

Planning: a Short Guide





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Introduction

This booklet outlines the planning permit process and planning scheme amendment process, and the course to be followed when applying for planning permits or objecting to planning permit applications. It is designed to clarify the rights, roles and responsibilities of all parties at each stage of the process.

Each section is described briefly below to allow you to focus on a specific area of interest. While there is some overlap, generally the sections can be read independently. However, if you want to understand all aspects of the planning permit process as well as amendments to planning schemes, you should read the entire booklet.

Section 1 describes the planning scheme and the legislative requirements councils must consider when deciding on applications for planning permits. It discusses planning scheme maps, ordinance, zones and overlays, and explains the difference between use and development. It also outlines how you can find information in the planning scheme.

Section 2 sets out what you should do before making an application for a planning permit, the steps you should follow to make the application, and what will happen after you lodge the application. It also considers advertising, objections, mediation and permit conditions.

Section 3 looks at the same process from the perspective of those who may be affected by a planning permit application. It advises objectors of their rights in the

planning process, and the procedures they must follow to make sure their objection is considered.

Section 4 outlines the review process undertaken by the Victorian Civil and Administrative Tribunal (VCAT). It explains how you can apply for a review and VCAT's hearing procedures.

Section 5 suggests some of the reasons why councils may wish to change the planning scheme. It also describes how you can submit a formal request for council to consider an amendment to the scheme, and the course of action council will follow after you make your request. Notice procedures, the exhibition period and panels are also discussed.

The final section lists contacts, useful documents and web sites.

The *Glossary* provides definitions for some of the technical terms used in this booklet.

An important note for users of this guide

Planning: a Short Guide is intended only as a guide to the planning system and legislation in Victoria. It must not be used as a substitute for the official documents – in particular, Acts, regulations and planning schemes. If in any case there appears to be a conflict between the Acts, regulations or planning schemes and this guide, the requirements of the Act, regulation or planning scheme must be followed.



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1. The planning scheme

What is 'planning'?

Planning refers to the decisions that change the environment and affect everyday life. These decisions might be about new public transport, the size of a new shopping centre, the location of parks, a bike path or a new road. These planning decisions may influence how we get to work, where we shop and what we do in our spare time.

The council makes most of the planning decisions that affect its municipality. For example, it decides whether or not to grant a planning permit for a new use or development, and what permit conditions are appropriate.

The council's planning department provides information and advice about the planning scheme, and processes and coordinates planning proposals for council's consideration.

What is the planning scheme?

The planning scheme controls land use and development within a municipality. It contains State and local planning policies, zones and overlays and other provisions that affect how land can be used and developed.

The planning scheme will indicate if a planning permit is required to change the use of land, or to construct a building or make other changes to the land.

Every municipality has its own planning scheme.

The planning scheme is on display at the public information counter at the council's planning department.

A copy of every planning scheme in Victoria is also available on the Department's website at www.dpcd.vic.gov.au/planningschemes.

What information is in a planning scheme?

There are two types of information in a planning scheme: a set of planning scheme maps that show the zones and overlays that apply to land covered by the scheme, and written information or ordinance that sets out the requirements of the policies, zones and overlays.

What are planning policies and how are they relevant?

Planning policies are statements about how decisions will be made. State planning policies are concerned with issues such as urban consolidation and neighbourhood character, while local planning policies are concerned with issues of regional or local significance.

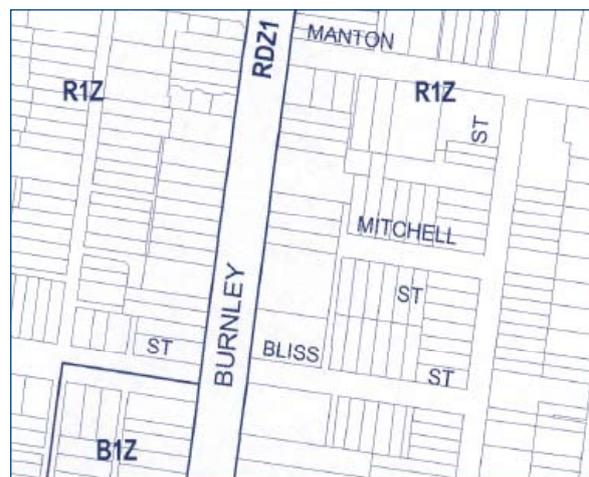
The council must take into account both the State and local planning policies when making a planning decision.

What is a zone?

The planning scheme zones land for particular uses, for example, residential, industrial, business or other. The zones are listed in the planning scheme and each zone has a purpose and set of requirements. This information will describe if a planning permit is required, and the matters that the council must consider before deciding to grant a permit. A zone may also specify information that must be submitted with a planning permit application.

The zone also contains information relating to land uses, subdivision of land, construction of new buildings and other changes to the land.

ZONE MAP



Legend

B1Z Business 1 Zone
R1Z Industrial Zone

RDZ1 Road Zone Category 1



2. The planning scheme

A zone sets out land use controls in three sections:

- Section 1: Land uses that do not require a planning permit.
- Section 2: Land uses that require a planning permit.
- Section 3: Prohibited uses. Some uses are not allowed on land in a zone because they may conflict with other uses; for example, industry is prohibited in the Residential 1 Zone.

What is an overlay?

The planning scheme map may show that a piece of land has an overlay as well as a zone affecting it. Not all land has an overlay. Some land may be affected by more than one overlay. If an overlay applies, the land will have some special feature such as a heritage building, significant vegetation or flood risk. The Heritage Overlay, for example, applies to heritage places of natural or cultural significance and describes the requirements that apply.

The overlay information will indicate if a planning permit is required for the construction of a building or other changes to the land. For example, if a Heritage Overlay applies, a planning permit is required to demolish an existing building. The Heritage Overlay requires council to consider, before it grants the permit, whether the demolition of the building will lessen the significance of the heritage place. An overlay may specify information which must be submitted with an application for a planning permit.

OVERLAY MAP



Legend
HO Heritage Overlay

What do 'use' and 'development' mean?

Use of land refers to using land for a particular purpose (such as a dwelling or a shop) and may not involve building anything.

Development includes the construction, alteration or demolition of a building or works and the subdivision or consolidation of land.

In some zones, the development of land and the proposed new use both require a permit. For example, in the Mixed Use Zone, a permit is required to construct a building and to use a building for an office. In other zones, the use may not require a permit, but a permit may be required to construct the building (the development) for the use. In this situation, council can only consider the effects of the new building (such as height, visual bulk and so on) and not the change in the use of the land.

Finding the information in the planning scheme

Planning scheme maps are usually kept in a large folder at the council's planning counter. A copy of every planning scheme is also available online at www.dpcd.vic.gov.au/planningschemes. Symbols are used for the zones and overlays shown on the maps. For example, all land in the Residential 1 Zone is marked with the symbol R1Z, and all land affected by a Heritage Overlay is marked with the symbol HO and a number. The land may also be affected by one or more overlays. Zone and overlay information is shown on separate maps.

If you wish to examine the planning scheme:

1. Look at all the maps that apply to the land you are interested in. Identify the zone and overlays that apply.
2. Look in the written (ordinance) part of the planning scheme to find out what the zone and overlays mean and what planning policies and other provisions may apply.

You need to look at both parts of the scheme.

Alternatively, talk to the council planning staff and explain your interest in the planning scheme. Ask them to show you the relevant sections. They can also explain what this information means, and how it affects the land you are interested in. Ask for a copy of this information. There may be a photocopy charge.



2. The planning permit

What is a planning permit?

A planning permit is a legal document that gives permission for a use or development on a particular piece of land. To obtain a permit, an application must be made to the council. If the council agrees with the proposal, it will grant a planning permit.

What obligations does a permit impose?

The permit contains written conditions and usually has endorsed plans that show what is to be built and how the land can be used. The proposed use or development must satisfy all the conditions on a planning permit and comply with the endorsed plans. This means the use or the buildings and works must be exactly as shown on the endorsed plans. The approved planning and building plans must also be consistent.

Council also has to approve minor changes to the approved plans. A new planning permit application will be required if council doesn't consider the changes to be minor.

The planning permit process

The following sections outline the planning permit process.

Before you make the application to council

Before you make your application to council:

- *Talk to the council planner.* Find out if a planning permit is required and make sure that what you want to do is not prohibited. If a proposal is prohibited, there is no point in making an application because it will be refused. If a permit is required, get a copy of the planning scheme provisions that council will use to assess the application. Ask the planner whether the council is likely to support the proposal. Discuss any changes that might be necessary to make the proposal acceptable.
- *Talk to your neighbours* so you are aware of their concerns. Taking the time to talk to them at this early stage may save time later if changes can be made to the plans that address their concerns. Most people

appreciate the opportunity to discuss plans before the formal notice process commences, although it will not always be possible to make changes that satisfy everybody.

- *Consider getting professional advice.* Planning assessment and decision-making are sophisticated processes that involve concepts such as respecting neighbourhood character, achieving good urban design outcomes, protecting reasonable amenity and enhancing heritage significance. Council and the community are looking for proposals that will meet their expectations. Getting the right professional advice at the beginning will help develop your ideas so you meet council's expectations and your objectives.

Preparing a planning permit application

Step 1: Find out if a permit is required

Find out whether a permit is required, what information must be provided with the application, and what relevant policies and provisions council will use to assess it. Different information will need to be provided for different types of permit applications and might include site plans, elevation drawings or a written report. Refer to the checklists provided at step 8.

