



HUME CITY COUNCIL APPEALS TO VCAT CHECKLIST

The Victorian Civil and Administrative Tribunal (VCAT) is the body created and sponsored by the State Government to review decisions made by local government on planning matters. The VCAT itself is a large organisation which hears a wide variety of matters across lists such as the Anti-Discrimination List, the Residential Tenancies List and the Guardianship and Administration List, to name just three. Planning matters are heard by the Planning and Environment List.

A detailed outline of rights of application for review is provided in the document titled 'Using Victoria's Planning System', which can be found at www.dpcd.vic.gov.au. The operating procedures and practices (practice notes) of the Tribunal can be found at www.vcat.vic.gov.au under the Planning and Environment List.

Common forms of applications for review by applicants

The most common form of application for review to VCAT is for a review of a Council decision to refuse to grant a permit. This application can only be made upon receipt of a formal Notice of Refusal to Grant a Permit from Council, which details the review options at VCAT.

The second most common is when applicants seek an urgent decision. An application for review of failure to grant a permit can be lodged once 60 'statutory' days have elapsed. This is not necessarily 60 days since the time the application was lodged, as the 'statutory time' does not include the time between when a request for further information is sent within 28 days lodgement and the time it is received, and the time for advertising of the application.

Common forms of application for review by objectors

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

Becoming a party to an application for review

People wishing to be present at VCAT must first be a party to the proceeding. The person who lodges the application for review, the planning permit applicant, and the Council are automatically parties. In the circumstance where the applicant seeks review, objectors will be sent a copy of the review application and a form on which grounds to contest the matter can be filled out. To become a party, objectors must fill out the form with the grounds on which they oppose the proposal, and send copies to the VCAT, the applicant and Council.

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

Please turn over for more requirements

The hearing process at VCAT

VCAT is not a typical court of law; its rules encourage hearings to be run in a relatively informal manner. The informal nature of the hearings is intended to allow all parties to feel involved and comfortable with the proceedings, and to afford people the opportunity of meaningful participation without the absolute need for legal representation.

Although the Tribunal Member will sometimes determine the matter 'on the spot' after hearing from all the parties, often the Tribunal Member will wish to visit the site or deliberate on what has been said. In these circumstances a written decision is generally sent out to all parties from 2-8 weeks after the hearing.

The decision of VCAT is final and Council is required in law to follow the order handed down. An opportunity of appeal to the Supreme Court is possible, however this only relates to a mistake in law in the determination. Any such appeals would be very expensive and potentially expose the appellant to costs. Legal advice and representation is required.

Representation at VCAT

Typically, Council will be represented at VCAT by its officers, although in some circumstances consultants or lawyers will be used. Objectors may appear in person, or can engage a planning consultant or lawyer. It is common for groups of residents to pool resources to fund a consultant or lawyer to ensure the best possible case is put forward. Although applicants may represent themselves, it is more common to have professional representation.

Costs

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

Council assistance for objectors

While Council is able to provide some general guidance for objectors on how the VCAT hearing will proceed, it is important to note that Council must present its own position at VCAT and cannot co-ordinate cases with objectors, represent objectors, or assist objectors in preparing or making their submissions.

Disclaimer: Please note this checklist is for standard information required for lodgement. Additional information may be required by the assessing planning officer after registration.