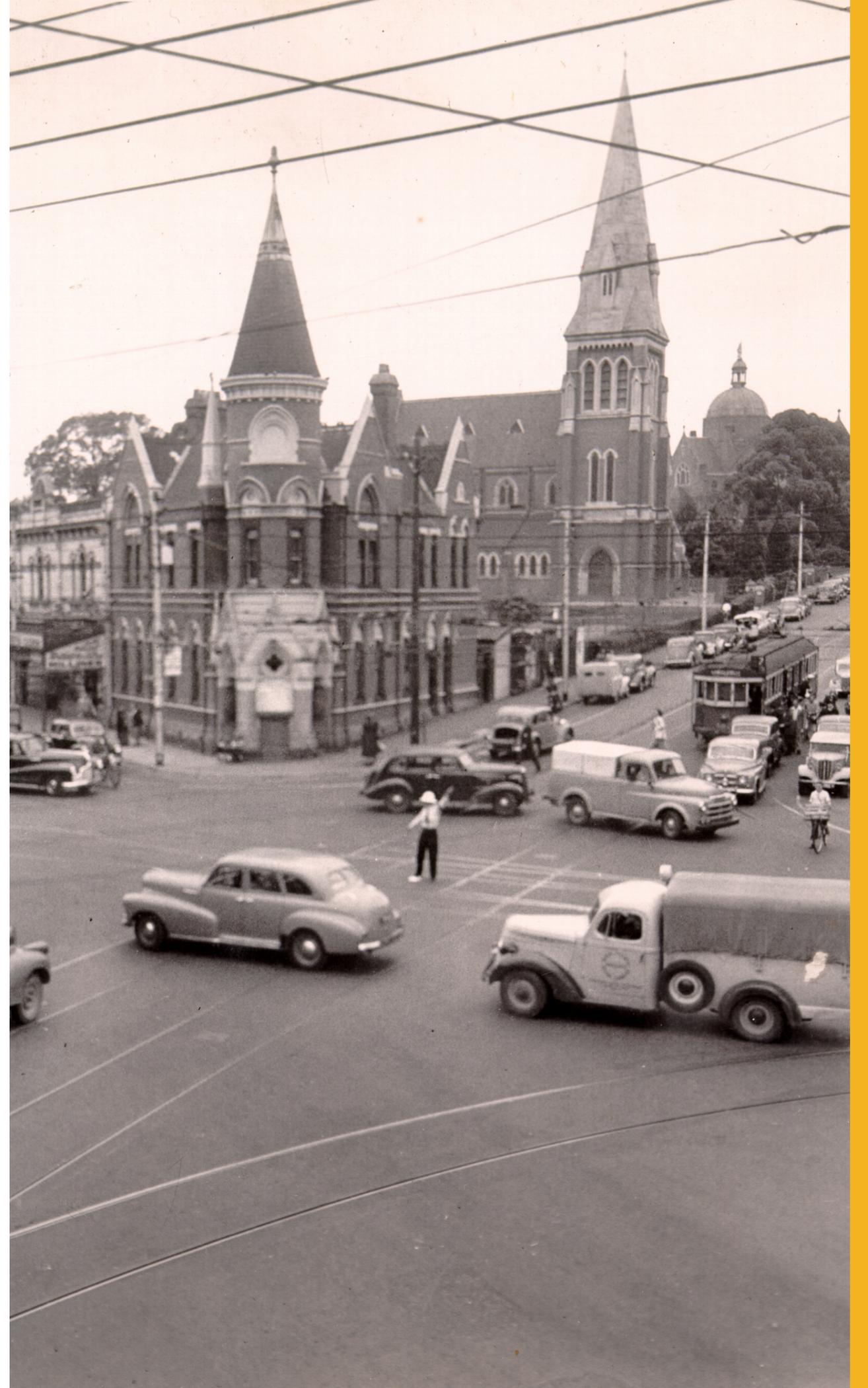
PART 5 - NOTIFYING PROPERTY OWNERS & NOMINATORS

Ensuring transparency and certainty for all parties involved in the nomination process (i.e. property owners and nominators) is critical. Council will notify property owner and nominator of any progress throughout the process, including:

- When a nomination has been received (following an initial review of the nomination to ensure it is genuine and supported by all relevant information).
- When a nomination has been accepted (i.e. information is considered new) and Council has commissioned a heritage assessment from Council's heritage consultant.
- When a heritage assessment has been completed and the property is not found to have sufficient heritage significance to justify inclusion in the Heritage Overlay.
- When a heritage assessment has been completed and the property is recommended for inclusion in the Heritage Overlay (either as an individually significant place or as part of a larger precinct).
- Any UPDC or Council meeting where the property will be considered (including throughout any planning scheme amendment process).
- When a nomination is not accepted and the reasons why the information is not considered new.

