

# Planning Application – Fact Sheet 14

## Appeals to VCAT

*Disclaimer: The information contained in this fact sheet is general advice and may not be relevant to your individual circumstance. You should seek your own legal and/or town planning advice prior to appealing any decision to VCAT or the courts.*



### Introduction

Planning related appeals are heard by the Planning and Environment List of the Victorian Civil and Administrative Tribunal (VCAT). A detailed outline of rights of application for review is provided in the document 'Using Victoria's Planning System', which can be found at [www.planning.vic.gov.au](http://www.planning.vic.gov.au). The operating procedures and practices (practice notes) of the Tribunal can be found under Planning and Environment List section at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

### What are the most common types of appeals and how long do I have to appeal a decision?

The most common applications for review are as follows:

#### Permit Applicant/Developer

- Section 77** - review Council's decision to refuse a planning permit – An applicant has 60 days to lodge an appeal from the date of Council's decision (noted on the refusal notice).
- Section 79** - Review Council's failure to make a decision on a planning application – this can only be lodged once 60 'statutory' days have elapsed. You should note that the statutory days clock is paused while the application is on public notice and when Council has requested further information.
- Section 80** - Challenge condition in a planning permit – An applicant has 60 days to lodge an appeal from the date of Council's decision (the date on the Notice of Decision (NOD) to Grant a Planning Permit or, if no NOD then the date on the Planning Permit).

**Maribyrnong City Council - Urban Planning Department**  
Cnr Hyde and Napier Streets, Footscray  
Postal Address: PO Box 58, Footscray VIC 3011  
T: 9688 0200 E: [urbanplanning@maribyrnong.vic.gov.au](mailto:urbanplanning@maribyrnong.vic.gov.au)

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### Objectors

- ❑ **Section 82** - If you are an objector and want to review Council's decision to grant a planning permit you will need to lodge an appeal within 28 days from the date of Council's decision (being the Notice of Decision to Grant a Planning Permit).
- ❑ **Section 77/79/80** - If you are an original objector to an application, and the permit applicant lodges an appeal as described above, you will be notified and you can then become a party to the appeal, including any future hearing(s) that may be scheduled.

### **How do I participate in the VCAT process, including hearings?**

People wishing to be present at VCAT must first be a 'party' to the proceeding. The person who lodges the application for review, the permit applicant, and the Council are automatically parties.

If the applicant seeks a review, objectors will be sent a copy of the review application. To become a party, objectors must fill out a 'Statement of Grounds' form outlining why they oppose the application. Copies must be sent to VCAT, the permit applicant and Council. The Statement of Grounds form provides two options. If you wish to participate in the hearing, including any Compulsory Conference (Mediation) then a fee applies (approximately \$20). If you would like VCAT to consider your objection but do not wish to participate in the hearing, then no fee applies.

Please note that if you select not to participate in the hearing then you will not be considered a party and you will not receive any further correspondence regarding the application. You will not be able to participate in any Compulsory Conference and will not receive a copy of the final decision.

### **How does a VCAT Hearing work?**

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 hearing 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.

However, VCAT still has rules and procedures which you must follow. If you don't follow these rules and procedures then VCAT may dismiss or 'strike out' your appeal. You may also be liable to pay the costs of other parties involved. You should seek your own town planning and/or legal advice before deciding to take a matter to VCAT.

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 said. In these circumstances a written decision is generally sent out to all parties in 2-8 weeks.

The decision of VCAT is final and Council is required to follow the order given by it. An opportunity of appeal to the Supreme Court of Victoria is possible, however this only relates to a mistake in law in the determination. You cannot appeal to the Supreme Court just because you do not like the decision. Any such appeals would be very expensive, and potentially expose the appellant to costs. Legal advice and representation is required.

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### **Can the permit applicant change their plans part way through the process?**

Yes. Once an appeal is lodged at VCAT, it is common for the permit applicant to amend their plans to respond to the concerns of Council, service authorities or neighbours. This is often referred to as the PNPE9 process, as this is the relevant [VCAT Practice Note](#) which guides the process. If the permit applicant seeks to amend their plans, they must do so a minimum of 30 business day (approximately 6 calendar weeks) prior to the hearing.

You can amend your Statement of Grounds, for example by removing or adding items, based on the new plans.

### **Do I need to be represented at VCAT by a Town Planner or Lawyer?**

Typically, Council will be represented at VCAT by its Town Planning officers, although in some circumstances consultants or lawyers may be used.

Objectors may appear in person or alternatively can engage a planning consultant, lawyer or barrister. It is common for groups of residents to pool resources to fund a consultant, lawyer or barrister to ensure the best possible case is put forward.

Although applicants/developers may represent themselves, it is more common to have professional representation.

### **Who covers my costs?**

The general practice of VCAT is that each party bears its own cost of attendance (and representation if applicable). However VCAT rules do provide that orders as to costs can be made if a party has acted in a vexatious or entirely unreasonable and unfair manner that has caused another party to incur cost.

### **Can Council assist me with my submission?**

While Council is able to provide some general guidance regarding how the VCAT hearing will proceed, it is important to note that Council must remain independent of the parties. Council will present its own position at VCAT in accordance with the Maribyrnong Planning Scheme. Council must not (and cannot) co-ordinate cases with parties, represent parties, or assist parties in preparing or making their submissions. This applies equally to both objectors and developers.