# PLANNING AND ENVIRONMENT DIVISION GUIDELINES Time Limits

## Time Limits For Lodging Applications For Review

Time limits for lodging applications for review under selected planning enactments are set out below. Applications made under other legislation may be subject to time limits. Check the relevant legislation.

### *Planning and Environment Act 1987*

#### Applications by permit applicants:

**Refusal to grant a permit (s.77)** - 60 days after the responsible authority has given notice of the refusal.

**Requirement to give notice (s.78(a))** - 30 days after the responsible authority required the applicant to give notice under section 52(1)(d).

**Requirement for further information (s.78(b))** - 60 days after the responsible authority required the applicant to provide further information under Section 54(1).

**Failure to issue permit (s.79)** – 10 days after lodging a VicSmart application or 60 days after lodging all other applications, however, the calculation of the days elapsed is complex (See Calculating elapsed days in failure applications).

**Conditions (s.80)** - 60 days after the responsible authority gave notice of its decision to grant a permit under section 64 or, if there was no notice required, after the permit was issued.

**Extension of time (s. 81)** - 60 days from decision to refuse extension or if no decision has been made one month after the request.

#### Application by objectors:

**Decision to grant a permit (s.82)** – Objectors have 28 days to lodge an application for review with VCAT after the date of the Notice of Decision to Grant a Permit.

**Note**: Any person who is affected by the granting of a permit, where a written objection was received by the responsible authority, but who did not themselves object, may apply to the Tribunal for leave to review that decision to grant a permit (S.82B). No time limit is specified, but once the permit is issued or if the planning scheme excludes objectors' applications for review, leave cannot be given.

### *Local Government Act 1989*

**Special rate or charge (s.185)** - 30 days after the date of issue of a notice of the special rate or charge to the applicant.

## EXTENSION OF TIME FOR MAKING APPLICATIONS

An application for an extension of time limits may be made under the provisions of Section 126 of the *Victorian Civil and Administrative Tribunal Act 1998*.

### Time limits cannot be extended in some cases

In some circumstances an extension of this time may not be available by virtue of clause 65(1) of schedule 1 *Victorian Civil and Administrative Tribunal Act 1998* which provides that the tribunal must not extend the time for commencement of a proceeding under a planning enactment if –

* + - * 1. a proceeding in respect of the same or related facts or circumstances has already been set down for hearing, or
        2. a permit, license or works approval has been issued to any person on or after the expiration of the time appointed for lodging an application for review of the decision to grant that permit, license or approval.

### Criteria for extension of time limits

The criteria that the Tribunal commonly considers when deciding whether to extend time for lodging an application for review are:

1. What reasons are given for the delay by the applicant for extension of time in lodging its appeal?
   * + - 1. Did the applicant for extension of time take any other action (apart from the lodging of the objection or the late appeal) which continued to make the responsible authority aware that its decision to grant a permit was being contested?
         2. Will the applicant for the permit or the responsible authority suffer any prejudice if the application to extend time is granted?
         3. Will granting of the extension of time result in the unsettling of other people or of established practices?
         4. Does the proposed appeal have a real chance of success?
         5. Are there any considerations of fairness as between the applicant for extension of time and other persons in a like position which are relevant?
         6. Is there to be an appeal in any event brought by persons who did lodge an appeal in time?
         7. Is there any other reason why it would be fair and equitable in the circumstances for the application for extension of time to be granted?

These considerations are based on a decision of the Federal Court in *Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment* (1984) 58 ALR 305 and were referred to in *Australia Pacific Airports v Hume CC* [1999] VCAT 47.

None of these criteria are determinative on their own. The overriding purpose of the power to extend time is to enable justice to be done.(See *Dingley Village Neighbourhood Centre Inc v Kingston CC* (1997) AATR 227 at 285).

A decision of the Tribunal, which may assist in understanding the Tribunal’s approach to the exercise of its discretion in respect of the extension of time, is *Katsanis v Wyndham CC* [2005] VCAT 824.

## CALCULATION OF TIME

When a permit is issued or a notice is given by post, two business days are allowed for service. The closing date is calculated from the second business day after posting. (See *Vitesnik v Macedon Ranges SC* [2007] VCAT 598)

If the closing date falls on a weekend or public holiday, the next business day is taken to be the closing date.

## ELAPSED DAYS IN FAILURE APPLICATIONS Calculator

### The Four steps

Section 79 of the *Planning and Environment Act 1987* provides that an applicant for a permit can apply to the Tribunal for a review of the failure of the Responsible Authority to grant a permit within the prescribed time. Clause 32 of the *Planning and Environment Regulations* 2015 provides that the prescribed time is 60 days or 10 business days for VicSmart applications[[1]](#footnote-1).