In addition, the property owner will be notified when an interim Heritage Overlay has been requested from the Minister for Planning in response to either a planning permit application or a Report and Consent application seeking demolition of the place under Section 29A of the *Building Act 1993*.

Keeping relevant parties informed will assist in avoiding a situation where a property is sold without the purchaser being aware of the potential heritage significance of the property. It also assists the owner in making informed decisions about potential renovation or new building design (that cannot progress due to negative impact on the heritage significance of the place).



PART 6 - PLANNING SCHEME AMENDMENT PROCESS

To include a property in the Heritage Overlay under the Boroondara Planning Scheme, Council must run a planning scheme amendment process.

The planning scheme amendment process is a formal statutory process to change planning laws and is governed by the *Planning and Environment Act 1987*.

A planning scheme amendment can only be prepared and initiated by a Planning Authority. In the case of introducing places of local heritage significance in the Heritage Overlay under the Boroondara Planning Scheme Council usually acts as the Planning Authority.

The process for applying a permanent Heritage Overlay is set out on page 18.

For the introduction of interim Heritage Overlays, the Minister for Planning is the Planning Authority (usually at the request of Council). An interim Heritage Overlay is intended to protect the building from demolition while Council goes through the process for applying a permanent Heritage Overlay.

The process for applying an interim Heritage Overlay is set out on page 20.



PERMANENT HERITAGE OVERLAY

Council must follow the full statutory planning scheme amendment process to apply a permanent Heritage Overlay to any property recommended for protection.

Before deciding whether to formally adopt the heritage study and commence the amendment process, Council undertakes a preliminary consultation process. This non-statutory consultation allows affected property owners and other interested parties an opportunity to provide feedback on the draft heritage study/assessment.

If Council decides to proceed, the normal amendment process includes the following opportunities for anyone to have their views considered:

- Formal exhibition process for one (1) month period allowing affected property owners and other interested parties to lodge formal submissions supporting or opposing the proposed Heritage Overlay.
- Independent planning panel hearing where parties can present their views and have those considered by a panel of experts.

There are also several meetings of the UPDC throughout the planning scheme amendment process when interested parties will have the opportunity to address the committee.

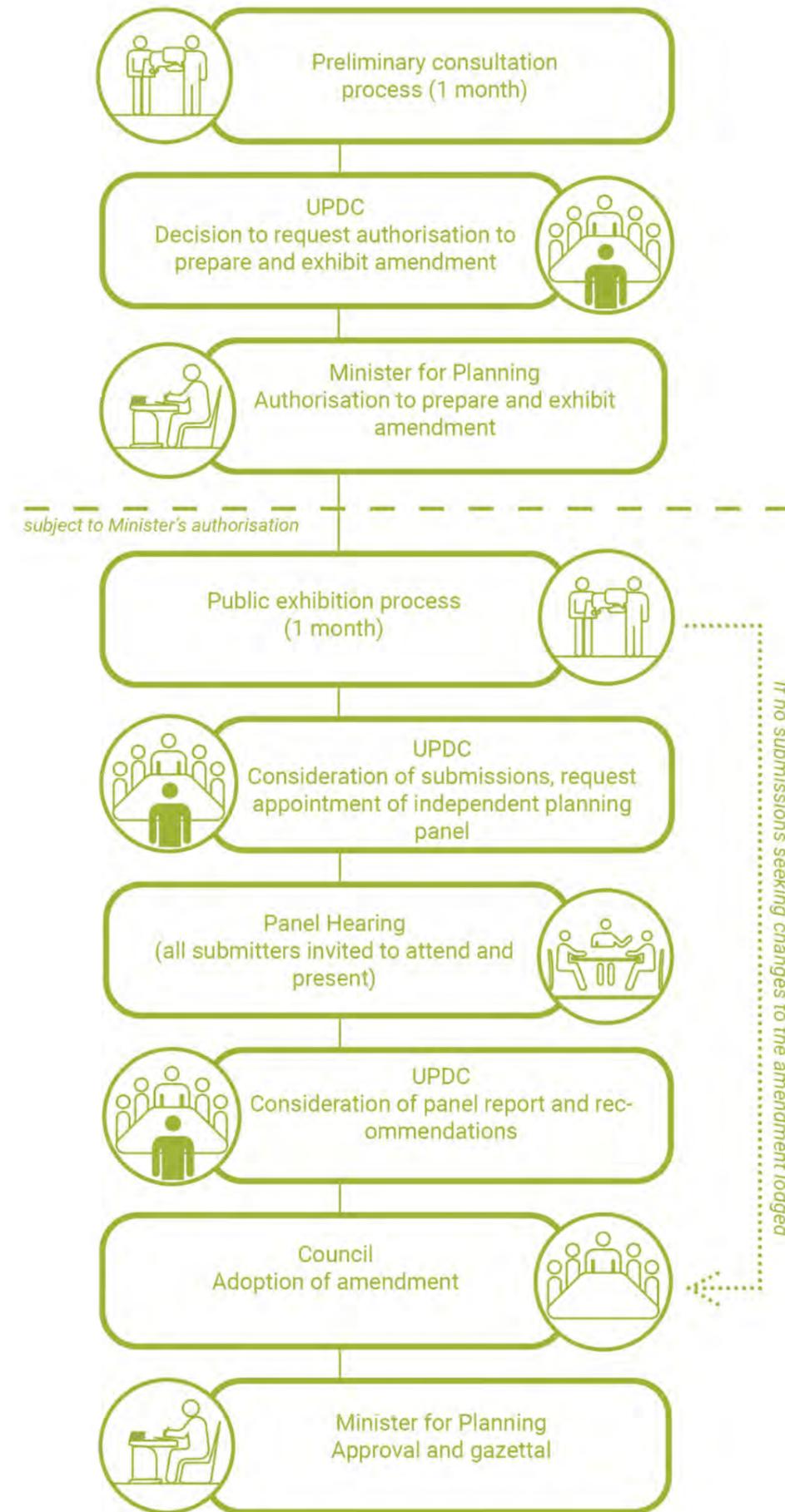
For more information on the planning scheme amendment process, please visit Council’s website:

