

Parties in planning disputes

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.

Who is a party in a planning case at VCAT?

A party is a person who has the right to participate in a case at VCAT. A party has the right to:

- receive notice of the hearing or compulsory conference
- attend and participate in a compulsory conference, and to be involved in discussions to resolve a proceeding
- be part of any consent order
- attend and participate at a hearing, including making submissions, calling evidence, and cross-examine any witness called by another party
- receive a copy of any VCAT order or decision
- appeal to the Supreme Court on a question of law.

Some persons are automatically parties. For example:

- The person who applies to VCAT is a party. They are called the 'applicant'. If a fee is payable to lodge the application, the

applicant must pay the fee (or successfully apply for fee relief) or the application may be struck out.

- If the application is about a review of a decision, the original decision maker is a party. This is commonly the responsible authority (usually the municipal council) that made a decision about a permit.

Other persons (including objectors) may be a party, or may become a party if:

- they are joined as a party by VCAT, or
- they are specified as a party in the *Victorian Civil and Administrative Tribunal Act 1998* or an enabling enactment (such as the *Planning and Environment Act 1987*) for a particular type of proceeding, or if they follow certain procedures.

A party may be an individual person or a group of persons with a common interest who join together as a 'joint party'. A joint party will normally be required to appoint a spokesperson, and VCAT will only send communications to that spokesperson on behalf of the group.

A party may also be an organisation, such as a company or government authority. However, an unincorporated association cannot be a party.

What are the obligations of a party?

As well as having rights in a case, parties also have obligations. They include requirements to:

- comply with the provisions of the *Victorian Civil and Administrative Tribunal Act 1998*, the *Victorian Civil and Administrative Tribunal Rules 2018*, the regulations and provisions of any enabling enactment
- comply with directions made by VCAT
- attend a hearing or compulsory conference in person or through a representative or professional advocate.

Parties must also comply with the VCAT practice note PNVCAT3 - *Fair Hearing Obligation*. A copy of the practice note is available on VCAT's website. The fair hearing obligation includes requirements that parties act honestly and co-operatively, and treat VCAT and other parties with courtesy and respect.

VCAT may impose sanctions on a party (including an award of costs or striking out a party) who engages in conduct causing disadvantage to another party.

Each party in a VCAT case usually bears its own costs and is not usually obliged to pay the costs of another party if unsuccessful, unless VCAT considers it fair to do so under section 109 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Parties other than objectors

❖ Permit applicants and permit holders

A permit applicant or permit holder who is the applicant for review (e.g. under section 77, 79 or 80 of the *Planning and Environment Act 1987*), or an applicant under section 87A of the *Planning and Environment Act 1987* is automatically a party in the case at VCAT.

A permit applicant is automatically a party to an application for review by an objector under section 82 of the *Planning and Environment Act 1987*. In such cases, the permit applicant is required to lodge a statement of grounds.

The *Planning and Environment Act 1987* specifies that the owner, user, or developer of the land directly affected by a matter (usually the permit holder) is entitled to be a party for many types of proceedings (e.g. applications under sections 149 and 149A).

❖ Responsible authority

The responsible authority (usually a council) is automatically a party in all cases involving the review of a decision made by the responsible authority.

❖ Minister for Planning

The *Planning and Environment Act 1987* specifies that the Minister for Planning is entitled to be a party for certain types of proceedings (e.g. applications under section 39).

The Minister for Planning will also occasionally be joined as a party in a VCAT case about a planning dispute.

❖ Referral authorities

A referral authority is an organisation that a planning permit application is referred to for specialist advice – usually a government body or service provider. A referral authority may be a determining referral authority or a recommending referral authority.

The relevant planning scheme specifies who is a determining referral authority or a recommending referral authority for a particular permit application.

Determining referral authority

A determining referral authority is automatically a party in a case including the refusal to grant a permit (or grant an amendment to a permit) if it objected to the grant of the permit (or the amendment to the permit) or the permit was refused because it required a condition that conflicted with a condition required by another determining or recommending referral authority.

A determining referral authority is also automatically a party if the application for review is of a permit condition required by the authority.

In other cases in which an authority is not a determining referral authority, the authority is eligible to become a party by lodging a statement of grounds by 4pm on the due date and paying the prescribed fee.

For an application for review of a failure to grant a permit, the applicant will be required to give notice of the application to a determining referral authority. If the determining referral authority wants to be

a party it must lodge a statement of grounds by 4pm on the due date.

A determining referral authority does not receive notice of an application for review under sections 82 or 82B. VCAT will consider on a case by case basis whether the authority should be notified of the application or will seek the advice of the responsible authority and other parties.]

Recommending referral authority

A recommending referral authority is automatically a party in any application for review at VCAT if the authority was given notice of the application for review under the *Planning and Environment Act 1987*. However, to remain a party the authority must lodge a statement of grounds.

A recommending referral authority must be given notice of an application for review under sections 77 or 80 if it objected to the grant of a permit; or, if the application for review relates to a permit condition recommended by the authority.

For an application for review of a failure to grant a permit, the applicant will be required to give notice of the application to a recommending referral authority. If the recommending referral authority wants to be a party it must lodge a statement of grounds by 4pm on the due date.

A recommending referral authority does not receive notice of an application for review under sections 82 or 82B. VCAT will consider on a case by case basis whether the authority should be notified of the application or will seek the advice of the responsible authority and other parties.

In other cases in which an authority is not a recommending referral authority, the authority is eligible to become a party by

lodging a statement of grounds by 4pm on the due date and paying the prescribed fee.