Pre-lodgement certification

You may consider using the pre-lodgement certification process to achieve a faster processing and decision timeline. Check if the Council offers the service and how you can use it. Essentially the process involves employing a Council agreed certifier to ensure that your application contains all the required information and is of an adequate standard to be lodged with the Council. This avoids delays often associated with incomplete applications. The process may also include conducting meetings with the Council planners and immediate neighbours to the site.

Step 2: Fill out the application form

If a permit is required, fill out the application for planning permit form, provide the required information and pay the required fee. All councils use a standard application for



2. The planning permit

planning permit form. The council's planning department will give you a copy and help you to complete it. Alternatively, application forms can be obtained at www.dpcd.vic.gov.au/planning. You must lodge the application form at the council offices. You should get a receipt for the fee paid.

Make sure you include your current mailing address and telephone number.

Step 3: Describe what the permit is for

Clearly describe what you want a permit for. Make sure you describe all the things that need a planning permit so a further permit won't be required. Check this with the council planner when lodging the application.

Step 4: State the cost of development

You must provide an accurate estimate of the cost of the development. This will determine the planning application fee. The fee must be paid when you lodge the application. It is paid to council to consider and assess the application. It is not a fee for approval, so there is no refund if the application is refused. The scale of fees is set down by government regulation.

Step 5: Include the owner's consent

If you are the permit applicant but not the owner of the land, you must provide the owner's details on the application for planning permit form. This section is used when an agent for the owner makes the application. The applicant must tell the owner that the application has been made.

Step 6: Attach title information

A current Certificate of Title must be provided. You must also provide a copy of any registered restrictive covenant that affects the land. If a registered restrictive covenant does apply, talk to the council planner about what to do next.

Step 7: Attach the plans and any necessary extra information

If the appropriate information is not provided, the application won't be processed. Council must have sufficient information to assess your application.

the planning permit process

before making the application

- find out about the planning scheme
- talk to the council planner
- talk to the neighbours
- consider getting professional advice

prepare and submit the application

- application information (see checklists page 6)
- application form
- fee

council checks the application

- more information?
- referral?

application is advertised if required for at least 14 days

- usually by letter to neighbours and a sign on-site
- people affected may object

council assesses the application

- considers any objections
- holds mediation meeting if needed
- considers any referral comments
- assesses planning scheme provisions
- negotiates with permit applicant
- prepares report

council decides the application

permit with conditions

notice of decision with conditions

refusal

review by VCAT if applied for

- by the permit applicant against conditions or refusal
- by an objector against notice of decision



2. The planning permit

Plans or other information may also need to be prepared to accompany the application. The planning scheme may state that particular information is required for certain types of permit applications.

Step 8: Check everything is there

Checklists for planning applications

The following checklists have been designed to provide applicants with advice on the information that should be submitted with a planning permit application for most common proposals.

As councils often have their own specific requirements and checklists, it is important to check with the particular council and confirm requirements before submitting an application. In particular, it is important to establish if councils have any local planning policies in their planning schemes that may require specific information to be submitted as part of the application.

For rural applications, refer to the Planning Practice Note: *Applying for a permit in the rural zones* (February 2002) www.dpcd.vic.gov.au/planning

Checklist 1. Construction and/or extension of a single dwelling or multi dwellings on a lot

In addition to the information required above, for all planning applications the following should be provided:

Fully dimensioned plans:

- three (3) copies of all plans drawn at preferred scales of 1:100 or 1:200

For all planning applications, the following must be provided:

- an application form completed and signed (obtained from relevant council or at the Department's web site indicated above)
- a current copy of title for the land showing the plan of subdivision
- the prescribed application fee (refer to fee schedule to be obtained from council or at the Department's web site indicated above)
- any registered restrictive covenant.

- one (1) copy of all submitted plans in A3 size suitable for photocopying

plans to show the following, as appropriate:

- the boundaries and dimensions of the site
- development plans including elevations

a Neighbourhood and Site Description

(as described in Clause 54 or 55 as appropriate in the planning scheme) may use a site plan, photographs or other techniques and must accurately describe:

in relation to the neighbourhood:

- the built form, scale and character of surrounding development including front fencing
- architectural and roof styles
- any other notable features or characteristics of the neighbourhood

in relation to the site:

- site shape, size, orientation and easements
- levels of the site and the difference in levels between the site and surrounding properties
- location of existing buildings on the site and on surrounding properties, including the location and height of walls built to the boundary of the site
- the use of surrounding buildings
- the location of secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within nine metres
- solar access to the site and to surrounding properties
- location of significant trees existing on the site and any significant trees removed from the site in the 12 months prior to the application being made, where known
- any contaminated soils and filled areas, where known
- views to and from the site
- street frontage features such as poles, street trees and kerb crossings
- any other notable features or characteristics of the site

a design response (as specified in the planning scheme) which must explain how the proposed design:

- derives from and responds to the neighbourhood and site description
- meets the objectives of Clause 54 or 55 of the planning scheme (as appropriate)



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- responds to any neighbourhood character features for the area identified in a local planning policy or a neighbourhood character overlay
- addresses any streetscape elevation issues.

You may also be required to provide:

- shadow diagrams for September equinox at 9.00 am, 12 noon, 3.00 pm
- details of colours materials and finishes
- streetscape elevations
- landscape concept plan
- energy rating report
- traffic report for larger scaled developments.

See Practice Note *Making a Planning Application for a Dwelling in a Residential Zone*

www.dpcd.vic.gov.au/planning.

Checklist 2. Applications for industrial planning permits

In addition to the information required for all planning applications, the following should be provided:

buildings and works

three (3) copies of fully dimensioned development plans drawn at a scale of 1:100 or 1:200 which include, as appropriate:

- the boundaries and dimensions of the site
- adjoining roads
- relevant ground levels
- elevations, including colour and materials of all buildings and works
- driveways and vehicle parking and loading areas
- setbacks of adjoining buildings where setback reduction is sought
- the layout of existing and proposed buildings and works identifying the intended use of the components of the building
- landscape layout plan, which includes the description of vegetation to be planted, the surfaces to be constructed, a site works specification and the method of preparing, draining, watering and maintaining landscape area
- written submission detailing content of proposed application

- a table showing floor areas and car-parking rates calculated for car parking to be provided

use of land

- the purpose of the use and the types of processes to be utilised
- the type and quantity of goods to be stored, processed or produced
- how excess land will be maintained
- hours of operation
- whether a Works Approval or Waste Discharge Licence is required from the Environment Protection Authority
- whether a licence under the *Dangerous Goods Act 1985* is required
- the likely effects, if any, on the neighbourhood, including:
 - noise levels and any remediation proposed
 - airborne emissions
 - emissions to land or water
 - traffic, including the hours of delivery and despatch
 - light spill or glare.

Checklist 3. Applications for business planning permits

In addition to the information required above for all planning applications, the following should be provided:

buildings and works

- (three) 3 copies of fully dimensioned development plans drawn at a scale of 1:100 or 1:200 which include, as appropriate:
- the boundaries and dimensions of the site
- adjoining roads
- relevant ground levels
- elevations, including colour and materials of all buildings and works
- driveways and vehicle parking and loading areas
- the layout of existing and proposed buildings and works identifying the intended use of the components of the building
- landscape layout plan, which includes the description of vegetation to be planted, the surfaces to be constructed, a site works specification and the method of preparing, draining, watering and maintaining landscape area



2. The planning permit

- any proposed signs
- written submission detailing content of proposed application

use of land

- a written submission detailing the purpose of the use and the types of activities which will be carried out
- proposed patron numbers and security arrangements for a licensed premises
- how excess land will be maintained
- the likely effects, if any, on adjoining land, including:
 - noise levels and any remediation proposed
 - traffic, including the hours of delivery and despatch
 - hours of operation
 - light spill or glare
 - solar access
- if an industry or warehouse:
 - the type and quantity of goods to be stored, processed or produced
 - whether a Works Approval or Waste Discharge Licence is required from the Environment Protection Authority
 - whether a licence under the *Dangerous Goods Act 1985* is required
 - the likely effects on adjoining land, including airborne emissions and emissions to land and water
- if a licensed premises:
 - delineated area of Liquor Licence to be shown.

Checklist 4. Applications for a planning permit for advertising signage

In addition to the information required for all planning applications, the following should be provided:

three (3) copies of plans at a scale of 1:100 or 1:200 showing as appropriate:

- the exact location of all existing and proposed signage on the land
- exact dimensions of the proposed signage, including the height, width and depth of the signage
- front, side and rear elevations of the signage (or location on a building if applicable) including exact height dimensions and the distance above natural ground level

- extent of the projection of the signage, clearance above the footpath and or laneway surface and distance to the face of the kerb
- plans depicting the proposed colours and building materials
- details of the illumination, floodlighting and animation (if applicable)
- a written submission considering the following as appropriate:
 - the effect of the sign on the amenity of the area, built environment or landscape
 - the advertising pattern and theme in the area and the number of signs of the same type
 - the effect of the sign on existing signs
 - the size and likely impact of the sign having regard to the size of the premises on which it is to be displayed and the scale of surrounding buildings
 - the effect of the sign on the safety, warning and security of premises and public areas
 - the effect of the sign on the appearance and efficiency of a road, railway, waterway or other public way, having particular regard to the sign's colour, brightness and location
 - the views of the Roads Corporation if the sign is an animated, floodlit, internally illuminated, panel, reflective or sky sign to be displayed within 60 metres of, or to project over, a freeway, State highway, metropolitan bridge or other road declared under the *Transport Act 1983*.

