# 

# The process of having a determination made ‘on the papers’

**Frequently Asked Questions**

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

The determination of matters ‘on the papers’ is one of the methods available to parties for proceedings to be decided.

Determination of proceedings ‘on the papers’ means that VCAT will make a decision based on written submissions and other material from the parties, without hearing from the parties (or their representatives) in person.

## What matters are suitable for a determination ‘on the papers?

Any proceeding may be considered for determination ‘on the papers’. Typically, however, those proceedings with a limited number of parties, and/or limited or confined issues, may be more suited to this process.

## What is the process for having a matter determined ‘on the papers’?

In accordance with section 100(2) of the *Victorian Civil and Administrative Tribunal Act 1998*,a hearing ‘on the papers’ can only occur if all the parties agree to this process.

VCAT has prepared a guideline (<https://www.vcat.vic.gov.au/resources/guide-for-submissions-in-hearings-planning-and-environment>), that provides information about the preparation of an agreement between the parties for the submission of material to the Tribunal.

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

If VCAT agrees that the matter is suitable for a determination ‘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.

The parties must comply with the timeline for the circulation of draft permit conditions, submissions and submissions in reply.

## Can amended plans be prepared?

Yes. The procedure in Practice Note PNPE9 *Amendment of Plans and Applications* must be followed. This must be done before reaching agreement to the matter being determined ‘on the papers’.

The agreement to the matter being determined ‘on the papers’ must also be reached after the time for lodging statements of grounds has passed and must include all parties, including those persons who have become parties by responding to the amended plans.

## Will I get a fair go?

All parties will be given the opportunity to make submissions, submissions in reply and provide any expert evidence. Parties are encouraged to provide photographs and other visual aids.

Any questions in cross-examination must be incorporated into written submissions and the written answers by the expert witness must be incorporated into the written reply submissions. All submissions, all supporting material and any expert evidence will be considered by the VCAT member.

The decision, and the reasons for the decision, will be provided in writing by the VCAT member.

## What happens if VCAT has a concern that the parties have not addressed?

VCAT will issue an order if it needs clarification on any issues either raised or not raised by the parties. The parties will be given an opportunity to make further written submissions addressing the issues detailed in the order.

## What if preliminary matters need to be determined?

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

Examples of preliminary 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.

## What if there is a question of law?

If the proceeding raises a question of law:

* the parties must agree on the wording on the question of law; and
* the parties must state whether they agree to the question of law being determined by a member of VCAT who is not a legal member.

## Will VCAT do a site inspection?

A site inspection is at the discretion of the VCAT member. If a party considers that a site inspection should be undertaken, then this should be included in the written submissions and this will be considered by the member.

## How long will the parties have to wait for a decision?

As a guide, VCAT will make a decision within two weeks once the final submissions are received by the Tribunal. This may vary depending on the nature and complexity of the issues in dispute.

## Is the same hearing fee payable as in the case of a hearing conducted in person?

Yes.

## I’ve never been to a VCAT hearing before, how do I make a written submission?

Information on making submissions can be found on the VCAT website. Go to: <https://www.vcat.vic.gov.au/resources/guide-for-submissions-in-hearings-planning-and-environment>