

Attachment 1

Planing Appeals Process Protocol

1. Introduction

This protocol sets out the level of representation at the Victorian Civil and Administrative Tribunal (VCAT) on behalf of Council for planning appeals.

The level of representation at VCAT on behalf of Council in planning matters relates to a number of factors. These factors include the complexity of the matter, the number of objections, the number of car parking spaces sought to be waived or dispensated, the impact of the case on the status or workability of Local Planning Policy and political and legal implications.

In all cases the City of Yarra will be represented at VCAT hearings in the most professional manner appropriate to the matters under review.

2. Categories of Applications

For the purpose of this protocol Planning Applications are generally divided into five (5) categories – Minor, Average, Large, Major (Significant) and Overturned Decisions.

(a) Minor applications, are applications involving:

- The construction of minor alterations and additions to existing buildings; and / or,
- The construction of a single dwelling on a single lot; and / or,
- The construction of a commercial development of up to 100m² in area;
- Up to five (5) objections; and /or,
- A dispensation or waiver of between zero and up to five (5) car spaces.

(b) Average applications, are applications involving:

- The construction of between 2 and 5 dwellings; and /or,
- The construction of a commercial development between 101m² and 500m² in area; and / or,
- Liquor licensing applications which accord with the relevant policies and provisions; and / or,
- Between six (6) and ten (10) objections; and / or,
- A dispensation or waiver of between five (5) and ten (10) car spaces.

(c) Large applications, are applications involving:

- The construction of between five (5) and thirty (30) dwellings; and / or,

- The construction of a commercial development between 501m² and 2500m² in area; and / or,
- Eleven (11) or more objections; and / or,
- A dispensation or waiver of between eleven (11) and fifteen (15) car spaces; and / or,
- Liquor licensing applications, which do not accord with the relevant policies and provisions.

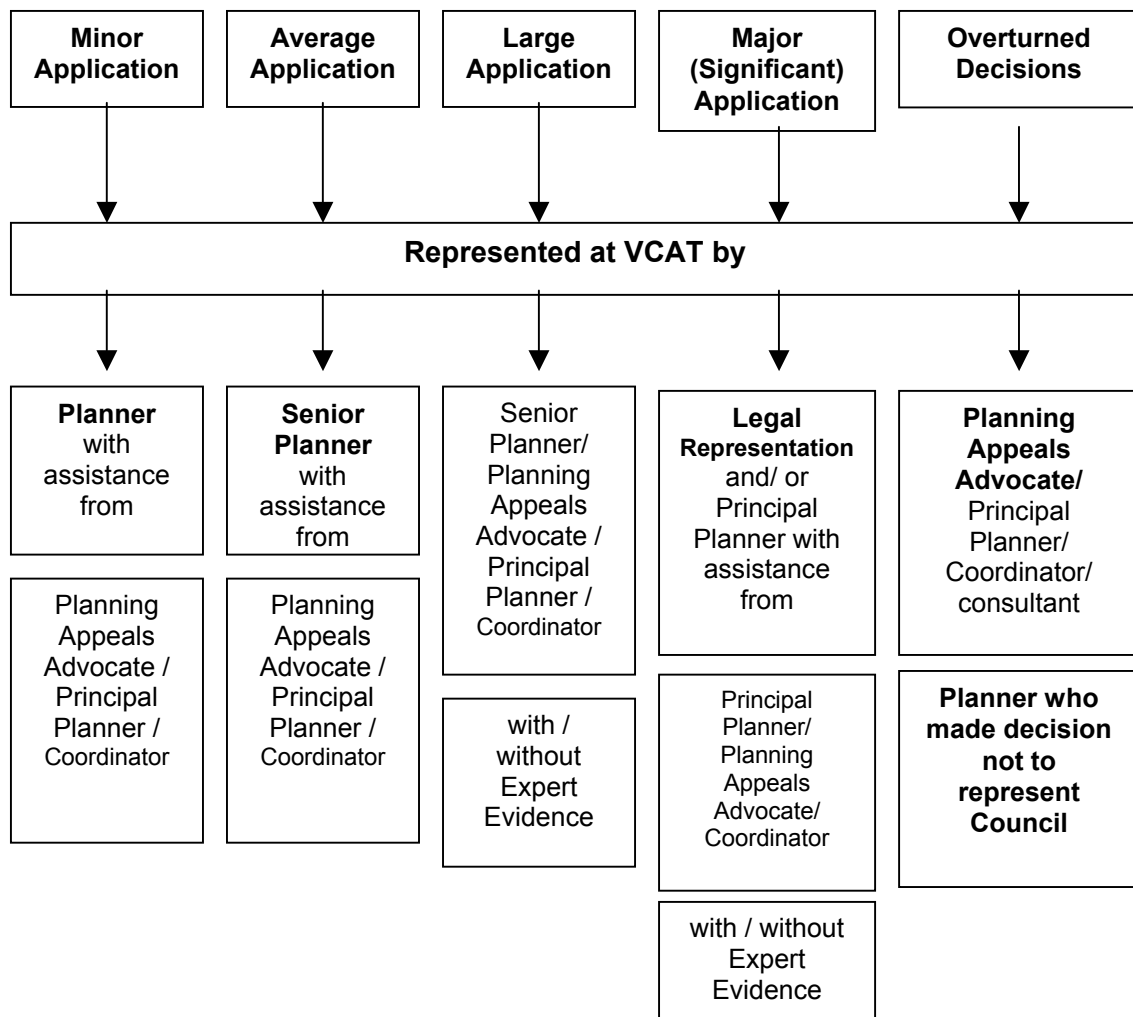
(d) Major (Significant) applications, are applications involving:

- The construction of greater than thirty-one (31) dwellings; and / or,
- The construction of a commercial development more than 2500m² in area; and / or,
- Eleven (11) or more objections; and / or,
- A dispensation or waiver of sixteen (16) or more car spaces; and / or,
- Political and legal implications; and / or,
- Effect on the status or workability of Local Planning Policy.

(e) Overturned decisions, are applications where:

- The decision of the planning officer is overturned by Council's Internal Development Approvals Committee (IDAC) or by the Council.

3. Protocol for Appeal Representation



4. Principles

- (a) Although applications may seem to fit within a specific category, in certain circumstances the final classification and level of representation will be subject to scrutiny by Council's Planning Appeals Advocate, the Coordinators and Manager of the Urban Planning Branch. This may also involve discussions with the Chief Executive Officer, Director City Development and Council.
- (b) All matters, which require Expert Evidence to be presented on behalf of Council, are categorised as Large and / or Major (Significant) Applications.
- (c) All matters, which require cross-examination of expert witnesses are categorised as Average, Large and / or Major (Significant) Applications.
- (d) **Planner** for the purpose of this protocol is a 'Band 5' Planner.
- (e) **Senior Planner** for the purpose of this protocol is a 'Band 6' Planner.
- (f) **Principal Planner** for the purpose of this protocol is a 'Band 7' Planner.
- (g) **Coordinator** for the purpose of this protocol is a 'Coordinator Urban

Planning Branch’.

- (h) **Legal Representation** for the purpose of this protocol refers to a solicitor, barrister or ‘Queens / Senior Counsel’.
- (i) **Expert Evidence** for the purpose of this protocol refers to the use of external professional parties to provide expert witness statements and be available for cross-examination in support of an appeal at VCAT. This could include traffic, heritage, urban design, acoustic or other relevant areas of expertise.
- (j) In Large and Major (Significant) Applications, the level of Legal Representation and Expert Evidence to be utilised will be decided upon, following consideration of quotations and in consultation between Council’s Planning Appeals Advocate, Coordinator’s Urban Planning Branch, Manager Urban Planning and Director City Development.
- (k) Quotations exceeding \$20,000 will require sign off from the Chief Executive Officer and / or Director City Development.
- (l) In all cases where Council has refused a planning application and there is community written objection to the application, the Manager Urban Planning will discuss the choice of appeal representation with the Chair of the Planning and Community Development Committee prior to selection.
- (m) Prior to an appeal hearing at VCAT, an opportunity will be provided to Council to brief Council’s legal representative or town planner where Council requests this.