

Amend or Cancel a Permit under Section 87A

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.

Amending or cancelling a permit issued by VCAT

There are two separate ways in which a person may apply to VCAT to amend or cancel a planning permit:

- an application by the permit holder or the owner or occupier of the land, under section 87A of the *Planning and Environment Act 1987*, to amend or cancel a permit issued at VCAT's direction.
- an application by an authority or person to amend or cancel a permit under sections 87 or 89 of the *Planning and Environment Act 1987*, but only on the limited grounds specified in those provisions.

Be careful to choose the type of application relevant to your circumstances.

This fact sheet deals only with section 87A applications. There is a separate fact sheet for section 87 and 89 applications. All references to section numbers in this fact sheet are to sections of the *Planning and Environment Act 1987*.

What can't VCAT help with?

VCAT can't consider an application under section 87A to amend or cancel a permit not granted by VCAT. Section 87A doesn't apply to a permit granted by a council or another organisation or tribunal other than VCAT. VCAT can't consider an application under section 87A if the permit has already expired.

Who can apply to VCAT?

Only the owner or occupier of the land concerned, or any person who is entitled to use or develop the land (usually the permit holder), can apply under section 87A.

A responsible authority or an objector can't make an application under section 87A. (Sections 87 and 89 may be available in these circumstances).

Before making an application for review, a person should confirm that the permit was granted by VCAT and identify the VCAT reference number and/or Austlii citation.

Reasons for applying

Section 87A does not specify or limit the grounds for an application. An application should generally only be made on grounds that relate to permit sought to be amended or cancelled.

For example, a permit holder may seek to cancel a permit previously issued by VCAT in order to undertake a different development under another permit. Or a permit holder may seek to amend a permit to vary the authorised development or use, or to change a permit condition.

If the permit was granted by VCAT, a permit holder will generally find it easier to cancel or amend the permit using section 87A rather than section 87 because the permit holder does not need to fit within the six limited grounds in section 87.

Are there time limits?

There are no time limits to apply to VCAT to amend or cancel a permit under section 87A, provided the permit has not expired.

What is the form of application?

To make an application to VCAT, you must use the correct Planning and Environment Division form. Be careful to use the section 87A form for permit holders, and not the section 87/89 form for responsible authorities and other persons.

A copy of the application form is available on VCAT's website.

An application under section 87A is eligible for inclusion in the Major Cases List by filling out the relevant section on the same application form.

Be aware that fees may apply. Information about application fees, hearing fees, and the Major Cases List are available on VCAT's website.

If you are seeking that the permit be amended, rather than cancelled, you should include with your application the specific changes to the permit you are requesting (e.g. change the use or development, or to permit conditions or endorsed plans).

What happens next?

VCAT must give the following persons an opportunity to be heard at the hearing:

- the responsible authority.
- any relevant referral authority.
- the owner and the occupier of the land.
- the person who asked for the cancellation or amendment of the permit.

Can objectors be involved?

The Tribunal may also give an opportunity to be heard by any other person who appears to

have a material interest in the outcome. This means that VCAT may require that notice of the application be given to persons potentially affected by the amendment of the permit (e.g. nearby land owners or those involved when the permit was first granted by VCAT). Those people may be given an opportunity to participate at the hearing by filing a statement of grounds.

Further information about objector involvement in a planning dispute, and statements of grounds, can be found in the 'Getting Involved' section on VCAT's website.

What can VCAT decide?

VCAT will consider the existing permit, the proposed amendments, and the relevant policies, provisions and decision guidelines in the planning scheme. VCAT must also consider the matters in section 90A.

After a hearing, VCAT may direct a responsible authority to amend or cancel the permit, or to take other action in relation to the permit. VCAT's decision is discretionary. VCAT must be satisfied that the amendment or cancellation of the permit produces an acceptable and appropriate planning outcome, and that it would be just and fair in the circumstances to cancel or amend the permit.

Further information

Cases about amending and cancelling a permit 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 the provisions of the *Planning and Environment Act 1987* that apply.
- look at the decisions in other similar cases. These can be found on the Austlii website. You may need to enter a search term and/or the name and section of the Act to find the most relevant cases.