<https://www.boroondara.vic.gov.au/planning-building/planning-and-heritage/planning/planning-scheme-and-amendments/planning-scheme-amendment-process>

For more information and advice on how to prepare your feedback, please visit Council’s website:

<https://www.boroondara.vic.gov.au/planning-building/planning-and-heritage/heritage/feedback-heritage-studies-and-amendments>

Where multiple nominations and heritage assessments are in progress or completed, Council may combine these into one planning scheme amendment process.



INTERIM HERITAGE OVERLAY

Prior to issuing a building permit for complete or partial demolition of a house, Report and Consent is required from Council pursuant to Section 29A of the *Building Act 1993*.

Section 29B of the *Building Act 1993* allows Council to suspend consideration of a Report and Consent application where it has requested introduction of an interim Heritage Overlay.

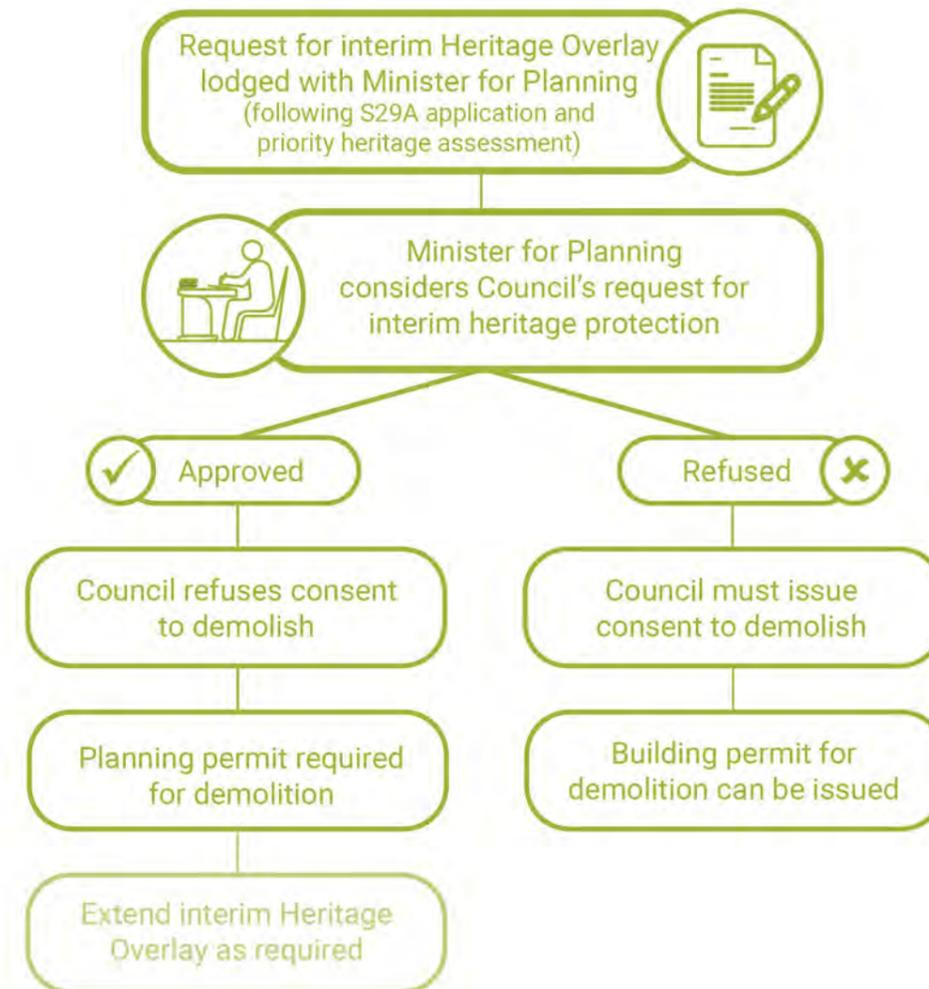
As Council needs to respond to a S29A application within 15 business days (if Council does not respond it is deemed to have consented), a priority heritage assessment will be undertaken for properties included on Council's future investigation list.

