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# Planning Proceedings At VCAT

## Information

The Council's decision about a planning permit application does not necessarily have to be final. Like many legal processes, if you are unhappy with the Council's decision you can appeal this decision with the Victorian Civil and Administrative Tribunal (VCAT).

This information sheet is designed to assist permit applicants and/or objectors who are considering lodging an application for review of the Council's decision at VCAT.

### What is VCAT?

VCAT independently reviews decisions made by the Council about planning permit applications and other planning matters. The State Government appoints VCAT members who are qualified legal practitioners, planners and other specialists. VCAT conducts public hearings and considers submissions made by all parties before making a decision.

If you appeal a decision made by the Council at VCAT it is called an 'Application for Review'. The party making the application for review is called the 'Applicant for Review'.

### Who can apply for a review?

An application for review involves all parties in a considerable amount of time, effort and expense, therefore, it should be considered carefully. A proceeding can only be stopped if VCAT agrees.

The most common types of reviews lodged are by:

- A person who has had a planning permit application refused – an application for review must be lodged within 60 days from when the 'Notice of Refusal to Grant a Permit' has been issued by the Council.
- A person who has had a permit approved, but disagrees with the conditions of the permit - an application for review of conditions must be lodged within 60 days from when the permit was granted by the Council.
- A person who has objected to a planning permit that has been approved – an application for review must be lodged within 21 days from when the 'Notice of Decision to Grant a Permit' was issued by the Council.
- A person who has lodged a planning permit application and is yet to get a decision from the Council after 60 days (known as 'Failure to Determine')

### How do you apply for a review?

#### Step 1 – Standard Form

Fill out the standard form for making an application for review and lodge it with VCAT within the time limits that apply for the type of review. The form is available from VCAT at 55 King Street, Melbourne, (03) 9628 9777 and online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

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## Step 2 – Statement of Grounds

The standard form requires the person applying for a review to provide a short statement of grounds in support of the review. The statement of grounds explains the reasons for the review and your position. It briefly covers all the points you will want to raise at the hearing.

If you are the permit applicant you should respond to the Council's grounds of refusal in your short statement of grounds. You have to try to convince VCAT that the Council made the wrong decision when it refused to grant the permit. If the review is about condition(s) on the permit, the statement of grounds should identify the condition number and explain why the particular condition should not be in the permit and why, if it is to be retained, it should be differently worded.

If you are the objector, cover the main points of the objection in your statement of grounds. You have to try to convince VCAT that the Council made the wrong decision when it decided to issue a notice of decision to grant a permit or include certain conditions on the permit. VCAT may not see a copy of the original objection you lodged with the Council, so address all the relevant points in your statement of grounds and enclose a copy of your objection.

Type or write the statement of grounds on a separate sheet of paper and staple it to the standard Application for Review form. Sign and date this sheet, and include VCAT's reference number and the address of the land on the form and the sheet in case it becomes detached. Type or clearly print your name and contact details. If these change, advise VCAT in writing so you are kept informed about the review. Always include VCAT's reference number for the review on any letters to VCAT.

Make sure the application for review form is signed and dated, and tick the correct box identifying the type of review.

## Step 3 – Lodging the form with VCAT

The form and the required filing fee must be lodged with the Registrar, VCAT at 55 King Street, Melbourne 3000 within the time limits that apply. Check the current filing fee with VCAT by calling (03) 9628 9777 or visit VCAT's website before you lodge the application. Keep a copy of the application for review form and a copy of any letters from VCAT about the review for your records.

## **What happens next?**

VCAT will write to the person who lodged the Application for Review and send them notice of review forms that need to be distributed to the Council, referral authorities and objectors/permit applicants within seven days. Contact the Council for a list of people you must notify.

The person who lodged the application for review will also need to complete a form that confirms that they have notified all the required people. This form must be submitted to VCAT within 10 days of all the notices being given. This allows VCAT to be satisfied that you have notified all the other parties that the application for review has been lodged.

Enclose all forms or other information supplied by VCAT. If you don't understand what you are required to do, contact the VCAT customer service officer identified in VCAT's letter for further information.