Checklist 5. Applications for a planning permit for waiver of car parking

In addition to the information required above for all planning applications, the following should be provided:

- a written statement for assessment against the requirements of Clause 52.06 (Car Parking) of the relevant planning scheme including:
 - full details of the current use and proposed use including days and hours of operation, staff numbers, etc
 - the proposed days and hours for trading
 - the numbers of tables and chairs within the premises and the number of patrons (if appropriate)
 - any car-parking deficiency or surplus (credit) associated with the existing use



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- any relevant parking precinct plan
- the availability of car parking in the locality
- any shared use of car spaces by multiple uses
- an empirical assessment of car-parking demand (if appropriate)
- available public transport options and accessibility
- three (3) copies of plans and elevations at a preferred scale of 1:100 or 1:200 showing:
 - site layout and existing car-parking spaces and dimensions.

Checklist 6. Applications for a subdivision planning permit

In addition to the information required above for all planning applications, the following should be provided:

- 15 copies of Plans of Subdivision (A4 size)
- a survey plan showing existing conditions and the site area in square metres and
- a written statement explaining:
 - the purpose of the subdivision
 - the current use of the land
 - the area of each proposed new allotment
 - how the proposal meets the objectives of Clause 56 of the planning scheme.

Submit the application

- Note the application reference number and the name and contact details of the council planner responsible for the application.
- Use the application reference number in all correspondence with council.
- Keep a copy of all the correspondence from council about the application. It is an important record of council's assessment process, and of the dates when decisions were made.

Try to lodge the application with the council planner you've discussed the proposal with. Get them to check that all the necessary information is provided.

After the application is lodged

You should receive an acknowledgment letter from council.

The council planner will check the application and advise you (in writing) within a reasonable time if more information is required. If more information is required, you should provide it promptly or the application won't be processed further.

The application is a public document and is available for inspection at the council offices. So that people who may be affected by the proposal can understand what's proposed, copies of plans may be made available to them.

More information

The council may send a letter requiring you to provide more information before it deals with the application. The letter will specify the information that is required to be provided and the date the information is required to be given to council. If the information is not given to council by the date specified, the application will lapse and you will need a new application if you choose to continue.

If you have difficulty providing the information by the date specified by council, you can apply to the council for an extension of time. This application should be in writing and must be submitted to council before the lapse date.

Referrals

Your application might be sent for comment to other departments (for example, engineering services, urban design) within council. It might also be formally referred to external agencies such as the Department of Primary Industries, VicRoads or Melbourne Water if the application affects their interests.

Advertising

A fundamental part of the Victorian planning system is to allow people affected by a planning decision to be given the opportunity to comment on what's proposed before the decision is made.

When the application is lodged, council decides whether notice will be given to the owners and occupiers of the adjoining land or any other person, and how the notice will be given. This is usually called advertising.



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If the planning scheme specifically states that advertising is not required, or if council is satisfied that the application will not have a negative impact or cause material detriment to any person, the application will not be advertised.

If formal advertising is required, council will issue a written direction to advertise the application. This can be expected within a reasonable time after the application is lodged, once all the required information is provided. The advertising period is at least 14 days.

Neighbours are usually notified of the permit application by letter. A notice may also be required to be displayed on the site.

Any comments received are called submissions, and these should be lodged with council during the advertising period. Council must consider them when it makes its decision about the application.

Submissions that oppose a proposal are objections.

Most submissions are objections, and they may lead to changes being made to the proposal before council makes its decision. Submissions can also be made in favour of a proposal.

Advertising must be carried out exactly in accordance with council's direction and the 14-day time frame must be strictly observed. Contact the council's planning department if you do not understand what you are required to do.

You may be directed to place a sign on the street frontage of the land for 14 days. This is usually required if council considers that persons other than the immediate neighbours might be affected by the proposal. Council will usually provide a sign filled out with the required information. You will have to make the sign weatherproof and ensure that it is displayed in accordance with council's requirements.

With the council planner, confirm the date to go on the sign, the date from which the sign must be on display, and when the sign can be taken down.

Most councils require a statutory declaration as evidence that advertising has been completed. The application won't be processed further until the advertising has been completed to council's satisfaction and the statutory declaration returned to council.

Objections

Objections may be lodged with council up to the time when it makes its decision about the application; however, objections are usually lodged during the 14-day advertising period. Anyone can lodge an objection. Objections can't be ignored and council must consider them when it makes its decision. Although objections may take any form, those relating to reasonable planning concerns will have more influence over council's decision.

When the advertising period has finished, check if the council's planning department has received any objections. If there are no objections and all the referral comments are back, the council planner can assess the application and make a recommendation about whether to grant a permit. Even if there are no objections, the application may be refused if the council planner's assessment is not favourable.

If objections have been received, arrange a meeting with the council planner to discuss them and identify the planning issues. For example, a change to the plans to increase the setback from a boundary may reduce shadow effects on a neighbour's property, or a condition restricting the hours of operation for a restaurant might address an objector's concerns about noise late at night.

Many councils encourage the objectors and the permit applicant to meet to discuss the proposal and address the objections. Council will facilitate the negotiation between the parties. As the permit applicant, you can arrange the meeting or negotiate with the objectors individually.

Ask the council's planning department for a copy of the objections. Make a note of each objector's name, contact details and their main concern. Offer to meet the objectors on-site to discuss what can be done. Contacting objectors individually may be effective, but be careful that any changes you agree to will not cause problems for other objectors. While it's not always possible to resolve objections and differences of opinion, it's usually worthwhile to try. Make sure you keep the council planner informed about the arrangements you make.

The council planner might suggest some changes to the plans or appropriate conditions to address the objections or issues council has identified when assessing the application. Any further action you take will depend on



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the nature of the objections, the advice from the council planner and your willingness to negotiate changes.

Changing the application

You are able to ask council to allow you to change your application including the plans before advertising is carried out or after advertising to address the concerns of the council planner or objectors. If the request to change the application is made after advertising has been carried out, the council planner may require the application to be readvertised.

Withdrawal of objections

An objection can be withdrawn conditionally, for example, provided that certain changes are made to the conditions imposed. If the objector's requirements are not met, the objection still stands. An objection must be withdrawn or conditionally withdrawn in writing, signed and dated.

The recommendation and permit conditions

Discuss the recommendation and the proposed permit conditions with the council planner before a decision is made. Councils usually use a set of standard conditions, but the planner may think special conditions are appropriate. By discussing the conditions early, you may avoid the need to apply for a review because you find the permit conditions unacceptable.

Assessment of the application

The council planner prepares a report describing the proposal, the relevant policies and planning scheme requirements, the assessment process, any objections and referral comments, and the response to them. They then make a recommendation about whether or not a planning permit should be granted. The council planner has to judge how well a proposal meets policy objectives in the planning scheme, and they may have to strike a balance between competing objectives.

An officer of the council may make the decision under delegation. This means a senior officer or committee of officers of the council makes the decision, rather than it being decided by the full council. A decision made under delegation is usually quicker because the application does not have to wait for a council meeting.

Most councils have a policy that identifies applications that may be decided under delegation. If the application is for a major project, or there are a certain number of objections, the application will usually be decided at a committee of council or a full council meeting.

If your application is listed on a council meeting agenda, you might want to make a short presentation to council in support of your application. With the council planner, discuss if this is possible and appropriate, and find out what notice is necessary for you to speak at the council meeting. Objectors can also make a short presentation at the council meeting.

Refusal

Council or its delegate may refuse to grant the permit and will issue a Refusal to Grant a Permit notice. The grounds for the refusal will be listed on the notice. Council will give a copy of this notice to you and all other parties involved in the application process. Information about applications for review to the Victorian Civil and Administrative Tribunal (VCAT) is printed on the back of the refusal notice.

A council planner may let you know in advance if your application is to be refused and the decision is to be made under delegation. This allows you to make changes to the application that address council's concerns. However, you are not under any obligation to make changes and, sometimes, there is a fundamental difference between what you want to do and the council planner's assessment of the application that can only be resolved at VCAT.

In some instances, the council planner may recommend that the permit is granted but council may refuse the application. Council is not obliged to accept the council planner's recommendation and there are many reasons why it may be overturned.

If your application is refused, you have 60 days from the date that notice of the refusal is given to apply to VCAT for a review of the decision. Lodge an application for review as soon as possible so you get in the VCAT system.



2. The planning permit

Granting the permit

A permit is nearly always subject to specified conditions that must be met. If there are no objections, council can issue the permit immediately. If there are objections, council can only issue a Notice of Decision to Grant a Permit. All concerned parties will receive a copy of the notice. The Notice of Decision to Grant a Permit does not have the same legal status as a permit. However, it signals council's decision to grant the permit and identifies the conditions to be included on it.

An objector has 21 days to lodge an application for review. If VCAT confirms that no application has been lodged within the 21 days, council will issue the permit. If an objector lodges an application for review within 21 days of the notice being given, council cannot issue the permit. The application will be decided by VCAT.

If council issues a permit, you will receive a copy of the permit and the endorsed plans. These are important documents and should be kept in a safe place. Don't use the endorsed plans as your working plans.

Permit conditions and expiry

If the permit is granted, you must comply with all of the permit conditions. Check the conditions very carefully and note any that must be complied with before the use or development commences. For example, amended plans may be required, or there may be a condition requiring a landscape plan to be prepared and approved by council. You cannot act on the permit until these conditions have been satisfied and the plans have been endorsed.

Note any conditions about expiry of the permit. Most permits expire two years from the date of issue unless specified times are included as a condition of the permit.

