

# ‘Other planning disputes’ under the *Planning and Environment Act 1987*

## Planning and Environment Division FACT SHEET

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*This fact sheet contains general information and should not be considered as legal advice. Seek professional advice if you are unsure about your rights, and be aware that the law may change.*

### What are ‘other planning disputes’?

The Planning and Environment Division at VCAT deals primarily with applications under the *Planning and Environment Act 1987* to review a decision on a permit, or to amend, cancel, extend or enforce a permit. VCAT can also make declarations about planning matters. Details about these common types of cases are available on the VCAT website.

There are several ‘other planning disputes’ that VCAT has the power to deal with under the *Planning and Environment Act 1987*. All references to section numbers in this fact sheet are to sections of this Act.

The ‘other planning disputes’ are:

- defects in procedure in relation to a planning scheme amendment (section 39).
- reviews of a requirement to give notice or to provide further information, or, to refuse to extend time within which information is to be provided (sections 78 & 81(2)).
- applications about a certificate of compliance (sections 97P & 97Q).
- review of the decision of a specified body that something must be done to the satisfaction of that specified body (section 149).
- applications to amend or end a section 173 agreement (sections 184 & 184A-D).

General information about each of these other planning disputes is set out in this fact sheet.

Note: VCAT can only deal with planning disputes when it is given the power to do so under the governing legislation. Be aware that not all decisions of a council or another organisation under the *Planning and Environment Act 1987* are reviewable by VCAT.

### What form do I use to apply?

For all of the ‘other planning disputes’ listed in this fact sheet, an applicant must use the Planning and Environment Division ‘General form of application’. A copy of the application form is available on VCAT’s website.

Be aware that fees may apply. Information about application fees and hearing fees is available on VCAT’s website.

### General information about ‘other planning disputes’

#### ❖ *Defects in procedure in relation to a planning scheme amendment*

#### What can VCAT hear?

VCAT can hear disputes about a non-compliance with the *Planning and Environment Act 1987* in relation to a planning scheme amendment process (section 39).

VCAT does not have a general power to review decisions about the merits of a planning scheme amendment.

#### Who can apply?

Only a person who is substantially or materially affected by a failure of the Minister,

planning authority or panel to comply with the Act may refer the matter to VCAT.

#### Are there time limits?

A referral to VCAT must be made within one month of the person becoming aware of the failure to comply.

#### What can VCAT decide?

VCAT can make a declaration, or direct that the planning scheme amendment not be adopted or approved until the defect is remedied. VCAT cannot vary or set aside a decision about an amendment, nor declare invalid an approved amendment.

#### ❖ *Reviews about notice and further information requests*

#### What can VCAT hear?

VCAT can review a decision of a responsible authority (usually a council):

- to require a permit applicant to give notice of a permit application to other persons (section 78(a)).
- to require a permit applicant to provide further information about a permit application (section 78(b)).
- to refuse to extend the time to comply with a further information request (section 81(2)).

#### Who can apply?

Only a permit applicant may apply to VCAT under these provisions.

#### Are there time limits?

An application for review under section 78 must be made within 30 days of a notice requirement, or within 60 days of a request for further information.

An application for review under section 81(2) must be made before the request for further information lapses. The lapse date is

calculated under regulation 34 of the *Planning and Environment Regulations 2015*.

#### What can VCAT decide?

VCAT will consider the reasonableness of the notice requirement or further information request, including whether the requirement is too onerous, extensive or unnecessary. VCAT will also consider (as appropriate) whether the permit applicant has had sufficient time to comply with a further information request.

VCAT can affirm, vary or set aside the notice requirement or further information request, or extend the time to comply with the further information request.

#### ❖ *Applications about a certificate of compliance*

#### What can VCAT hear?

A person may apply to a responsible authority (usually a council) for a certificate of compliance about whether an existing use or development of land, or a proposed use or development, complies with the planning scheme.

VCAT can review the refusal or failure by the responsible authority to provide a certificate of compliance (section 97P).

VCAT can also consider a request to cancel or amend a certificate of compliance (section 97Q).

#### Who can apply?

Only an applicant for a certificate can make an application for review under section 97P.

Any person can make an application to cancel or amend a certificate, but only if that person believes that they have been adversely affected by a material misstatement or concealment of fact in relation to the application for the certificate, or a material mistake in relation to the issue of the certificate. Apart from these two grounds,

VCAT cannot generally review a certificate of compliance.

#### Are there time limits?

An application for review under section 97P must be made within 60 days of the decision, or after 30 days if the responsible authority has failed to decide the application for a certificate of compliance within that time.

