

## Planning Proceedings at VCAT



Council's decision about a planning permit application does not necessarily have to be final. Like many other legal processes, if you are unhappy with a Council decision you can appeal this decision with VCAT.

This fact sheet explains how you can refer a decision to VCAT and what is involved in the process.

### What is VCAT?

The Victorian Civil and Administrative Tribunal (VCAT) is a State Government appointed panel of experts that independently reviews planning decisions made by councils. VCAT conducts public hearings and considers submissions made by all parties before making a decision.

### Who can apply for a review?

An appeal to VCAT is called an 'application for a review' and the party making the application is called the 'applicant for review'. 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 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 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 Council.

- > A person who has lodged a planning permit application and is yet to get a decision from Council after 60 days (known as 'Failure to Determine').

### What does 'Failure to Determine' mean?

The Planning and Environment Act 1987 stipulates that Council must make a decision on a planning permit application within 60 days of receipt otherwise the applicant can refer the matter to VCAT. If you are asked to provide further information, it is 60 days from the date all the information is received.

Council is mindful that planning permit applicants are often under time and financial pressures, and seeks to process all applications as efficiently as possible. However, there are strict processes that must be applied when assessing an application.

Realistically, depending on the size and detail of the proposed works, it can take anywhere from four weeks for small applications, and some months for larger applications.

### Further information

If you need more information about planning in Yarra:

#### Visit our website

> [www.yarracity.vic.gov.au/planning](http://www.yarracity.vic.gov.au/planning)

#### Telephone

> 9205 5555 (between 8.30am and 5.00pm, Monday to Friday)

#### Visit the planning counter

> Richmond Town Hall  
333 Bridge Road, Richmond  
Monday to Friday  
8.30am to 5.00pm and  
Tuesday 8.30am to 6.00pm

For more information about VCAT, visit [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) or call 9628 9777.

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# Planning Proceedings at VCAT

Most people are happy to keep working with Council past the 60 day timeframe, however if you do plan to lodge a review with VCAT it is important to carefully consider the likely timeframes associated with this process. The best thing to do is talk to the Council planner to find out how much longer they expect the decision to take, and what they think the decision will be. Once a review has been lodged with VCAT, they become the decision maker.

## Lodging an application

- 1) Complete the application for review form – available from VCAT (55 King Street, Melbourne), by calling 9628 9777 or visit [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).
- 2) Provide a statement of grounds – this must explain why you feel the review is needed (briefly cover all the points you want to raise at the hearing) and clearly state your position.

*If you are the:*

- > **Permit applicant** – respond to Council's grounds of refusal. If you are appealing a permit condition, clearly identify the condition and explain why it should be changed or removed from the permit.
- > **Permit objector** – cover the main points of your objection. VCAT will not see your original objection, so address all relevant points and enclose a copy of your objection.

Attach the statement of grounds to the application sheet, however clearly mark both copies with the property address in case they come apart.

- 3) Lodge the application with the correct fee – you must lodge the form and the fee with the Registrar at VCAT (in person at 55 King



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Street, Melbourne, or by mail to GPO Box 5408 CC, Melbourne VIC 3001) within the relevant timeframe. For the current fee, visit the VCAT website or call 9628 9777.

## Notifying other parties of your application

VCAT will write to the person who lodged the application and send them notice of review forms that need to be distributed to Council, referral authorities and objectors/ permit applicants within seven days. Contact 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.

## Responding to an application

If you want to contest an application for review you must:

- > Fill out the statement of grounds (which you have been sent by the person who lodged the application)
- > Return a copy to vcat, council and the person who lodged the application within 14 days.

This will ensure that you are notified of the hearing date and invited to attend and make a submission.

If you fail to lodge a statement of grounds within 14 days, you will not be notified of the hearing. However, if you find out about the hearing you

may still be able to make a submission as long as all parties, and VCAT, agree before it commences.

If you do not want to attend the hearing, but still want to comment, you must complete the statement of grounds, advise VCAT that you cannot attend, and ask them to consider your written submission as part of the hearing. Please provide six copies.

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

### Withdrawing your application for review

If you lodge an application for review and change your mind, you must immediately write to the VCAT Registrar and send a copy of your letter to Council and all other parties involved.

**Please note:** If you withdraw an application with VCAT that was made because Council failed to determine an application within 60 days, you withdraw the entire application. Meaning, if you want to pursue that application again with Council you will need to start all over again and lodge a fresh application.

### Adjourning the hearing

If you have lodged an application for review and you can't attend the hearing due to an unavoidable situation, you must immediately write to the VCAT Registrar and send a copy of your letter to Council and all other parties involved seeking an adjournment.

**Please note:** VCAT will not automatically grant an adjournment, your request must be deemed valid.

### 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, direction 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 (written and circulated to all those involved), or by VCAT.

Bring at least six copies of the submission and give one to each VCAT member and other party. Make sure each copy is complete, clearly labelled and number each paragraph.

### Hearing procedures

The VCAT member/s assigned to the review conducts the hearing. *The hearings:*

- > Are open to the public
- > Follow a structured order of presentation of submissions
- > Are usually held at VCAT (55 King Street, Melbourne).