If a permit condition is unacceptable, you have 60 days from the date the permit was issued, or the Notice of Decision to Grant a Permit was given, to apply for a review. Lodge an application for review of the conditions as soon as possible so you get in the VCAT system.

Amending a permit

After a permit is issued, a situation may arise that requires a change to your permit and approved plans. Instead of applying for a new permit, you are able to

apply to council for an amendment to your permit. The request for an amendment to the permit will follow the same process as a new application including advertising and referral of the application.

You should discuss the amendment to the permit with the council planner before submitting your application for an amendment to the permit.

Failure to decide the application

If council fails to make a decision about the application within 60 days, you can apply for a review to VCAT. The 60 days must be calculated in accordance with Regulation 30 of the Planning and Environment Regulations 1998.

If council did not request further information, the 60 days is calculated from the date the application was lodged excluding the time between council's direction to give notice about the application and the giving of the last required notice.

If council did request further information, the 60 days is calculated from the date when the information was provided excluding the time between council's direction to give notice about the application and the giving of the last required notice.

In calculating the 60 days, the day the application was lodged is excluded and the last day is included. Weekends and public holidays are included in the 60 days. However, if the last day falls on a weekend or public holiday, the 60-day limit expires on the next working day.

If the 60-day limit is approaching, find out from the council planner what the recommendation will be, when the decision will be made, and the reasons for any delay. Reviews against the failure to make a decision are relatively uncommon because council is likely to make a decision before the hearing date at VCAT. However, if a refusal is recommended, it may save you some time in the VCAT system if you have applied for a review under this provision. The appropriate action will depend on the particular circumstances. For more information about applications for review, see Section 4.



3. Influencing decisions

This section provides advice to people who may be affected by a planning permit application.

How can you influence the planning permit process?

If you are affected by a planning permit application, you can influence what is proposed and what gets approved by consulting and negotiating with the permit applicant and the council planner.

Any person can inspect the plans and lodge an objection to an application if they have concerns about it.

An objection is a written statement explaining your views about the application and how you may be affected if a permit is granted. An objection should specifically explain what impact the proposal will have on you, and the changes that would make the use and/or development acceptable.

An objector has the right to have a planning decision reviewed.

Talk to the permit applicant

Permit applicants are encouraged to discuss their initial plans with neighbours so they can ascertain their neighbours' concerns and address these before the proposal is fully developed and finalised. Permit applicants are not required to do this, but these negotiations might avoid objections and delay later in the process.

If a permit applicant approaches you, ask for a copy of the plans so you can think carefully about what is proposed and how you might be affected. Suggest ways that the plans could be changed to address your concerns. For example, it may be possible to retain a significant tree for shade and screening if the setback from the boundary is increased. The permit applicant might not agree to make these changes, but they are now aware of your concerns.

Advertising the application

Most applications are advertised unless council is satisfied that granting a permit will not cause material detriment to any person, or the planning scheme says advertising is not required. Notice about the application is given to neighbours and a sign may also be displayed on the land. If you are an adjoining owner and occupier, you should get a formal notice about the application even if the permit applicant has discussed the proposal with you before the application was lodged.

Through this process, neighbours are informed about a proposal and invited to inspect the plans. If you do not receive a formal notice you can still lodge an objection, but council's planning department must receive it before council makes a decision about the application.

Arrangements for giving notice about applications vary between councils. Some require letters to be sent to owners and occupiers by registered post, some provide a mail-out service for permit applicants, and some require signs on the site as well as letters to neighbours. Council will make your name and address available to the permit applicant for this purpose only.

The notice will tell you:

- the address of the land that is subject to the application
- the permit applicant's name
- council's reference number for the application
- the nature of the permit sought
- where the application and plans can be inspected
- the name of the council officer who is responsible for the application
- the address for lodging your objection
- the date by which objections should be lodged (at least 14 days after the date the last notice was given).

Council cannot make a decision on the application until the notice period is over.

If you support the proposal, you do not have to take any action, although you can make a submission in support.



3. Influencing decisions about planning permits

If you have a reasonable concern about the application, you can lodge an objection with council during the 14-day notice period. This will ensure you are involved in any negotiations with the permit applicant and council about the application. However, you can still lodge an objection up to the time council makes its decision on the application.

If you negotiated changes to the plans with the permit applicant before the application was lodged, you should inspect the plans submitted with the application to make sure they include these changes.

Making an effective objection

Carefully inspect the plans and the reports provided with the application. See if your property or building is shown on any of them and make a note of your concerns and questions.

Discuss the proposal with the council planner and the permit applicant so you understand what's proposed and how you might be affected. Ask the council planner to explain why a permit is required and what the application is for. Ask them to identify the changes or impact the proposal will have on your property. Get a copy of the plans and visit the site so you can assess the effects of the proposal.

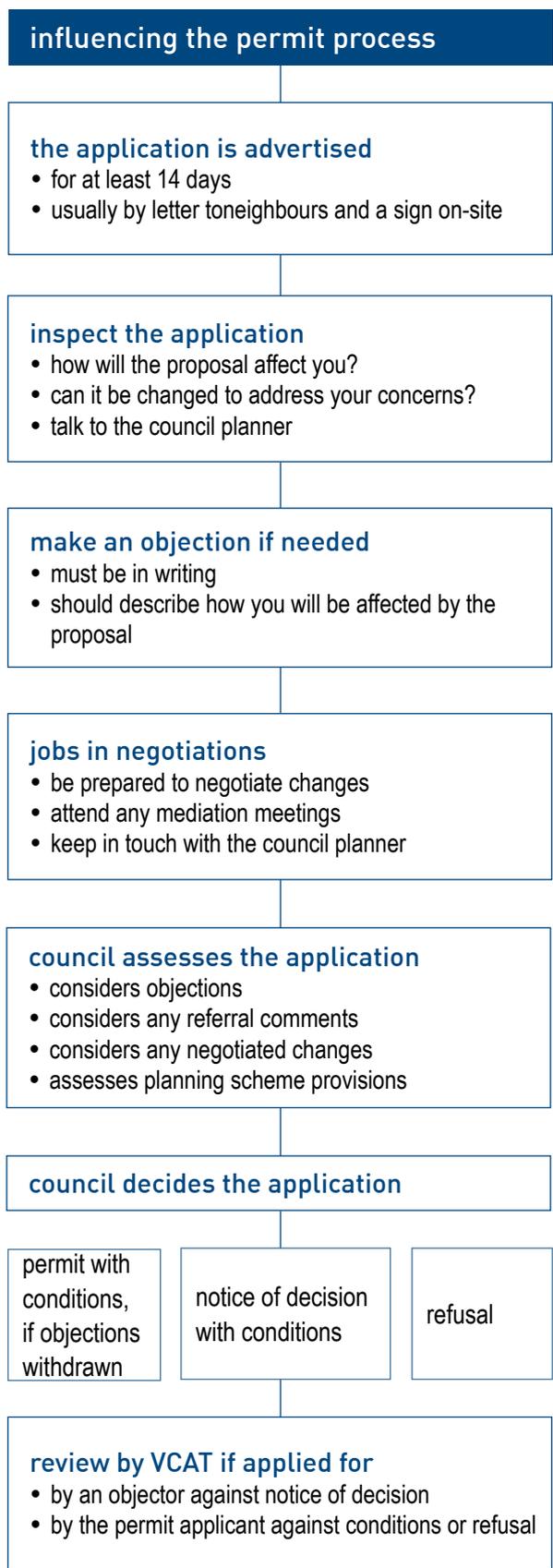
In your objection, describe how you will be affected if a permit is granted and suggest how these impacts could be reduced (or even eliminated) by possible changes to the plans or the inclusion of specific permit conditions. Most permit applicants will try to address reasonable concerns.

Your objection will carry more weight if it is rational, specifically addresses the proposal and describes how you will be affected.

Most councils have a standard objection form that you can fill out, but it is not essential that you use it.

Your objection should:

- be typed or clearly written
- be addressed to the council and clearly marked as an objection
- include the permit application reference number and the address of the land, so the objection can be attached to the correct application file





3. Influencing decisions about planning permits

- include your name and current contact details. This allows council to keep you advised of any meetings between the applicant and other objectors, or of any changes to the plans or the proposal that the permit applicant makes
- include your signature and date of your objection
- be lodged within the 14-day notice period.

Keep a copy of your objection for future reference.

If you lodge an objection, you secure the right to apply for a review to VCAT if council decides to grant a permit.

An objection is a public document and copies may be made available to other parties including the permit applicant, councillors and VCAT.

Negotiations between the permit applicant and the objectors

Once the notice period for the permit application is over, the council planner formally considers the proposal, taking any objections into account.

Talk to the council planner to find out what other objections have been received and discuss changes to the plans or permit conditions that might address your concerns. It may be appropriate to talk to the other objectors if you have shared concerns. At this stage, you should talk to the permit applicant to see if changes can be negotiated.

The council planner may arrange a consultation or mediation meeting between the permit applicant and the objectors. This allows the permit applicant to provide more information about the proposal in response to the objections, and to discuss any changes that could be made to address them. Specific conditions on the permit might also help to reduce the proposal's impact.

Most councils arrange these meetings as a usual step in the planning assessment process. A mediator will conduct the meeting and you will get the chance to discuss your concerns.

At the end of the meeting, find out from the council planner what the next steps will be in the application assessment process. There may be a second meeting, or the council planner may decide the issues can't be resolved and will continue the application process.

