

Short Cases List

Planning and Environment Division FACT SHEET

Version 1.2 – issued 1 July 2022

What is the Short Cases List?

The Short Cases List (SCL) has been set up to deal quickly and efficiently with cases in the Planning and Environment Division that are suitable for hearing and determination within an allocated time of three hours.

Two hours will be allocated for the presentation of submissions and evidence. A further hour will be available to allow the Member to prepare and deliver a decision.

Most hearings in the SCL will be listed for a hearing within approximately 12 weeks of lodgement of the application.

What types of matters will be included in the SCL?

The SCL has been established to deal with applications with the following characteristics:

- there are limited parties.
- the application, the grounds of review or grounds of refusal suggest that the issues are limited in number and extent.
- the case is capable of being heard and determined within three hours.
- a site inspection is unlikely to be required.
- any Cultural Heritage Management Plan or other preliminary issues have been addressed.

Any application that can be made in the Planning and Environment Division may be included in the SCL. This includes:

- all VicSmart applications (which will be listed within approximately 6 weeks)
- section 80 conditions reviews
- section 77, 79, 82 & 87A applications that have the characteristics outlined above.

How is a case included in the SCL?

An application may be included in the SCL either at VCAT's initiative or at the request of a party.

Parties will usually be notified in an initiating order if VCAT has included an application in the SCL.

A party may request that an application be included in the SCL at any time. If the application has already been listed for hearing, VCAT will consider whether to transfer the hearing to the SCL after the following has occurred:

- information about the application from the responsible authority or other decision-maker is received.
- a statement of service has been provided.
- the time (if necessary) for statements of grounds to be lodged has expired.

If VCAT decides it is appropriate to transfer the application to the SCL, VCAT will set a new hearing date. However, it is unlikely that the case will still be heard within 12 weeks from lodgement of the application.

If a party considers that a case is not suitable for inclusion in the SCL, that party may request to remove the case from the SCL. A request must be made in writing within 10 business days of the date of the initiating order.

Can SCL applications be amended?

Because of the shorter hearing timelines in the SCL, the opportunity to amend an application or plans will be limited.

An applicant who wishes to amend an application or plans must still comply with the procedures and timelines contained in VCAT's Practice Note PNPE9 – *Amendment of Plans and Applications*. This Practice Note is available on VCAT's website.

If compliance with the Practice Note PNPE9 procedures and timelines means that the application will not be ready for hearing on its scheduled date, or leads to new parties being joined and/or new issues raised, VCAT will remove the case from the SCL and re-list it for hearing at a later time to be determined by VCAT.

Can evidence be called at a SCL hearing?

Any party wishing to call expert evidence in a case included in the SCL must still comply with the procedures and timelines contained in VCAT's Practice Note PNVCAT2 - *Expert Evidence*. The Practice Note is available on the VCAT website.

What about Cultural Heritage Management Plans?

Compliance with the requirements of the *Aboriginal Heritage Act 2006* is a relevant matter for the Tribunal in considering whether to include an application in the SCL.

How do SCL pre-hearing procedures differ from a standard case?

When a case is listed in the SCL, VCAT will issue an initiating order that will advise the parties of the date, time, length and place of the hearing, in the same way that it does for other applications.

The initiating order will also include directions about the required actions to be carried out by the applicant, the responsible authority and

other parties. In order to meet the objective of listing SCL cases approximately 12 weeks after lodgement of the application, the times for completing these actions will be much shorter in the SCL than for standard cases.

For the SCL, the initiating order will usually require that:

- not less than 7 days before the hearing, all parties must provide VCAT and all other parties with written submissions addressing the key issues relevant to that party.
- no further written submissions will be required at the hearing.
- the responsible authority is required to include draft 'without prejudice' permit conditions as part of its submission.
- the draft 'without prejudice' permit conditions will be discussed at the end of the hearing.

What is the format for submissions?

Written submissions must be prepared in accordance with the SCL submissions template included with this fact sheet.

The SCL submissions template provides an 'issues focussed' format. The relevant issues in the case are identified and submissions are presented around those issues. The template also contains an appendix to allow for the inclusion of other relevant information VCAT requires to make its decision.

The responsible authority must also include draft 'without prejudice' permit conditions as part of its submission.

What are the SCL hearing procedures?

Hearings in the SCL will be scheduled for a fixed time, usually not exceeding three hours. The expectation is that the parties will take no more than two hours to present submissions and evidence. The remaining hour will be available to allow the Member to prepare and deliver an oral decision, if appropriate.

