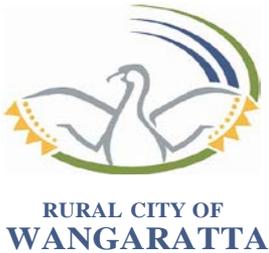


No.7 – Applications for Review at the Victorian Civil and Administrative Tribunal (VCAT)



This advice sheet is intended to assist permit applicants or objectors who are considering lodging an application for review of a Council planning decision at the Victorian Civil and Administrative Tribunal (VCAT), or persons who will be participating in an upcoming review hearing.

VCAT is the body created and funded by the State Government to review decisions. It has specific jurisdictions to review planning decisions made by local government. VCAT itself is a large organisation which hears a wide variety of matters across lists such as the Anti-Discrimination List, the Residential Tenancies List, and the Guardianship and Administration List, to name just three. Planning matters are heard by the Planning and Environment List.

A detailed outline of relevant parties' rights for a review hearing (known as an Application for Review) is provided in the document 'Using Victoria's Planning System', which can be found at www.dtpli.vic.gov.au. The operating procedures and practices (practice notes) of the Tribunal can be found at www.vcat.vic.gov.au, under Planning and Environment List.

Common types of review applications by applicants

The most common form of review sought by permit applicants at VCAT is for a review of a Council decision to refuse to grant a permit. This application can only be made upon receipt of a formal 'Notice of Refusal to Grant a Permit' from Council, which is a decision document that outlines the Council's grounds for refusing the permit application.

The second most common review by permit applicants is an application for review of Council's failure to determine a planning application, which can be lodged once 60 'statutory' days have elapsed, or 10 working days for VicSmart applications. This is not necessarily 60 days, or 10 working days in the case of VicSmart applications, since the time the application was lodged, as the 'statutory time' does not include the time between when a request for further information is sent within 28 days of the application's lodgement and the time it is received, and the time between the giving of the first and last notice when advertising an application.

The third most common is a review against conditions contained in a Notice of Decision (NOD) or permit.

Common forms of review applications by objectors

If Council decides it wants to approve an application when objections have been received, it must issue a 'Notice of Decision to Grant a Permit' to the applicant and objectors. Upon receipt of this decision notice, objectors may lodge an application for review to the Tribunal within 21 days of the date of the notice.

Becoming a party to an application for review

People wishing to present at the VCAT must first be a party to the proceeding. The person who lodges the application for review, the permit applicant (if they were not the party lodging the application for review) and the Council are automatically parties to the review proceeding. In the circumstance where the permit applicant seeks review, objectors will be sent a copy of the review application, and a form on which grounds to contest the matter can be filled out. To become a party, objectors must fill out the form with the grounds on which they oppose the proposal, and send copies to VCAT, the permit applicant and the Council.

In the case of an application for review by an objector party, other objectors must also fill out the statement of grounds form, as must the permit applicant. The objector who seeks the review must send the relevant forms to the other objectors, applicant and Council.

The hearing process at VCAT

VCAT is not a typical court of law, its rules encourage hearings to be run in a relatively informal manner. 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 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, hence legal advice and representation is required.

Representation at VCAT

Typically, Council will be represented at VCAT by its officers, although in some circumstances independent 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 (and representation if applicable). 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 Council is able to provide objectors some general guidance on how the VCAT hearing will proceed, it is important to note that Council must present its own position at VCAT and cannot represent objectors, or directly assist objectors in preparing or making their submissions.

This advice sheet is to be used as a general guide only. Council has made all reasonable effort to ensure the information provided in this series is true and accurate. However, it is recommended that readers seek professional advice before acting or making decisions on the basis of this information. For any questions or clarification, please contact Council's Planning Unit on 5722 0888.

