

# Hearing ‘On the Papers’

## Planning and Environment Division FACT SHEET

Version 1.2 – issued 12 August 2020

### What is a hearing ‘on the papers’?

VCAT may conduct all or part of a proceeding entirely on the basis of documents, without any physical appearance by the parties or the representatives or witnesses. This is known as a hearing ‘on the papers’.

The power to conduct a hearing ‘on the papers’ can be found in s 100(2) of the *Victorian Civil and Administrative Tribunal Act 1998*.

During the period the COVID-19 Omnibus (Emergency Measures) Regulations 2020 remain in force, VCAT may conduct a hearing ‘on the papers’ unless a party objects.

### In what types of cases may a hearing ‘on the papers’ be used?

The cases that are more suited to a hearing ‘on the papers’ are those where there are a limited number of parties and/or the issues are limited or confined. Examples include a simple two-party case about the review of a permit condition, a hearing about a question of law referred to a legal member, and costs applications.

### What is the process for a hearing ‘on the papers’?

#### ❖ Where there is no evidence

The parties should agree on a timetable for providing:

- primary written submissions.
- written submissions in reply.
- if relevant, draft permit conditions.

Each party must provide its submissions to VCAT and to all other parties. Other relevant

documents may be included with the primary written submission.

#### ❖ Where there is evidence

Hearings involving witness evidence will generally not be suited to a hearing ‘on the papers’. However, if a hearing ‘on the papers’ includes witness evidence, the parties should agree on a timetable for providing:

- written submissions including any questions for another party’s witness.
- written submissions in response, including answers by the other party’s witness to the questions.
- written submissions in reply by any party who asked questions of another party’s witness. These submissions must only address the answers provided by the witness.
- if relevant, draft permit conditions.

Each party must provide its submissions to the Tribunal and to all other parties. Other relevant documents may be included with the primary submission.

The parties may submit an agreed alternative process appropriate to the case.

### What happens if the application or the plans are proposed to be amended?

If it is proposed to amend the plans and/or the application, the procedure in Practice Note PNPE9 - *Amendment of Plans and Applications* must still be followed. A copy of the Practice Note is available on VCAT’s website. A hearing ‘on the papers’ will not be scheduled or confirmed until after compliance with Practice Note PNPE9 and the time for lodging statements of grounds has passed.

## Identifying any preliminary matters

Parties should consider if there are any preliminary or procedural matters that need to be determined before they prepare their submissions for a hearing 'on the papers'.

If the parties identify any preliminary or procedural matters that need to be determined before making submissions on the merits of a proposal, then the parties must write to VCAT identifying the relevant matter/s, and seek direction as to the appropriate process for determining these.

Examples of preliminary or procedural matters that should be determined before making submissions on the merits of a proposal include:

- whether a Cultural Heritage Management Plan is required.
- whether a proposal complies with a mandatory requirement of the planning scheme.
- whether additional permit requirements apply under the planning scheme.
- whether there is a question of law.

If the proceeding raises a question of law:

- the parties must agree on the wording of the question of law.
- the parties must state whether they agree to the question of law being determined by a VCAT Member who is not an Australian lawyer.

## What must be considered in preparing a timetable for submissions?

Any request by the parties for a hearing 'on the papers' must address the following matters:

- The timing of the circulation of any draft planning permit conditions on a 'without prejudice' basis. For example, the Council could circulate these conditions with its primary submissions. Other parties can then respond to these conditions in their respective reply submissions.

- The date by which the parties agree to circulate their primary submissions and their submissions in reply.
- Any other actions as agreed by the parties, including dates for such actions to be completed, must be included.

## How is a hearing 'on the papers' requested?

Once the parties have reached agreement on the process and timelines involved, they must advise VCAT in writing, and request that the matter be conducted 'on the papers'. VCAT will then consider the request.

If VCAT agrees that the matter is suitable for a hearing 'on the papers', it will issue an order to all the parties specifying the process to be followed. This may vary from the parties' agreed timetable.

All parties must comply with the timeline for the provision of draft permit conditions, primary submissions and submissions in reply.

## How is a hearing 'on the papers' conducted?

Once all submissions are received, a Member will be allocated to conduct the hearing 'on the papers', and the matter will be scheduled for hearing.

The proceeding will be listed on VCAT's website under 'Today's Hearings' and in the daily Law List on its scheduled hearing day, indicating that it will be heard 'on the papers'.

The Member allocated to hear the case 'on the papers' will consider all of the submissions and provide a written decision, usually within two to six weeks after the listed hearing date.

## Is a hearing fee payable?

The same hearing fee is payable as in the case of a hearing conducted in person.