



National Trust Advocacy Toolkit

Advocacy Guide No. 4:

Appealing a Permit Decision at the Victorian
Civil and Administrative Tribunal (VCAT)

About the National Trust of Australia (Victoria)

The National Trust of Australia (Victoria) is the state's leading independent heritage advocacy organisation. We advocate for the recognition, protection, and celebration of our diverse natural, cultural, social, and Indigenous heritage in our cities and regions.

The National Trust's vision is for our diverse heritage to be protected and respected, contributing to strong, vibrant and prosperous communities.

nationaltrust.org.au/vic
conservation@nattrust.com.au | 03 9656 9800

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photograph by Suzie Potter.

OBTAINING INDEPENDENT LEGAL ADVICE

This publication is intended only to provide a summary and general overview of relevant matters. It is not intended to be comprehensive nor does it constitute legal advice. While care has been taken to ensure the content is current, we do not guarantee its currency. You should seek legal or other professional advice before acting or relying on any of the content.

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Introduction

About this Advocacy Guide

The National Trust Advocacy Toolkit is a free online resource developed by the National Trust of Australia (Victoria) to support communities to advocate for the protection of places of cultural heritage significance. The purpose of this Advocacy Guide is to provide a broad overview of the processes for appealing a permit decision at the Victorian Civil and Administrative Tribunal (VCAT) for a property covered by a heritage overlay.

About the Victorian Civil and Administrative Tribunal

The Victorian Civil and Administrative Tribunal (VCAT) is an independent tribunal that hears and determines a range of disputes. The Planning and Environment List of the tribunal is made up of appointed members with expertise in town planning, law, engineering and architecture who independently review decisions made by councils and other statutory authorities.

VCAT conducts public hearings and considers submissions and evidence made by those involved in hearings before it makes decisions. It has the power to affirm, set aside or amend a decision made by the planning authority (usually the local council; called the “responsible authority” at VCAT).

VCAT has the power to hear an appeal on a Notice of Decision to Grant a Permit (Notice of Decision) for places affected by a Heritage Overlay.

Also refer to “Advocacy Guide No. 3: Objecting to an Application for a Planning Permit for Properties Covered by a Heritage Overlay.”

Reviewing/seeking a review of a planning decision made by a responsible authority to VCAT

When a responsible authority assesses a permit application there are a range of possible decisions, including:

- issue a Permit, if there are no objections
- issue a Notice of Decision to Grant a Permit, if there are objections, or
- issue a Refusal to Grant a Permit, if it does not support the permit application.

After the responsible authority has made a decision, either the objector or permit applicant can lodge an appeal (Application for Review) at VCAT.

In some cases, if the responsible authority has not made a decision within a specified time frame, the permit applicant can lodge an Application for Review against the responsible authority’s failure to decide the application within the prescribed time.

The following are common planning proceedings heard by VCAT:

- the permit applicant seeking review of a condition of the Permit
- an objector seeking review of the Notice of Decision to Grant a Permit
- the permit applicant seeking a review of the responsible authority’s Refusal to Grant a Permit, and
- the permit applicant lodging an Application for Review against the responsible authority’s failure to determine the permit application within the prescribed time of 60 days.

What VCAT considers when making a decision

Section 60 of the *Planning and Environment Act 1987* specifies what a council or responsible authority and VCAT must consider when it makes a decision. Some of these include:

- the relevant planning scheme
- the objectives of planning in Victoria
- any objections received
- any decision and comments from a referral authority
- any significant effects the proposal may have on the environment, and
- any significant social and economic effects.

VCAT members are only able to consider relevant considerations under the *Planning and Environment Act 1987*, including the Planning Scheme and other relevant documents as of the date the decision is being made. (For example, if a Planning Scheme Amendment is gazetted and comes into force and effect the day after a hearing and a decision has not been made, VCAT must consider the Planning Scheme Amendment).

VCAT does not have the power to change a planning scheme. For example, it cannot add a place to a Heritage Overlay or consider heritage as part of an application if there is not a relevant control in the planning scheme.

See “Advocacy Guide No. 5: Heritage Overlays and Planning Scheme Amendments” for information on how a planning scheme is amended, including the application of heritage overlays.

➤ The VCAT website has instructions on how to make applications and lodge the relevant forms, at vcat.vic.gov.au/case-types/planning-and-environment

Examples of ways you may become involved in a VCAT hearing

1. You agree with the responsible authority’s decision, but the applicant has lodged an Application for Review against the decision with VCAT

Once the responsible authority has issued either a Notice of Decision to Grant a Permit or a Notice of Decision to Refuse to Grant a Permit, the applicant has 60 days to appeal the decision to VCAT.