*The participants include:*

- > Council's representative
- > The objector, who either requested the review or lodged a statement of grounds in response to the applicants request for a review
- > The applicant, who either requested the review or lodged a statement of

grounds in response to the objectors request for a review.

*Procedures:*

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

During the hearing, you cannot 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 expert witnesses are presented, in which case, you are allowed to ask questions of the witness in cross examination.

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.

### 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 party. Make sure each copy is complete, clearly labelled and number each paragraph (this will assist when referring to specific points while doing your presentation).

*Your submission should:*

- > Address relevant planning provisions and controls
- > Be clear, concise and non-repetitive

Permit applicants, objectors and Council are entitled to bring in expert witnesses to give evidence at the hearing.

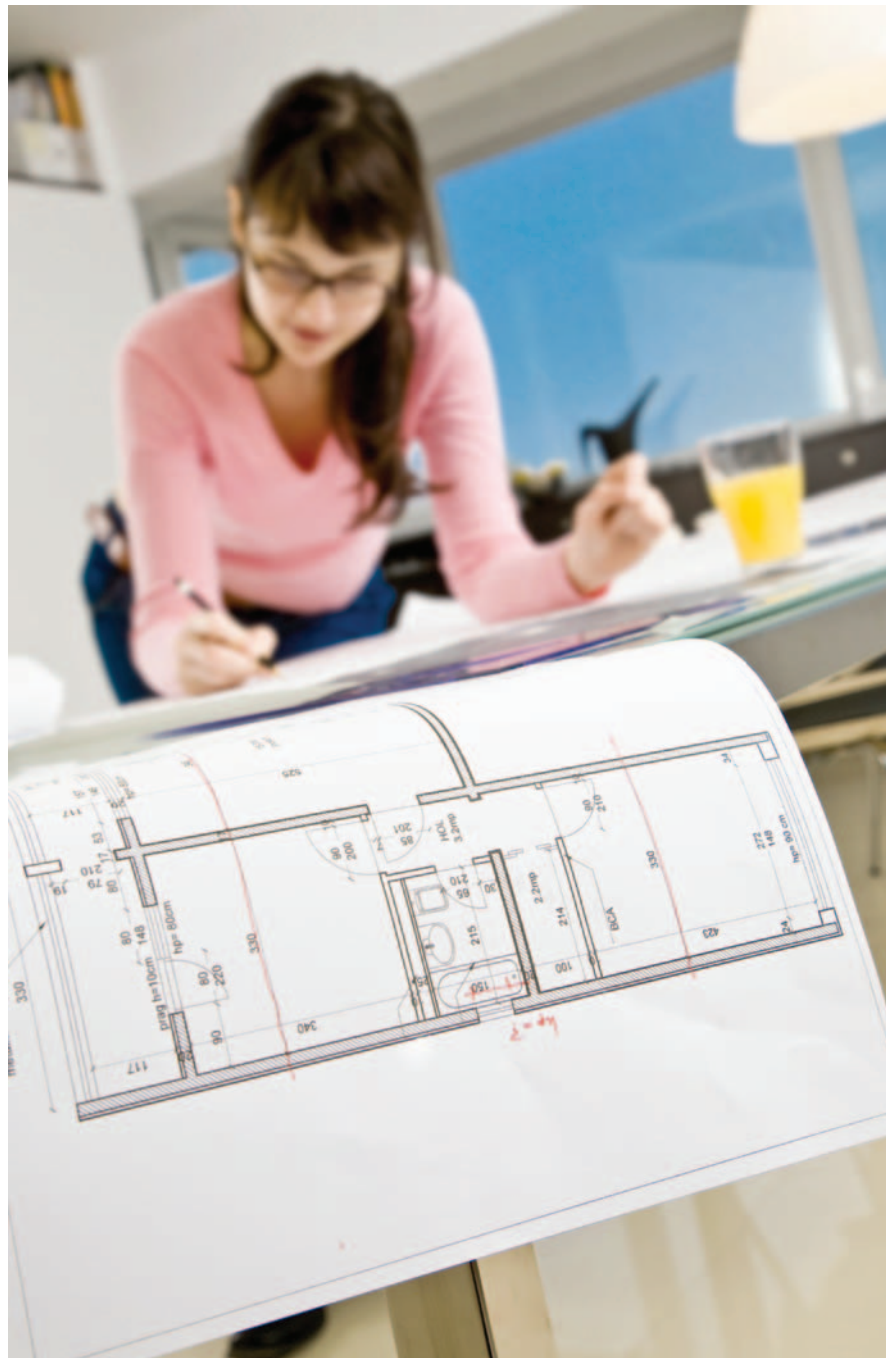
> Refer to plans of the proposed development to help you explain.

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.

## Expert reports

Permit applicants, objectors and Council are entitled to bring in expert witnesses to give evidence at the hearing. For example, a heritage expert may be brought in to a case involving the demolition of a building in a heritage overlay/area.

If expert evidence is going to be used at the hearing, their report must be circulated to all parties 10



business days before the hearing unless arranged otherwise. At the hearing the expert will read from their report and each party will have the opportunity to ask questions. It is a good idea to read the report thoroughly and jot down questions before the hearing.

## Decision

Usually, VCAT will give a decision in writing some weeks after the hearing date. A copy of the written decision is circulated to all the parties involved. Occasionally, VCAT will announce its decision at the end of the hearing.