If the permit applicant agrees to make changes to the plans as a result of these consultations, talk to the council planner about how these will be addressed. Make sure the changes agreed to are made to the application or are confirmed in writing. If the changes do not address all your concerns, indicate this in a further letter to council and confirm that your objection stands.

The permit conditions

Discuss the permit conditions with the council planner, as appropriate conditions may address or reduce some of your concerns about the proposal. The conditions are very important, particularly if the council planner tells you they intend to recommend that the application be approved.

Withdrawing an objection

If you are satisfied with the outcome of negotiations with the permit applicant, or do not wish to pursue your objection, you can withdraw it by writing to council.

However, if you withdraw your objection, you will lose your right to apply to VCAT for a review. Therefore, don't withdraw your objection unless you are completely satisfied that your concerns have been addressed and the changes have been made to the application or are confirmed in writing.

You can also withdraw an objection conditionally, for example, provided certain changes are made. This will protect your right to apply for a review if the changes are not made.

The assessment process

The council planner will prepare a report that describes the application, the relevant policies and planning scheme requirements, the assessment process, the number and nature of the objections and the response to them, and referral comments. They then make a recommendation based on a professional assessment of the application. They have to judge how well a proposal meets a strategic objective, policy or requirement in the planning scheme, and often have to strike a balance between competing objectives. The report should contain a clear statement about the reasons for the planner's recommendation after considering all the relevant material.



3. Influencing decisions about planning permits

An officer of the council under delegation may decide the application. This means a senior officer or committee of officers of the council makes the decision rather than the full council. A decision made under delegation is usually made more promptly because the application does not have to wait for a council meeting.

Most councils have a policy that identifies applications that may or may not be decided under delegation. If the application is for a major project, or there are a large number of objections, the application will probably be put to a committee of council or a full council meeting for decision. If council is to decide the application, it may be helpful to discuss your concerns with the Ward Councillor before the council meeting.

Find out from the council planner what the recommendation is and how the decision will be made. Make sure you know what's going on at this final stage of the application process. If the application is to be decided by council, you might want to make a short presentation at the council meeting to explain your objection. From the council planner, find out whether this is possible and what the requirements are for you to speak at the council meeting. Focus on the impact of the proposal and explain why the application should be refused or modified.

The decision

Before making a decision, council or its delegate will usually be given a summary of the objections as part of the council planner's report about the application. Objections can suggest permit conditions, or changes to plans or other ways of addressing concerns and improving the proposal. Council's decision might be conditional upon these changes being made to the plans.

A permit will not be refused just because objections have been received. Council has to decide the merit of the objections and weigh up a number of planning considerations before it makes its decision.

If council decides to grant the permit, and there are objections, council can issue a Notice of Decision to Grant a Permit but cannot issue the permit until the time for applications for review has passed and no applications have been lodged. The permit applicant and the objectors will receive a copy of the Notice of Decision to Grant a

Permit. The notice does not have the same legal status as a permit. However, it signals council's decision to grant the permit and identifies the conditions that will be included on the permit.

Information about applications for review to VCAT and the time frame for lodging applications is printed on the back of the notice. Read the application for review information carefully and talk to the council planner about what you should do next. It might be worthwhile to get some independent advice. You have 21 days from the date that notice of the decision was given to lodge an application for review. If VCAT confirms that no applications for review have been lodged within the 21 days, council will issue the permit.

If there is an application for review, council cannot issue the permit. Its decision to grant the permit and the permit conditions will be subject to review by VCAT. VCAT will make the final decision about the application.

Notice of decision to grant a permit

All objectors will receive a copy of the Notice of Decision to Grant a Permit by post. Make a note of the date that the notice was received and calculate when the 21 days for application for review lapses. The notice will include all the conditions the applicant must comply with, and will identify the plans to be endorsed as part of the permit. Read the notice carefully and make sure it includes any condition you have negotiated with the permit applicant or the council planner. Check the plan reference numbers, particularly if revised plans have been prepared during negotiations with the permit applicant.

Application for review

For detailed information regarding applications for review, see section 4.

Application for review of conditions

The permit applicant has 60 days from the date that the Notice of Decision to Grant a Permit was given to apply to VCAT for a review of any of the conditions on the notice.

If the permit applicant lodges an application for review of the conditions, they will notify objectors and you will be invited to be involved in the review process. Discuss



3. Influencing decisions about planning permits

the situation with the council planner so you can find out whether you need to be involved in the review. This will depend on whether the condition affects your objection to the proposal.

A refusal to grant the permit

If council refuses to grant the permit, a Refusal to Grant a Permit notice will be issued that identifies the grounds for the refusal. If you objected to the proposal, you will receive a copy of the refusal notice. The permit applicant has 60 days to apply to VCAT for a review of the refusal. You will be notified that the permit applicant has lodged an application for review and will be invited to take part in the review.

You do not have to be involved in the review. If you are part of a group of objectors with shared concerns, discuss the most effective way to be involved in the review with the other objectors and the council planner. It may be a good idea to nominate a spokesperson for the group.

If you take part in a review, your submission should explain to the VCAT why council was correct to refuse the application.

If you are asking VCAT to impose certain conditions on the approval, clearly explain your reasons for requesting these.



4. Applications for review to VCAT

What is VCAT?

VCAT (the Victorian Civil and Administrative Tribunal) independently reviews decisions made by councils 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 the parties. VCAT makes its assessment of the proposal's planning merits and decides whether a permit should be granted, and what permit conditions are appropriate.

An appeal to VCAT is called an application for review. The party making the application for review is called the applicant for review.

One or more VCAT members hear the case and hearings are conducted in a structured, formal way. Courteous behaviour is required and people are not allowed to interrupt or ask questions during another's presentation. Although parties may be represented by a lawyer or planner, this is not essential and many permit applicants and objectors present their own submissions.

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

Who can apply for a review?

If a person's permit application is refused, they can apply for a review of this decision. This must be done within 60 days of council giving notice of the refusal. As a matter of courtesy, tell the council planner you have lodged an application for review before you are formally instructed to do so by VCAT.

If council grants the permit with conditions, the permit applicant can apply for a review of the conditions. This must be done within 60 days of the permit being issued, or the Notice of Decision to Grant a Permit being given.

The objector can also apply for a review of a decision to grant the permit. This must be done within 21 days of the Notice of Decision to Grant a Permit being given. If you are an objector, discuss the review process and chances of success at VCAT with the council planner. You might also need independent professional advice to help you decide whether to apply for a review and how to prepare for it.

Whether you are the permit applicant or the objector, lodge the application for review promptly after council has made its decision so other parties know your intentions and the matter gets into the VCAT system as soon as possible.

There are other types of application for review proceedings to VCAT but these are less common. If you have a planning problem, talk to the council planner about what to do and find out if an application for review is appropriate in your circumstances.

The *Planning and Environment Act 1987* sets out the common types of applications for review.

How do you apply for a review?

Step 1: Fill out the 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, telephone (03) 9628 9777 and online at www.vcat.vic.gov.au.

Step 2: Provide a 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 argue at the hearing. Also, it is often the first document that the VCAT member looks at before the hearing.



4. Applications for review to VCAT

If you are the permit applicant, respond to council's grounds of refusal in your short statement of grounds.

Add any additional points you want to cover at the hearing in your detailed submission. You have to try to convince VCAT that 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 or why, if it is to be retained, it should be differently worded.

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

Type 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 they become separated. 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: Lodge the form with VCAT in time and with the relevant fee (unless the fee is waived)

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 on telephone (03) 9628 9777 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.

the review process

council decides the application

consider council's decision

- do you agree with council's decision
- are the permit conditions appropriate
- talk to the council planner about your options for a review

apply for a review by VCAT

- apply in time
- fill out form and pay fee
- prepare statement of grounds
- give notice of the review as directed

prepare for the review

- search the VCAT's file
- find out who is a 'party' to the review
- prepare submission
- consider getting professional advice
- circulate any correspondence/reports

the day before the hearing

- check hearing date, time and location
- finalise and make copies of submission
- reconfirm expert witness attendance

the day of the hearing

- fill out attendance sheet
- follow hearing procedures
- listen carefully to other parties

VCAT decides the application

- decision is issued in writing
- council must act on decision if directed



4. Applications for review to VCAT

If the cut-off date is getting close, you can lodge the application for review in person at VCAT's offices or fax a copy and mark it urgent. VCAT's fax number is (03) 9628 9789. If you fax it, post the original form and the fee to VCAT without delay. A faxed application for review is not considered to be lodged until the fee is paid. The completed standard form and fee must be lodged in time for the review to proceed.

What happens next?

VCAT will write to the person who lodged the application for review. It will direct them to give a copy of the notice of review and forms supplied by VCAT marked (A) and (B) to council, any referral authorities and the objectors/ permit applicants within seven days.

VCAT's form (A) provides information for the persons against whom the application is made. Form (B) is a blank statement of grounds form to be completed by any objector or permit applicant who wishes to contest the application for review.

Contact council's planning department for the names and addresses of the persons you must give notice to, and ensure you meet VCAT's time frames for notice.

If you lodged the application for review, you must also fill out form (C) – Statement of Service of Documents supplied by VCAT. You must return it 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 any 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.

Response to the application for review

If you want to contest the application for review, you must fill out the statement of grounds (notice form B) and lodge a copy with VCAT, council and the person who lodged the application for review within 14 days of receiving notice about the review. You will then be advised of the hearing date and invited to attend and make a submission to VCAT. This means you become a 'party' to the review and secures your right to make a submission to VCAT.