At the start of the hearing, the Member will ask whether the parties agree to the factual background information in the submissions (e.g. the review site and the locality, the proposal, and the planning scheme provisions). Unless the Member requires clarification, this information will be taken 'as read'. If a party disagrees with any of this information, that party should advise the Member at the start of the hearing.

The Member may also seek the consent of the parties to confine the issues in the hearing to those identified in the submissions, having regard to section 84AB of the *Planning and Environment Act 1987*.

The Member may allocate a set time to each party to make their submissions. Parties must be prepared to present their submissions concisely, and to focus on the issues in dispute. A party's position with respect to those issues should be explained having regard to the reasons why a permit is required, and the applicable policies or provisions in the planning scheme.

If a party intends to call expert or lay evidence, the Member may allocate a set time for the presentation of the evidence in chief, or direct that the witness statement be taken 'as read' and move straight to cross-examination. The Member may also regulate cross-examination.

Parties are encouraged to use visual images, plans and electronic media to convey information about the site, its surrounds and other matters relevant to VCAT's consideration. SCL hearings are intended to enable presentation of such materials. Information about available technology is available on VCAT's website.

At the hearing, the Member may also raise issues that have not been identified by the parties in submissions. All parties will be given an opportunity to respond to those issues.

Will there be a site inspection?

A site inspection will not normally be undertaken unless the Member considers it is necessary.

Is a hearing always required?

For short cases, as an alternative to a SCL hearing, parties have the option to request the Tribunal to decide the case 'on the papers' under section 100(2) of the *Victorian Civil and Administrative Tribunal Act 1998*, without attending a hearing. This option is only available if all parties agree or, if a party does not agree, the Tribunal is satisfied that the objection is not reasonable.

When will a SCL decision be made?

At the end of a SCL hearing, the Member will usually provide an oral decision.

If a Member gives an oral decision, parties should take notes of the Member's reasons as they are given. Written reasons will not usually be provided unless requested under section 117 of the *Victorian Civil and Administrative Tribunal Act 1998*. If written reasons are requested, they will usually be a corrected version of the transcript of oral reasons given at the hearing.

Parties can also request a recording of the oral reasons given.

If the Member reserves the decision, written reasons will normally be provided within two weeks of the hearing. If the Member has requested additional information at the hearing, the reasons will usually be provided within two weeks of receipt of that information.

VCAT will provide a written order in a proceeding in accordance with the *Victorian Civil and Administrative Tribunal Act 1998* whether or not it gives oral or written reasons.

SUBMISSION TEMPLATE FOR USE IN SHORT CASES LIST

| | | |
|----------------------------------|---|--------|
| VCAT FILE NO. | P | /..... |
| PERMIT APPLICATION OR PERMIT NO. | | |
| SUBMISSION ON BEHALF OF: | | |

THE ISSUES
Include a brief statement about the issues that are in dispute in the case
(to be completed by all parties).

SUBMISSIONS
Issue 1: _____

- Identify the issue in dispute.
- Identify any relevant provisions or policies in the planning scheme that assist in consideration of the issue.
- Concisely explain the arguments in support of your position.

Issue 2: Repeat as above

CONCLUSION
Concisely conclude your position - e.g. the application should be allowed/allowed in part/refused. If changes are proposed to a permit or proposed condition, specify the wording you request.

APPENDIX TO SUBMISSION TEMPLATE

| | |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| THE PROCEEDING (to be completed by responsible authority and permit applicants) | |
| Review or application type | Insert relevant section(s) e.g. s 80 of the <i>Planning and Environment Act 1987</i> |
| THE SITE AND AREA (to be completed by all parties where relevant) | |
| Address | Insert street address and, if relevant, lot and title details |
| Site features | List the key features of the site if relevant to the dispute |
| Locality features | Summarise the key features of the street or area if relevant |
| Applications and approvals | Include details of previous applications and approvals relevant to the consideration of the issues. |
| PLANNING SCHEME PROVISIONS (to be completed by responsible authority & permit applicant) | |
| Proposal | List key features of the proposal as relevant to the dispute |
| Zoning | List the Zone applying to the land |
| Overlays | List any Overlays applying to the land |
| Reasons permit required | List clauses under which a permit is required |
| Policies and provisions | List relevant State and local policies and any other provisions |
| RELEVANT BACKGROUND INFORMATION (to be completed by all parties where relevant) | |
| Process/background | |
| Previous permits | List if relevant |
| Previous Tribunal decisions | List if relevant |