Amendment of permit application

An authority may become a determining referral authority or a recommending referral authority if a permit application is amended after an application for review is lodged. A permit applicant must give notice of an application to amend a permit application to an authority if the authority would be a determining or recommending referral authority for the amended permit application.

How or when is an objector a party in a planning case at VCAT?

❖ Original objectors

An ‘original objector’ is a person who objected to a planning permit application before the application was decided by the responsible authority (usually the council).

If the application is exempt from notice requirements under the *Planning and Environment Act 1987*, the person is not entitled to object and is not an ‘original objector’.

If the responsible authority issues a notice of decision to grant a permit, an original objector can apply to review that decision at VCAT. Upon lodging an application under section 82 of the *Planning and Environment Act 1987*, the objector who made the application to VCAT is automatically a party. If there are joint applicants and one of them is not an original objector, that person is not automatically a party and must apply to be joined to the proceeding if the person wants to be a joint applicant.

If the responsible authority decides to refuse to grant a permit or to include conditions on the permit, the permit applicant may apply to review that decision at VCAT, and VCAT will require the applicant to give notice of the application for review to all original objectors. In response to the notice, an original objector may get involved in the VCAT case by lodging a statement of grounds by 4pm of the due date, paying the prescribed fee, and sending a copy to the permit applicant and responsible authority.

Further information about the ‘statement of grounds’ process, including a copy of the form and information about time limits and fees (including fee relief), is available on the VCAT website. Information about time limits will also usually be included in a VCAT order and the notice sent to the original objector.

The statement of grounds form requires the original objector to make a choice under clause 56(5) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* about whether the objector wants to participate in the hearing. There are important consequences associated with this choice:

- If the original objector indicates that they intend to participate in the hearing, and pays the fee, the objector automatically becomes a party in the proceeding.
- If the original objector fails to pay the fee (or fails to pay the fee after an unsuccessful application for fee relief), the objector does not become a party.
- If the original objector pays the fee after 4pm on the due date, the original objector will need VCAT’s permission to become a party.
- If the original objector indicates that

they do not intend to participate in the hearing, no fee is payable, and the objector is **not** a party.

❖ **Non-original objectors**

A person who was not an original objector to a permit application can still lodge a statement of grounds and indicate that they wish to participate in the proceeding. A fee is payable.

The non-original objector does not automatically become a party. VCAT will schedule a practice day hearing before a compulsory conference or the hearing to consider whether that person should become a party. That person may be required to explain why they were not an original objector, and why they should be joined as a party. VCAT will also consider the views of the permit applicant and the responsible authority before deciding whether to join the person as a party. The joining of a person as a party is not guaranteed.

❖ **Objectors to amended plans, or applications to amend a permit**

A permit applicant may apply to amend its permit application or plans in an existing application for review. Alternatively, a permit holder may apply to amend an existing permit or plans (e.g. under section 87A of the *Planning and Environment Act 1987*). In these circumstances, VCAT will usually require the permit applicant or permit holder to give notice to other persons. This may include persons who were given notice of the original permit application.

A person receiving the notice, and who objects to the application to amend the

application, plans or the permit, may get involved in the VCAT case by lodging a statement of grounds and paying the prescribed fee by 4pm on the due date. Information about how to do this will be included with the notice. A similar process applies as for original objectors in a review proceeding. If the person indicates that they intend to participate at the hearing, and pays the fee, they automatically become a party in the proceeding.

If the fee is not paid by 4pm on the due date or after an unsuccessful application for fee relief, the person will need VCAT's permission to become a party.

❖ **Change of mind by objector about participation in the hearing**

If a person lodged a statement of grounds indicating they do not wish to participate in the hearing, but subsequently changes their mind and wishes to participate in the hearing and become a party, they must lodge a fresh statement of grounds form and pay the fee.

This needs to occur at least 48 hours before the day of the hearing or compulsory conference.

The person does not automatically become a party. The person must get VCAT's permission to participate as a party. VCAT will consider the views of the permit applicant and the responsible authority before deciding whether to join the person as a party. Joining a party is not guaranteed.

How is a person joined as a party?

If a person is not automatically a party or eligible to become a party under the *Victorian Civil and Administrative Tribunal*

Act 1998 or an enabling enactment (such as the *Planning and Environment Act 1987*), VCAT may still join that person as a party.

Under section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*, any person can apply to be joined as a party. VCAT can also join a party on its own initiative.

VCAT may join a person as a party if it considers that:

- the person ought be bound by, or have the benefit of, a VCAT order
- the person's interests are affected by the proceeding
- it is desirable that the person be joined as a party.

The joining of a person as a party is not guaranteed.

VCAT will not normally join a person as a party under section 60 if they are eligible to become a party under another provision.

Role of persons who are not parties

A person who does not become a party or is not joined as a party cannot attend the compulsory conference, and their consent is not required to any settlement of the case at VCAT.

The person may still attend a final hearing as an observer (unless the hearing is closed to the public), but is not entitled to make submissions or to ask questions or cross-examine witnesses. If that person filed a statement of grounds, VCAT will still consider their grounds at any hearing.

A person who is not a party will not receive any correspondence or orders from VCAT. Other parties are not required to send them witness statements or other information unless directed by VCAT.

Removal of parties

VCAT may order that a person cease to be a party to a case about a planning dispute at VCAT if it considers that:

- the person's interests are not affected, or are no longer affected, by the proceeding.
- the person is not a proper or necessary party to the proceeding, whether or not the person was one originally.