If you were an objector to the permit application, you will be served with the Application for Review of the decision. When you are served with the Application for Review you will also be provided with a form referred to as a Statement of Grounds.

If you would like to participate in the proceeding and be heard before VCAT makes a final decision, you must submit a completed Statement of Grounds and pay a fee at the time you submit the statement. The fee to be added as a party to participate at the hearing is nominal. You can check the current fee on VCAT’s website.

You can also choose to fill in the Statement of Grounds and state that you do not want to attend the hearing. You will not become a party to the proceedings if you make this choice, but the VCAT decision-maker will consider your written grounds. There is no fee to lodge a Statement of Grounds if you do not want to participate at the hearing.

➤ Prepare and lodge the Application for Review form, or Statement of Grounds within the relevant time, with the relevant fee.

2. You do not agree with the responsible authority’s decision and you want to lodge an Application for Review with VCAT

If the responsible authority issues a Notice of Decision to Grant a Permit and you do not agree with the decision you may decide to take further action and file an Application for Review with VCAT.

You have the right to file an Application for Review if you are an objector who made an objection during the notice period. You have 21 days to file the application once the council or responsible authority has issued the Notice of Decision to Grant a Permit. You must also pay an application fee. The fee depends on the type of planning decision, and can be substantial. Fees may also apply for each hearing day.

Before you file an Application for Review, ensure you understand the fees involved, and consider how you will fund the Review.

➤ Prepare and lodge the Application for Review form, within the relevant time, with the relevant fee.

Having representation at VCAT

VCAT is set up to enable objectors to participate in hearings without town planning, legal or other professional representation. However, objectors should be aware that permit applicants often engage town planners, lawyers and experts to present and support a case. You may wish to seek advice from a town planner, lawyer or other relevant expert to determine whether you should engage representation at a hearing.

Some lawyers may offer pro-bono or discounted rates to community groups, but you should be prepared to raise funds.

3. You did not object to the permit application and you disagree with the responsible authority's decision

If you did not object during the period the permit application was advertised and open for comment by the responsible authority and you disagree with the decision, you may still be able to apply to VCAT to review it.

Apply and request to be joined as a party

Prepare and lodge the "Application for Review" form and make sure you fill in Part B, where you apply for leave (permission) to make the application.

You will need to explain why you did not lodge an objection in time, and how you are affected by the decision. Both applications will be listed together at VCAT on the same day.

Your application may be opposed

If your request for leave is granted, you can be joined as a party.

An application by you to be joined as a party may be opposed by the permit applicant. If you seek to be joined as a party to an application, it is worth getting advice from a town planner or lawyer about what this may mean for you.

While VCAT can advise you on how you can apply to be joined as a party, it cannot give you legal advice, including on your prospects of success in being granted leave to apply.

Preparing your Statement of Grounds

When you lodge an Application for Review you are required to set out your reasons for doing so. These written reasons are known as your "Statement of Grounds". They should take the form of a succinct summary of each of your objections in bullet-point form.

If you intend to participate in the hearing you should keep these reasons brief, as you will be given the opportunity to expand upon them in your oral submissions. Alternatively, if you do not intend to participate in the hearing you may wish to expand on these reasons in more detail.

Your Statement of Grounds should contain sufficient information so that the issues you intend to raise can be clearly identified. You should not simply enclose a copy of your original objection but should summarise your individual concerns (eg: the adverse impact on the significant heritage fabric of the building, the adverse impact of the height or scale of the proposed development the heritage place or precinct).

You should try not to use emotive terms and keep your reasons factual.

In preparing your Statement of Grounds you may wish to find out the planning controls that apply to the land. You can do this by searching the state government's Interactive Planning Scheme Map and creating a "Planning Property Report". This will provide links to the relevant planning controls which you may wish to consider in your submission.

Create a "Planning Property Report" at mapshare.maps.vic.gov.au/vicplan

More information

Visit the Community Environmental Legal Service website at cels.org.au/vcat for:

- video instructions on what a VCAT appeal in this list involves
- Environmental Justice Australia's detailed guide to running a case, including an Appeals Kit.

Visit the VCAT website to find out more, at vcat.vic.gov.au. If you still have questions, contact VCAT directly (noting that VCAT cannot give you legal advice).