If you don't lodge a statement of grounds within 14 days, you will not get notice of the hearing. If you become aware of the hearing and attend, you will have to ask VCAT, at the beginning of the hearing, for permission to make a submission. To avoid this, circulate your statement of grounds within the 14-day time frame.

If you do not intend to appear at the hearing, do not file and serve a statement of grounds. Instead, you can lodge a written submission (provide six copies) with VCAT and ask that it be taken into consideration.

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.

Practice notes

VCAT has issued practice notes to help you understand its processes and procedures. Two important ones are:

- *Practice Note Planning & Environment List (No. 1) – General Procedures*
- *Practice Note VCAT No. 2 – Expert Evidence.*

You can obtain copies from the VCAT Registry or front counter. They are also available on the VCAT web site at www.vcat.vic.gov.au.

Practice Note Planning & Environment List (No. 1) – General Procedures covers:

- communications with tribunals and other parties
- adequacy of grounds and request for further particulars
- request for directions
- hearings
- urgent hearings
- adjournments
- withdrawal of applications
- settlement
- mediation
- costs
- amendment of plans.

Any expert witness who gives evidence to VCAT on your behalf must comply with *Practice Note VCAT No. 2 – Expert Evidence.*



4. Applications for review to VCAT

Council information and searching VCAT's file

Under *Practice Note Planning & Environment List (No. 2) – Responsible Authority Information*, council must give VCAT information about the application for review to enable VCAT to understand the context of the application. This information includes copies of the permit application, relevant plans, details of the planning scheme requirements, the names and addresses of all objectors, details of referral authorities, and a copy of any officer's report prepared for the application. Normally, council does not supply copies of this information to the other parties. However, you may apply to VCAT for consent to search the VCAT file to look at this information and make copies on payment of the necessary fees. To do so, contact VCAT's Registry.

Search VCAT's file well before the hearing to make sure you are familiar with all documents given to VCAT.

Mediation

VCAT can direct mediation of an application, but this is only done for a limited number of applications. However, you may request that the matter be referred to mediation. Make your request to VCAT's Registry who will forward information. If you consider a settlement is possible, discuss mediation with the other parties.

Circulating correspondence

If you correspond with VCAT, you are required to provide copies of the correspondence to all other parties, including council, and you must notify VCAT in writing that you have done so. It is sufficient to indicate that a copy was sent to all other parties.

Withdrawing an application for review

If you change your mind after you have lodged an application for review, you must write to the VCAT Registrar without delay and, preferably, well in advance of the hearing date. At the same time, send a copy of your letter to council and all other parties to the review. An applicant for review does not have a right to withdraw the application; VCAT must formally agree to the request.

In your letter, explain your position and ask what to do. Telephone VCAT if you have not had a response to this letter within a reasonable time, especially if the hearing date is getting close. Make sure you follow any VCAT instructions about notifying other parties about your request for a withdrawal, and follow the time lines. VCAT may not agree with your request, and other parties may be able to claim costs against you if they have spent time and money preparing for a review that does not proceed, or if late notice about the withdrawal is given (see the section on costs below).

Adjournments

Changing the hearing date is difficult and usually requires all the other parties to agree to the change. *Practice Note Planning & Environment List (No. 1) – General Procedures* sets out the procedure for applying for an adjournment of the hearing date. If you have lodged the application for review and you can't attend the hearing due to an unavoidable situation, you must advise the VCAT Registrar, in writing, as soon as possible. At the same time, write to all the other parties and seek their consent to the adjournment.

An adjournment may result in costs being applied.

Directions hearing

Sometimes, VCAT holds a directions hearing before the date of the full hearing. Directions hearings are held if a preliminary matter needs to be addressed to avoid a delay at the full hearing. They usually take about 30 minutes.

For example, a directions hearing would be held to decide who the parties to the review are, or if a use is prohibited by the planning scheme. A directions hearing may be held at the request of one of the parties, or may be initiated by VCAT.

If you think a directions hearing is required, you must request this in writing and address it to the VCAT Registrar. Your letter must specify the reasons for the request. It should be received well before the hearing date. You must provide a copy of the request to all other parties. If you are invited to a directions hearing, you should attend. *Practice Note Planning & Environment List (No. 1) – General Procedures* sets out the procedures that must be followed when applying for a directions hearing.



4. Applications for review to VCAT

Hearing procedures

VCAT's hearings are open to the public. In the interest of fairness to all parties, standard procedures are followed. One or two VCAT members usually conduct the hearing and submissions are presented in order. The council's representative normally goes first, then any referral authority, the objectors and, finally, the permit applicant. Information sheets and practice notes are available from VCAT and its web site to help people become familiar with the hearing's processes and procedures.

Any preliminary matters that require consideration (such as amendment applications, substitution of plans, requests for adjournment or directions, and time for hearing a particular witness of limited availability) should be raised before council commences its case.

Most VCAT members will explain the procedures at the commencement of the hearing and give all parties plenty of time to make their submissions.

You cannot ask questions directly of other parties, although the VCAT member may ask you a question during your presentation. Make sure you direct your presentation to the VCAT member sitting across the table from you. If they are taking notes, wait for them to finish before you continue.

VCAT takes into account the merit of the submission and the relevant planning considerations when making its decision, not the calibre of the spokesperson. A valid point made by one person will carry weight with VCAT over an invalid point, regardless of how many people support or repeat it. Groups of objectors may find it more effective to work together to make a single coordinated presentation.

However, if you feel a planner or lawyer would be a more effective communicator, or if you need the assistance of expert planning and/or legal advice to prepare or present your case, you may consider engaging a representative to speak on your behalf.

If you have not been to a VCAT hearing, attend one on a planning matter so you can see how they are conducted.

Where do the hearings take place?

Most hearings are held at VCAT's offices at 55 King Street, Melbourne. The list of hearings arranged for the day is displayed on the information board in the ground floor foyer, and the daily Law List is published in the *Age*.

The list shows the applicant for review, the council, the address of the land, the hearing's starting time, the allocated hearing room, and the members appointed to hear the case. Most morning hearings start at 10 am, and afternoon hearings usually start at 2.15 pm. However, these times can change with notice to all parties, so check the starting time.

Hearings start promptly, so allow enough time to complete the pre-hearing formalities. If you are a party to the review, take a seat at the table in the hearing room and fill out the attendance sheet. Ask the council's representative if you're not sure what to do. Print your name on the attendance sheet and your interest in the matter so the VCAT member knows who you are. The attendance sheet is the official record of the parties who participated at the hearing, so fill it out clearly.

Stand when the VCAT member enters or leaves the hearing room. Address the chairperson as Mr Chairman or Madam Chair. Other parties should also be formally addressed (for example, Mr Carson or Ms Smith).

Preparing and presenting a submission

VCAT provides a brochure to help people prepare effective submissions. It also explains some of the VCAT procedures. You can get a copy from the VCAT web site (www.vcat.vic.gov.au) or by telephoning VCAT on (03) 9628 9777.

In your submission, address the relevant planning considerations and avoid repetition. Be accurate. If some of the background material in your submission has already been covered by the council's representative, skip over it and focus on the things that are important to you. If you don't agree with what's been said by other parties, say so and explain your reasons to VCAT. VCAT may want to explore your issues so be prepared for questions. Refer to the plans of the proposed development to help explain your views or concerns.



4. Applications for review to VCAT

Most people speak to written submissions. This ensures VCAT is aware of your concerns and provides a record for VCAT to consider after the hearing.

Bring at least six copies of your submission to the hearing (more copies may be required if there is a large number of other parties). Check that each copy of your submission is complete, and sign and date it. Make sure it is securely bound or stapled. Number each page and each paragraph of the submission for easy reference. If your submission includes photographs, write on the back where and when they were taken, or stick them onto A4 sheets of paper.

The VCAT member will tell you when it's your turn to speak. Before you begin, hand a copy of your submission to each VCAT member and then to the other parties at the table. You can read out your submission, but you should address it to the VCAT member.

If you are an objector and a party to a review (but not the person who made the application for review), you do not have to attend the hearing and VCAT will take your written submission into account. However, your submission will probably be more effective if you present it in person or through a representative.

What about revised plans?

Sometimes, the permit applicant prepares revised plans before the day of the hearing and seeks VCAT's agreement to use the revised plans instead of the original plans submitted with the application. This might be done to address an objector's concern, or it might follow expert advice and reconsideration of a planning issue.

Application plans can't be changed without VCAT's formal agreement, and it does not always agree to replace the plans. This might be because the revised plans are so different that a new planning permit application is required.

If you are the permit applicant, make sure the revised plans have all changes clearly marked and include a written statement of the changes. You must fill out the standard form for submitting amended plans (Notice of Application to Amend Plans form) and lodge the form, revised plans and written statement of the changes, with VCAT at least 20 business days before the hearing

date. At the same time, a copy of these documents must also be given to all other parties to the hearing. You must also give a copy of the form, written statement of the changes and a blank Application to be Joined as a Party and Statement of Grounds form to any person who objected to, or was notified of, the permit application and is not a party to the hearing. *Practice Note Planning & Environment List (No. 1) - General Procedures* sets out the procedures that a permit applicant must follow when seeking to submit revised plans.

If you receive a Notice of Application to Amend Plans form, look at the revised plans and read the written statement of changes carefully and consider whether they address your concerns or improve the situation compared to the original plans. If you are a party to the hearing and object to the revised plans, you should lodge a written objection with VCAT. If you are not a party to the hearing and object to the revised plans, you should fill out the Application to be Joined as a Party and Statement of Grounds form and lodge this and a written objection to the revised plans with VCAT. *Practice Note & Environment Planning List (No. 1) - General Procedures* sets out the procedures that a person wishing to object to revised plans must follow.