Determining whether or not the 60 days has elapsed is complex. In most cases it can be calculated using the four step process set out below.

#### Step 1

Ascertain the start date (See the notes below for the determination of the start date).

#### Step 2

Count the total days that have elapsed from the start date to the date upon which the application review was or is to be received by VCAT.

#### Step 3

Count the “notice” days that elapsed while giving notice of the permit application under section 52 of the *Planning and Environment Act 1987*. (See the notes below in relation to determination of the beginning and end of the notice period).

#### Step 4

Calculate the number of prescribed days that have elapsed by subtracting the “notice” days counted in Step 2, from the total days counted in Step 1. If the total days minus the notice days is less than 60 days, the application is premature.

**The four steps table set out on the last page of this document simplifies the calculation of elapsed days.**

### Notes on the Four Step Calculation

#### Step 1 and the start date

The start date is the most recent of the dates determined as follows:

The date upon which the permit application was first received by the Responsible Authority.

1. The date upon which the permit applicant applied to amend the permit application pursuant to section 50 of the *Planning and Environment Act 1987*. (See section 57(b))
2. The date upon which the permit applicant agreed to an amendment of the permit application proposed by the Responsible Authority pursuant to section 50A of the *Planning and Environment Act 1987*. (See section 50A(5)(b))
3. The date upon which more information is given to the Responsible Authority in accordance with a written request made within the prescribed time pursuant to section 52 of the *Planning and Environment Act* *1987*. Clauses 18 of the *Planning and Environment Regulations* *2015* provides that the prescribed time in respect of a responsible authority’s request for more information is 28 days.

**Note**: The Tribunal has decided that the date on which the Responsible Authority requires more information is the date upon which written notice of the requirement is dispatched to the permit applicant (See *Wilbow Corporation Pty Ltd v Boroondara CC* [2006] VCAT 437)

#### Step 3 – The giving of notice

For the purposes of counting the days that elapsed giving notice: -

1. The date upon which a requirement to give notice of a permit application is made is the date upon which the written requirement is dispatched to the permit applicant by the Responsible Authority.
2. The date upon which the last notice was given is usually the most recent of the following dates:
   1. The date upon which the last notice was posted, or;
   2. The date upon which the last notice was erected upon the land, or;
   3. The last date upon which a notice was published in a newspaper.

### The Four Steps Table

**Important**, understand the notes set out above before completing this form.

|  |  |  |
| --- | --- | --- |
| **Step 1** | The date upon which the permit application was first received by the Responsible Authority. |  |
| The date upon which the permit applicant applied to amend the permit application. |  |
| The date upon which the permit application agreed to an amendment of the permit application. |  |
| The date, within the prescribed time, upon which further information required by Responsible Authority is given to the Responsible Authority. |  |
| **Start date, the most recent of above dates:** |  |

|  |  |  |
| --- | --- | --- |
| **Step 2** | Start date: |  |
| Date VCAT application received: |  |
| **Total days counted:** |  |

|  |  |  |
| --- | --- | --- |
| **Step 3** | Date notice requirement made: |  |
| Date last notice given: |  |
| **Notice days counted:** |  |

|  |  |  |
| --- | --- | --- |
| **Step 4** | Total days counted in Step 2: |  |
| Notice days counted in Step 3: |  |
| **Total days minus Notice days** |  |

**If the total days minus the notice days is less than 60 days, the application is premature.**

TRIBUNAL DECISIONS ON TIME LIMITS AND THE EXTENSION OF TIME

There are a number of decisions of the Tribunal (some referred to above) which may assist which may assist in the understanding of the issues and approaches to discretion relevant to time limits and the extension of time. These decisions are available on the Australasian Legal Information Institute's website (AustLII) at http://www.austlii.edu.au/au/cases/vic/VCAT/.

Wilbow Corporation PL v Boroondara CC [2006] VCAT 437

Vitesnik v Macedon Ranges SC [2007] VCAT 598 -

Katsanis v Wyndham CC [2005] VCAT 824

*ML Design v Boroondara CC* [2005] VCAT 2088 (10 October 2005)

*McKernan v Boroondara CC* [2005] VCAT 2082 (3 October 2005)

Wilbow Corporation PL v Boroondara CC [2006] VCAT 437

Archerduck PL Ballarat CC [2007] VCAT 1696

Australia Pacific Airports v Hume CC [1999] VCAT 47

1. In VicSmart applications there is a separate “three steps” calculator which is available on the VCAT website. [↑](#footnote-ref-1)