An application under section 97Q must be made 'as soon as practicable' after the person became aware of the facts relied upon in support of the request.

#### What can VCAT decide?

VCAT can direct the responsible authority to cancel or amend the certificate of compliance, or can refuse the application.

#### ❖ *Reviews about matters 'to the satisfaction of' a specified body*

#### What can VCAT hear?

A planning scheme, permit condition, section 173 agreement or enforcement order, will sometimes say that a matter must be done 'to the satisfaction of' a **specified body**, or must not be done without the consent or approval of that body. These are often called 'secondary consents'.

The specified body that may be required to give these secondary consents includes the responsible authority (usually the council), the Minister, a public authority or a referral authority such as Melbourne Water.

VCAT can review a decision about a secondary consent, or the failure of the specified body to give its consent within the prescribed time period (section 149).

#### Who can apply?

Only a 'specified person' may apply to VCAT under section 149. These are generally only the owner, user, developer of the land directly affected by the matter, and the relevant specified body.

There are no review rights for an objector under this provision. Even if it was not the specified body whose secondary consent was required, the responsible authority (usually the council) is always automatically a party in a planning dispute under section 149.

#### Are there time limits?

An application for review must be made within 28 days of the decision, or after 30 days if the specified body has failed to decide the matter within that time.

#### What can VCAT decide?

On an application for review, VCAT may affirm, vary, or set aside the decision, or set aside the decision and remit the matter for re-consideration by the responsible authority.

#### ❖ *Applications to amend or end a section 173 agreement*

#### What can VCAT hear?

A section 173 agreement is an agreement between the responsible authority (usually a council) and a landowner that places restrictions on how the land can be used or developed. The agreement is binding and is usually registered on the land title.

VCAT can consider a dispute between a responsible authority and a landowner about the terms of a proposed agreement required by a planning scheme or permit condition (section 184).

VCAT can also review the decision of a responsible authority about whether an existing agreement should be ended or amended (sections 184A, 184B, 184C and 184D).

#### Who can apply?

Only an owner of land required to enter into a proposed section 173 agreement can apply to VCAT if the owner objects to any provisions of the proposed agreement.

A person who applied to end or amend the agreement can apply to VCAT to review a decision of the responsible authority to end or amend the agreement in a different way (section 184A(1)(a) or (b)) or to refuse to end or amend the agreement (section 184(1)(c)).

Another party to the agreement can apply to VCAT to review a decision to end or amend the agreement (section 184B).

As part of the statutory process, the responsible authority is required to give notice to any person who may suffer material detriment as a result of the ending or amending of the agreement. A person receiving such a notice who objects to the ending or amending of the agreement (or a person entitled to object who did not receive notice) can apply to VCAT to review a decision to end or amend the agreement (sections 184C and 184D).

#### Are there time limits?

An application under section 184 must be made within 60 days of the person being given a copy of the proposed agreement.

An application under section 184A(1)(a) or (b), or under sections 184B and 184C, must be made within 21 days after the responsible authority gave the relevant notice. An application under section 184A(1)(c) must be made within 60 days after the responsible authority gave the relevant notice.

#### What can VCAT decide?

For an application under section 184, VCAT may approve the proposed agreement with or without amendments.

On an application for review under sections 184A, 184B, 184C or 184D, VCAT will consider matters including the purpose of the

agreement and why it was entered into, whether there has been a change in circumstances which justifies the ending or amending of the agreement, and whether any party or other person will be disadvantaged by the ending or amending of the agreement.

VCAT may refuse an application to end or amend a section 173 agreement, or it may direct that the agreement be ended or amended.

#### **Cases under the *Planning and Environment Act 1987* that VCAT doesn't deal with as a planning dispute.**

Some disputes under the *Planning and Environment Act 1987* are not dealt with as planning disputes. These relate to:

- Growth Areas Infrastructure Contributions (Part 9B) (dealt with by VCAT's Review and Regulation List).
- compensation as a result of a stop order or cancellation of a permit (section 94(5)) or a loss caused by the reservation of land or a road closure (section 105) (dealt with by VCAT's Land Valuation List).

#### **Further information**

The 'other planning disputes' listed in this fact sheet are often complex, and some of the terms used in the *Planning and Environment Act 1987* have particular meanings given to them in the Act or by the courts.

For further information:

- carefully read any decision letter and other documents sent to you by the council, and/or visit your council's website.
- carefully read the sections of the *Planning and Environment act 1987* that relate to your particular type of application.
- look at the decisions in other similar cases decided by VCAT. VCAT decisions can be found on the Austlii website. You may need to enter a search term (e.g. the name and section of the Act) to find the most relevant cases.