VCAT may adjourn the hearing so that the revised plans may be considered at the beginning of the full hearing or it might hold a hearing before the full hearing to discuss the matter. It might also decide to allow a person who objected to the permit application or was notified of the application to become a new party to the hearing.

If the changes are minor and do not affect other people, VCAT is likely to agree to replace the original plans with the revised plans. Until VCAT makes its decision about the request, the parties won't know which plans will be the subject of the hearing; therefore, you may need to be prepared to discuss both sets of plans.

What about expert reports?

A party can engage an independent expert witness to prepare a report and present it to VCAT as evidence. For example, a party may call a planner to provide expert evidence on planning issues, such as compliance with the planning scheme. A traffic and parking report is usually provided if traffic and parking impacts are critical and in



4. Applications for review to VCAT

dispute. An urban design report may be helpful if VCAT has to decide if a building design respects the character of the area. Expert advice from a heritage architect is usually provided if VCAT has to decide whether or not a permit can be granted to demolish a building in a Heritage Overlay area.

If evidence of an expert witness is to be relied on at the hearing, the witness's report must be circulated to all parties 10 business days before the hearing. Permit applicants, objectors and council are entitled to bring in expert witnesses to give evidence at the hearing. Often experts do not agree, and the VCAT member must decide which evidence carries the most weight.

At the hearing, the expert witness will read from the report and each party can then ask questions of the witness in the order that submissions have been presented. Read the report carefully before the hearing and write down your questions. Make sure they are relevant to the case and the expertise of the witness. Use these questions to support your position by trying to expose any failing in the line of argument or flaw in the logic of the evidence put by the witness.

If you are an objector, discuss the expert's report with the council planner well before the hearing.

Expert evidence and the expert witness's report must comply with *Practice Note VCAT No. 2 – Expert Evidence*.

When is the decision made?

Usually, the decision is given in writing some weeks after the hearing date. A copy of the written decision is posted to all parties at the same time. Sometimes, however, VCAT will announce the decision at the end of the hearing.

VCAT makes its decision based on the submissions and evidence put to it, the relevant planning policies and requirements, its inspection of the site, and its own assessment of the proposal's likely impacts.

VCAT's decision is final unless there is an appeal to the Supreme Court on a question of law.

Costs

Parties to VCAT proceedings usually bear their own costs. However, although it is exceptional, VCAT can direct a party to pay another's costs in the interests of fairness. For example, costs may be awarded if one party's behaviour unreasonably disadvantages another party. This might occur if the person who lodged the review fails to attend the hearing without good reason. Costs are only paid if indicated by VCAT. Get legal advice if you think another person may ask VCAT to order you to pay their costs.



5. Changing the planning scheme

Amendments to the planning scheme

Councils can decide to amend planning schemes to achieve a desirable planning outcome or to support a new policy direction. For example, if council wanted to encourage more residential development in an industrial area, it would amend the scheme and rezone land from industrial to residential.

Amendments to the scheme have significant planning implications and affect the wider community because they change the way land can be used or developed, and change the basis for making planning decisions in the future.

Any amendment to the scheme involves all the parties who may have an interest in the amendment, or may be affected by it. Therefore, council will have to be certain that the amendment has planning merit and is consistent with the future strategic directions for the municipality. The Department's Planning Practice Note – Strategic Assessment Guidelines for Planning Scheme Amendments sets out the matters that council should consider before amending its planning scheme.

What are the formal steps in the amendment process?

The process for changing a planning scheme is set down in the *Planning and Environment Act 1987*. The process must be followed exactly and usually involves the following steps:

- the concept is developed
- the concept is documented and designed
- a request is made to amend the planning scheme
- the request to amend the planning scheme is considered
- notice is given about the amendment and submissions are invited
- submissions are considered
- changes are made to the amendment, the submissions and the amendment are referred to an independent panel for review and report, or the amendment is abandoned

- the panel's report is considered and a recommendation made to adopt the amendment or abandon it
- the amendment is submitted to the Minister for consideration and approval
- the Minister considers the amendment and decides whether to approve it
- the approval notice is published in the Government Gazette
- the Minister gives notice of approval of the amendment to Parliament.

It usually takes between six and eight months for amendments to be prepared, considered and approved.

When is an amendment appropriate?

In most cases, council has the final say about preparing amendments to the planning scheme and will refuse changes that are not strategically justified. For example, council will refuse to change the zone applying to a small parcel of land simply because it would benefit the owner.

However, in many circumstances, an amendment is appropriate. For example, council may decide to change the policy framework for making planning decisions, or to change the planning provisions that affect a large area of land of strategic importance. Other examples include designating the route of a new freeway, or introducing a new local planning policy for a particular issue.

Council will need to be satisfied that the amendment is necessary, desirable and consistent with its future policies and expectations for the municipality.

The following sections outline the process for requesting an amendment to the planning scheme.

Talk to the council planner

If the planning scheme needs to be amended before your project can proceed, talk to the council planner to confirm that a change is necessary. Find out if they will support the preparation of the amendment. They may be able to suggest an alternative approach that avoids the need for an amendment.



5. Changing the planning scheme

A decision to amend the scheme will be made by the full council, a committee of council, or by a senior council officer under delegation. Therefore, it is essential early in the project to get a clear direction about the council's willingness to prepare the amendment.

There is no right of review to VCAT if council refuses an amendment request.

A fee is payable to consider the request and is not refundable if council refuses to prepare the amendment. Confirm the fee with the council planner.

Talk to people who might be affected

Think about the people who might be affected by the amendment and decide on the best way to consult with them. People appreciate being told about a planning proposal and being invited to discuss it in advance of the formal process. This allows them to gain an understanding of the proposal, and allows you to address their concerns and, possibly, avoid submissions opposing the amendment.

The amendment process usually involves fairly extensive public notice procedures that invite submissions. If submissions are made, it is common for an independent panel to be appointed by the Minister to consider the submissions, and to report to council with its advice.

Making a formal request to change the planning scheme

If the council planner agrees it is appropriate to formally request that council consider preparing an amendment, make your request in writing, and include reference to the discussions with the council planner. Direct your request to the council's chief executive officer or the manager of council's planning department. Support your request with a detailed submission that explains the:

- reasons why the change to the planning scheme is required
- strategic basis for the proposed change
- effect of the proposed amendment.

If the issues are complex, consider obtaining professional help with the submission to make sure it covers all the relevant planning issues. For example, reports from experts might be required to address issues such as

the amendment process

develop the concept

- identify problem or opportunity
- review planning scheme and options
- assess the effects of making a change
- consider the *Strategic Assessment Guidelines for Planning Scheme Amendments*

design the concept

- talk to the council planner
- get professional advice
- choose the right planning tools

make a request to council

- apply in writing with supporting information
- give reasons for the change
- explain the strategic basis

council decides on the request

- no right of review if refused

Minister's authorisation

- council seeks consent to prepare an amendment

notice of amendment is given

- at least one-month notice period
- notice procedures must be carefully followed
- submissions are invited

council assesses the amendment

- submissions are considered
- amendment is changed or abandoned, or submissions referred to a panel

Minister decides on the amendment

- if approved, notice published in the *Government Gazette* and notice to Parliament



5. Changing the planning scheme

traffic, urban design or environmental issues. The supporting information required will depend on the nature of the proposed amendment.

With your request, enclose a draft of the text of the amendment or a copy of the planning scheme map that shows the changes to zone boundaries. You will probably need professional help to prepare this information. Writing an amendment is a technical skill that is best left to council once it has formally decided to prepare the amendment.

The Department of Planning and Community Development provides a planning scheme map amendment service.

Council will organise map preparation after the decision to prepare the amendment has been made and the amendment allocated a reference number.

Consideration of request to amend the planning scheme

Council or an officer under delegation will consider the amendment request and formally decide whether to prepare the amendment. There is no time limit for the consideration of this request, and no right of review if council refuses it.

When deciding to prepare an amendment, council must consider the State and Local Planning Policy Frameworks, significant effects on the environment, and the social and economic effects of the amendment. Council will keep a record of its resolution to prepare the amendment. Obtain a copy of this resolution for your reference.

A favourable council decision at this stage does not necessarily indicate that council will ultimately support the amendment in its submitted form, or at all. Council must reserve its final decision about an amendment until after all the necessary steps in the process have been completed.

If council resolves to prepare an amendment, council will seek the Minister for Planning's authorisation to prepare an amendment. In authorising council to prepare the amendment, the Minister will indicate whether council can approve the amendment or whether it must be returned to the Minister for approval.

Notice procedures for amendments

Once council formally decides to prepare an amendment and the Minister authorises the preparation of the amendment, the notice procedures in the *Planning and Environment Act 1987* (called the exhibition period) must be undertaken. This ensures Ministers, public authorities and owners and occupiers of land that may be affected by the amendment know about it, and invites inspection of the amendment and submissions to council.

Notice procedures include letters to affected parties and publication of notices in the local press and the Government Gazette. The exhibition period is usually at least one month from the date when the last notice is published in the Government Gazette. Submissions must be lodged with council within the one-month exhibition period.

However, the Minister has the power to prepare and approve an amendment with limited notice or, in special circumstances, no notice at all.

The procedure for giving notice of an amendment requires careful coordination to make sure the correct order of notices is given, that all the notices are complete and correct, and that all parties are given a copy of the notice.

Given the coordination difficulties, most councils undertake the notice procedures for an amendment to ensure they are carried out in accordance with the legislation.