An interim Heritage Overlay request lodged with the Minister for Planning under Section 20(4) of the *Planning and Environment Act 1987* does not include consultation with the property owner. Under this process the Minister for Planning (or his delegate) are exempt from any normal notice requirements.

The Minister for Planning has final approval over Council's interim Heritage Overlay request. If approved, the place will be included in the Heritage Overlay until a specified date (usually 12 months from approval) to allow Council to progress the planning scheme amendment for a permanent Heritage Overlay. Should a final decision on the permanent Heritage Overlay not have been made by the time the interim Heritage Overlay expires, Council will request extension of the interim Heritage Overlay (usually 6 to 12 months).

While affected property owners will not have the opportunity to lodge a formal submission on the interim Heritage Overlay, they will have the opportunity as part of the exhibition of the permanent Heritage Overlay. This includes the opportunity to present their views to an independent planning panel.

Even if the Minister for Planning refuses introduction of an interim Heritage Overlay, Council may decide to progress with a planning scheme amendment for a permanent Heritage Overlay (although the final decision always rests with the Minister for Planning).



PART 7 - GRADING CHANGES

The Community Heritage Nomination process does not apply to the consideration of changing the grading of properties already included in an existing heritage precinct. Re-grading requests will continue to be considered through a separate process.

Re-grading a property in existing heritage precincts requires a planning scheme amendment and cannot be undertaken simply through resolution of the Urban Planning Delegated Committee (UPDC) (without a statutory process). This ensures re-gradings are undertaken in a procedurally fair manner that is not open to legal challenge.

However, re-grading of properties in existing precincts that do not have a Statement of Significance incorporated into the Boroondara Planning Scheme Heritage Overlay is complex and problematic. Only precincts introduced since the Hawthorn and Kew Heritage Gap Studies (2021) have incorporated Statements of Significance.

Furthermore, heritage precincts introduced prior to the early 2000s do not have heritage citations (and statements of significance) that comply with current standards and statutory requirements. Drafting new precinct citations and statements of significance for incorporation into the Heritage Overlay (now a statutory requirement) will open the entire precinct up to review and potential challenge by property owners.

Re-gradings will therefore only be considered in circumstances where a Statement of Significance Incorporated Document already exists within the Boroondara Planning Scheme. Any gradings reviews of other properties will be subject to Council allocating budget for a strategic and coordinated review of heritage citations and Statements of Significance.



CONTACT

For any questions on the Community Heritage Nomination Process or these Process Explanatory Notes please contact Council's Strategic Planning Team via:

- Email: strategic.planning@boroondara.vic.gov.au
- Phone: 9278 4815

If you are deaf or require language assistance, contact us via the National Relay Service **1300 555 727** (Speak and Listen) or **TTY 13 36 77** and ask for **9278 4444**.

Council's free phone lines are available in languages other than English. Call **9278 4002**.

APPENDIX 1 - HERCON CRITERIA

CRITERION A

Importance to the course, or pattern, of Victoria's cultural history.

CRITERION B

Possession of uncommon, rare or endangered aspects of Victoria's cultural history.

CRITERION C

Potential to yield information that will contribute to an understanding of Victoria's cultural history.

CRITERION D

Importance in demonstrating the principal characteristics of a class of cultural places and objects.

CRITERION E

Importance in exhibiting particular aesthetic characteristics

CRITERION F

Importance in demonstrating a high degree of creative or technical achievement at a particular period.

CRITERION G

Strong or special association with a particular present-day community or cultural group for social, cultural or spiritual reasons.

CRITERION H

Special association with the life or works of a person, or group of persons, of importance in Victoria's history.

Note: The Heritage Council of Victorian heritage criteria were developed for consideration of places of potential state significance and inclusion on the Victorian Heritage Register.

However, the Victorian State Government's [Planning Practice Note 1 Applying the Heritage Overlay](#) recommends the use of these criteria for assessing and identifying places of local heritage value as well. In applying these criteria to the local level it is important to recognise that the [Victorian Heritage Register Criteria and Threshold Guidelines](#) are not intended to be used for places of local heritage significance.