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## Responding to the application for review

If you want to contest the application for review, you must fill out the statement of grounds and lodge a copy with VCAT, the Council and the person who lodged the application for review within 14 days of receiving notice about the review. This will ensure that you are notified of the hearing date and invited to attend to make a submission.

If you do not lodge a statement of grounds within 14 days, you will not get notice of the hearing.

When the review is listed for hearing, VCAT will inform you in writing, of the date, time and place of the hearing. You will normally be advised at least three weeks ahead of the date.

If you do not want to attend the hearing, but still want to comment, you must complete the statement of grounds, and ask them to consider your written submission as part of the hearing.

**Please note:** Any correspondence with VCAT must be circulated to the Council, referral authorities and all parties to the review, and you must advise VCAT that you have done so.

### Directions hearing

Sometimes VCAT holds a directions hearing before the date of the full hearing in order to address any preliminary matters and avoid delays. For example, directions hearings are often held to determine preliminary matters, such as circulating plans and evidence, or discussing potential hearing dates.

A directions hearing may be held at the request of one of the parties.

### Hearing procedures

VCAT is not a typical court of law, its rules encourage hearings to be run in a relatively informal matter. The informal nature of the hearings is intended to allow all parties to feel involved and relatively relaxed about the proceedings, and to afford people the opportunity of meaningful participation without the absolute need for legal representation.

Although the Tribunal will sometimes determine the matter 'on the spot' after hearing from all the parties, often the member will wish to visit the site or deliberate on what has been submitted at the hearing. In these circumstances, a written decision is generally sent out to all parties in between 2 to 8 weeks.

VCAT's decision is final, and the Council is legally required to follow the order given by it. An opportunity to appeal the Tribunal's decision to the Supreme Court only exists for matters relating to a point of law. Any such appeals are expensive, and may expose the appellant to costs, and legal advice and representation is required.

### The hearing procedure

- The Council representative goes first and outlines the proposal, explains the relevant planning policies and controls, and provides reasons for the Council's decision.
- The objector then follows outlining their concerns
- The applicant goes last outlining why a permit should be granted or conditions amended.

During the hearing, you can not ask questions or interrupt other parties. Only the VCAT member can ask you a question and you should direct your presentation to them. This process is varied when an expert witnesses are presented, in which case, you are allowed to ask questions of the witness in cross examination.

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## **Presenting your submission**

When presenting at VCAT, most people talk to written submissions. This ensures that VCAT is aware of your concerns and has something to look back over after the hearing.

Bring at least six copies of the submission and give one to each VCAT member and other parties. Make sure each copy is complete, clearly labelled and number each paragraph. Your submission should address relevant planning provisions and controls, be clear, concise and non-repetitive and refer to plans of the proposed development to help you explain.

When giving your presentation, do not repeat what has already been said, but focus on the most important things. If there are many people objecting to the permit, it might be best to designate one person to present all your concerns.

VCAT does not base its decision on the quality of the speaker, but if you are uncomfortable, you may wish to get a representative to speak on your behalf. Typically, the Council will be represented at VCAT by its officers, although in some circumstances consultants or lawyers will be used. Objectors may appear in person, or alternatively can also engage representation through a planning consultant or lawyer. It is common for groups of residents to pool resources to fund a consultant or lawyer to ensure the best possible case is put forward. Although applicants may represent themselves, they more commonly have professional representation.

## **Costs**

The general practice of VCAT is that each party bears its own cost of attendance. Although rarely applied, VCAT powers do provide that orders as to costs can be made if a party has acted in a vexatious or in an entirely unreasonable and unfair manner that has caused another party to incur cost.

## **Council assistance for objectors**

While the Council is able to provide for objectors some general guidance on how the VCAT hearing will proceed, it is important to note that the Council must present its own position at VCAT and can not represent objectors, or directly assist objectors in preparing or making their submission.

If you become involved in an application for review, you can obtain further information from VCAT on (03) 9628 9777 or [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). The Council's Planning Department may also be able to provide general advice. An appointment can be made to meet with a planning officer by contacting the Council on (03) 5832 9700 or online at <http://www.greatershepparton.com.au/bookings/>.

Information sheets and practice notes about what happens at hearings are available from the VCAT website [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) or by calling 9628 9777.