Discuss the notice requirements and arrangements with the council planner so the roles and responsibilities of the respective parties are clear, and the dates of notice publication are agreed in advance.

Failure to comply with the notice requirements may lead to additional notices being given, the time for lodging submissions being extended, or the process being undertaken again.

It is essential that a complete copy of the amendment and supporting documentation is available at the offices specified in the notice so anyone can view the amendment. Amendments are usually available for inspection at the council offices and the Department of Planning and Community Development for at least one



5. Changing the planning scheme

month after the notice was published in the Government Gazette. Amendments can also be viewed online at www.dpcd.vic.gov.au/shared/ats.nsf

Council must submit an electronic copy of the amendment to the Department of Planning and Community Development at least 10 working days before the exhibition period begins. This is to ensure accurate information is available for inspection at the specified locations, in hard copy and electronically, on the day the exhibition commences.

Making a written submission

Anyone can lodge a submission about an amendment. A submission may:

- support the amendment and request that council approve it as exhibited
- oppose the amendment for specified reasons and ask council to abandon it
- suggest changes to the amendment to address concerns.

Submissions should be lodged before the closing date to ensure you can present your views to a panel (if one is appointed to consider submissions). The closing date is usually strictly observed.

Make sure your submission is clearly written or typed and includes your name, current contact details, and the reference number for the amendment so it is attached to the correct council file. State that you want to present your submission to a panel if one is appointed to consider submissions. This means you will be advised about the panel's hearing dates and invited to present the points in your submission. Keep a copy of your submission for future reference.

Your submission is a public document and copies of it could be circulated to other parties.

What happens after the exhibition period closes?

If you requested the amendment, monitor the submissions and make an appointment with the council planner to review them once the exhibition period closes. Discuss how to respond to them and the next steps in

the amendment process. A fee is payable to council for considering submissions and referring them to a panel. There is no time limit for an amendment to be presented to council after exhibition.

If submissions have been received, council must consider them and decide on a course of action. Get a copy of the council resolution to ensure you understand council's intentions following consideration of the submissions.

The legislation provides three options. Council may:

- decide to change the amendment as requested in submissions and proceed to approve it in a modified form
- ask the Minister to appoint an independent panel to review the submissions, conduct a public hearing, consider the amendment, and prepare an independent report with recommendations about the amendment for council
- decide to abandon the amendment.

Talk to the council planner and find out when the amendment and submissions will be presented to council, and what the recommendation will be. Consider discussing the amendment with the Ward Councillor. Council will advise you in writing about the decision it makes.

Appointment of a panel

Council must make a written request for the Minister to appoint a panel. This request must include all the relevant information about the amendment including the names and addresses of submitters, and the main issues in point form.

The panel will be appointed and will conduct public hearings in a convenient venue.

Panel members are appointed from Planning Panels Victoria and are experienced planners and other professionals with skills relevant to the particular amendment.

The panel is independent and its main role is to review the submissions and provide advice to council and the Minister about the amendment and the submissions referred to it.



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Making a submission to the panel

If you made a submission, council will write to you with details of the panel's appointment and the procedures for the hearing. Enclosed with the council's letter will be a brochure called *What is a Panel?* and a request to be heard form. The brochure provides information about the panel process. Talk to the council planner if you need more information about the way the panel operates and how hearings are conducted.

If you want to make a presentation to the panel, fill out the request to be heard form and return it promptly to the address identified. Returning the form registers that you want to speak at the hearing and you will be allocated a slot in the timetable. If you don't return the form and fail to follow the instructions, you will not be advised about the panel's arrangements.

After returning the request to be heard form, you will be advised of the venue and the timetable for presentations.

What happens at the panel hearing?

Panel hearings are open to the public and are conducted by the panel chairperson. The panel usually comprises one or two persons. While the hearing is relatively informal, it is conducted in a structured way to make sure all submitters have the opportunity to be heard.

The hearing might be conducted over several days. Unless you are the council's representative, it is not necessary to attend every day of the hearing, but make sure you are there at your allocated time. You will be advised if the hearing is running behind or ahead of schedule.

If you are a submitter, ask the council planner for a complete copy of the timetable for the hearing, as there may be other parties whose presentations are of interest. The council's representative usually presents the council's submission on the first day of the hearing, followed by the person who requested the amendment. Later submitters are usually grouped according to issues or availability.

At the hearing, you will be invited to present your submission. Prepare a written submission that is based on your original submission but takes into account any changes to the proposal since exhibition. Hand a copy

of your submission to each panel member when invited to speak. Have at least six copies with you, and give a copy to the council's representative and the person who requested the amendment.

Tips for effective submissions

Make sure you number each page and each paragraph in your submission for easy reference. Your name should be on the cover and securely staple all copies. The panel will re-read all submissions made to it. Read your submission to the panel. Direct your comments to the panel members and take your time, but try not to be too slow. Stop speaking if you see the panel taking notes. Focus on the key aspects of the amendment that affect you. Photographs or other display material might help illustrate a point. Make sure your statements are accurate.

Explain how you will be affected by the amendment if it is approved. Make your views of the amendment clear. Do you want the amendment to be abandoned, changed in a particular way, or approved as exhibited? The panel will be interested to hear your views and the reasons for them. Be prepared for questions from the panel. While the other parties can't question you, the panel will have a copy of your original submission and may want to clarify a point at the hearing.

What happens next?

After the hearing, the panel prepares a report for council. The Minister also gets a copy of the report. Preparation of the report usually takes four to six weeks, and includes a discussion about the submissions and the amendment. The panel may take into account any matter it thinks is relevant. The panel report makes a recommendation about what council should do about the amendment. The panel report must be made public 28 days after council receives it.

Council must consider the panel's report and recommendation when it makes its decision about the amendment, but it is not bound by the recommendation.

After the hearing, keep in touch with the council planner to find out when the panel report will be available, and when the amendment will be presented to council for final consideration.



5. Changing the planning scheme

Final decision by council

Once the panel report has been received, council will decide whether to:

- adopt the amendment without changes
- adopt the amendment with changes
- abandon the amendment.

There is no right of review if council decides to abandon the amendment at this stage, however, the Minister must be advised if this is council's formal decision.

If council adopts the amendment (with or without changes), it must be clearly identified in the council resolution so there is no confusion about the exact words used or the effect of the amendment.

There is a fee payable to council at this stage of the amendment process. There is no time frame for submitting the amendment for final consideration by council, but it usually takes place fairly promptly after the panel report has been received.

Depending on the Minister for Planning's authorisation, council will either be authorised to approve the amendment itself or submit the adopted amendment to the Minister for consideration and approval. If council is authorised to approve the amendment, council must first obtain 'certification' from the Department of Planning and Community Development that the amendment is acceptable prior to the approval of the amendment. Once the certification is obtained, council must decide whether to approve or abandon the amendment.

The Minister's consideration

If council is not authorised to approve the amendment, the adopted amendment is submitted to the Minister for consideration and approval and a fee is payable. This involves the officers of the Department of Planning and Community Development making an assessment of the amendment and preparing a report with a recommendation for the Minister's consideration.

The combined amendment and permit process

Where a planning proposal requires an amendment and a planning permit, council may combine the amendment and permit process to save time. Talk to the council planner to find out more about this process.



Glossary

Application for review

Application to VCAT to review a planning decision made by a council

Development

Includes the construction, alteration or demolition of a building or works, and the subdivision or consolidation of land

Directions hearings

Held by VCAT if a preliminary matter needs to be addressed to avoid a delay at the full hearing

Endorsed plans

Plans approved to form part of a planning permit

Mediation

Consultation or negotiation to resolve an issue usually conducted under the guidance of a council officer and sometimes at the direction of VCAT.

Objector

The party opposing a planning application

Ordinance

The written part of a planning scheme

Overlay

Planning scheme provision that indicates that the land has some special feature, such as a heritage building. It affects how land can be developed

Permit applicant

The party applying for a planning permit

Planning permit

A legal document that gives permission for a use or development on a particular piece of land

Planning scheme

Controls land use and development within a municipality. It contains State and local planning policies, zones, overlays, particular provisions, general provisions, definitions and maps

Planning scheme maps

Maps in the planning scheme that show the zones and overlays that apply to land covered by the scheme

Statement of grounds

Written statement to VCAT that explains your reasons for applying for a review and your position

Use

Refers to using land for a particular purpose (such as a dwelling or a shop) and may not involve a building

VCAT

Victorian Civil and Administrative Tribunal

Zone

Planning scheme provision that controls land use and development based on the primary character of the land (for example, residential or industrial)



Further information

The following is a list of contacts, useful documents and web sites.

Department of Planning and Community Development

Planning and Environment Act 1987

Planning and Environment Regulations 1998

Planning and Environment (Fees) Regulations 2000

Using Victoria's Planning System, November 2007

What is a Panel?

Planning Practice Notes – www.dpcd.vic.gov.au/planning

www.dpcd.vic.gov.au/planningschemes

www.dpcd.vic.gov.au/shared/ats.nsf

Victorian Civil and Administrative Tribunal

55 King Street, Melbourne 3000

Telephone (03) 9628 9777

Facsimile (03) 9628 9789

www.vcat.vic.gov.au

Victorian Civil and Administrative Tribunal Act 1988

Practice Note Planning & Environment List (No. 1) – General Procedures

Practice Note Planning & Environment List (No. 2) – Information to be provided by a Responsible Authority

Practice Note VCAT No. 2 – Expert Evidence

Submissions in the Planning & Environment List