

Planning-related disputes under the *Heritage Act 2017*

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.

Heritage cases that VCAT can hear as a ‘planning dispute’

The Planning and Environment Division at VCAT deals with a range of planning disputes relating to the development and use of land.

The planning-related disputes that VCAT can hear under the *Heritage Act 2017* relate to reviews of specified decisions and to covenants. All references to section numbers in this fact sheet are to sections of this Act.

VCAT may review a decision of the Executive Director at Heritage Victoria about:

- an application for a heritage permit to carry out works or activities in connection with a registered heritage place or object (section 109(1)(b)), but only where the matter is referred to VCAT by the Minister.
- a repair order in relation to a registered place or registered object (section 156).
- a rectification order in relation to a registered place or registered object (section 164).

VCAT may also release a land owner from a covenant entered into with the Heritage Council or National Trust (section 136).

Heritage matters that VCAT cannot deal with

VCAT cannot deal with several matters under the *Heritage Act 2017* that are dealt with instead by another body – the Heritage Council. These include:

- a review of a decision on a nomination to include a place or object in the Heritage Register.
- a review of a decision on an application for a permit in relation to a registered shipwreck or a historic shipwreck.
- a review of a decision on an application for consent regarding archaeological sites on the Heritage Inventory.
- the making or revoking of an interim protection order or a stop order.
- the preparation of a World Heritage Strategy Plan or a World Heritage Management Plan.

Who can apply to VCAT?

❖ *Permits*

Only the Minister can refer an application to VCAT about the review of a decision of the Executive Director about a heritage permit.

A land owner or other person **cannot** apply directly to VCAT to review a decision about a heritage permit. A land owner or a person with a substantial interest in the heritage place or object can seek a review by the Heritage Council (under section 106). Most reviews are determined by the Heritage Council. However, the Minister may direct the Heritage Council to refer the application to VCAT if the Minister considers that the decision may have a significant effect on the achievement of planning and heritage objectives.

The Minister has published a practice note on the circumstances in which the Minister may refer a review to VCAT. This can be found on the Department of Environment, Land, Water and Planning website.

❖ **Repair order**

An owner of a registered place or object may apply to VCAT to review a repair order (section 156(1)).

❖ **Rectification order**

A person on whom a rectification order is served may apply to VCAT to review the issue of the rectification order (section 164(1)).

❖ **Covenant**

A land owner who enters into a covenant with the Heritage Council or National Trust and who cannot reach agreement for release of the covenant may apply to VCAT for an order to resolve the dispute (section 136).

Reasons for applying

The *Heritage Act 2017* does not specify or limit the grounds for reviewing a decision of the Executive Director, but an application for review should generally only be made on relevant heritage grounds that relate to that decision.

The Executive Director is required to consider specified matters under the *Heritage Act 2017* before making a decision about a heritage permit, a repair order, or a rectification order. VCAT will consider similar issues when it decides the matter. A person applying for a review of the decision at VCAT should therefore carefully read the sections in the *Heritage Act 2017* that relate to that decision, as these will provide guidance about relevant issues.

Are there time limits?

An application to review a repair order or a rectification order must be made within 28 days after the order is served (sections 156(2) and 165(2)).

A request to the Heritage Council to review a decision by the Executive Director on an application for a heritage permit must be made within 60 days of the decision (section 106(4)). This request must be made before the Minister could refer the review to VCAT.

There are no time limits to apply to VCAT for an order to resolve a dispute about the release of a covenant.

What is the form of application?

To make an application to VCAT, you must use the Planning and Environment Division 'General form of application'. A copy of this application form is available on VCAT's website.

Be aware that fees may apply. Information about application fees and hearing fees is available on VCAT's website.

What can VCAT decide?

On an application for review of a decision on a permit application, VCAT may affirm the decision, vary the decision, or set aside the decision and make a substituted decision.

On an application to review a repair order, VCAT may extend the time to comply with the order pending the hearing of the application. VCAT must set aside the order if VCAT is satisfied the owner has not allowed the registered place or object to fall into disrepair or failed to maintain it to the extent that its conservation is threatened, but otherwise VCAT must confirm the repair order.

Further information

Cases brought under the *Heritage Act 2017* are often complex, and some of the terms used in the *Heritage Act 2017* have particular meanings given to them in the Act or by the courts.

For further information:

- carefully read any decision letter or other documents sent by Heritage Victoria and/or visit the Heritage Victoria website.
- check the relevant sections of the *Heritage Act 2017*.
- look at the decisions in other similar cases decided by VCAT. VCAT decisions can be found on the Austlii website. You may need to enter a search term (e.g. the name and section of the Act) to find the most relevant cases.