

Parties in planning disputes

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.

Who is a party in a planning case at VCAT?

A party is a person who has the right to directly participate in a case at VCAT. At VCAT, a party has the right to:

- receive notice of the hearing or compulsory conference.
- attend and participate in a compulsory conference, and to be involved in discussions to resolve a proceeding.
- be part of any consent order.
- attend and participate at a hearing, including making submissions, calling evidence, and cross-examine any witness called by another party.
- receive a copy of any VCAT order or decision.
- appeal to the Supreme Court on a question of law.

Some people are automatically parties. For example:

- the person who applies to VCAT is a party. They are called the ‘applicant’.
- if the application is about a review of a decision, the original decision maker is a party. This is commonly the responsible authority (usually the council) that made a decision about a permit.

Other people (including objectors) may be a party, or may become a party if:

- they are joined as a party by VCAT.
- they are specified as a party in the *Victorian Civil and Administrative Tribunal Act 1998* or an enabling enactment (such as the *Planning and Environment Act 1987*) for a particular type of proceeding or if they follow certain procedures.

A party may be an individual person or a group of people with a common interest who join together as a ‘joint party’. A joint party will normally be required to appoint a spokesperson, and VCAT will only send communications to that spokesperson on behalf of the group.

A party may also be an organisation, such as a company or government authority. However, an unincorporated association cannot be a party.

What are the obligations of a party?

As well as having rights in a case, parties also have obligations. They include:

- a requirement to comply with the provisions of the *Victorian Civil and Administrative Act 1998*, the *Victorian Civil and Administrative Rules 2018*, the regulations and provisions of any enabling enactment.
- a requirement to comply with directions made by the Tribunal.
- a requirement to attend a hearing or compulsory conference in person or through a representative or professional advocate.

Parties must also comply with the VCAT practice note PNVCAT3 - ‘*Fair Hearing Obligation*’. A copy of the practice note is

available on VCAT's website. The fair hearing obligation includes requirements that parties act honestly and co-operatively, and treat VCAT and other parties with courtesy and respect.

VCAT may impose sanctions on a party (including an award of costs or striking out a party) who engages in conduct causing disadvantage to another party.

Each party in a VCAT case usually bears its own costs and is not usually obliged to pay the costs of another party if unsuccessful, unless VCAT considers it fair to do so having regard to the matters in section 109 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Parties other than objectors

❖ *Permit applicants and permit holders*

A permit applicant or permit holder who is the applicant for review (e.g. under section 77, 79, 80 or 87A of the *Planning and Environment Act 1987*) is automatically a party in the case at VCAT.

A permit applicant is automatically a party to an application for review by an objector under section 82 of the *Planning and Environment Act 1987*. In such cases, the permit applicant is required to lodge a statement of grounds.

The *Planning and Environment Act 1987* specifies that the owner, user, or developer of the land directly affected by a matter (usually the permit holder) is entitled to be a party for many types of proceedings (e.g. applications under sections 149 and 149A).

❖ *Responsible authority*

The responsible authority (usually the council) is automatically a party in all cases involving the review of a decision made by the responsible authority.

❖ *Minister for Planning*

The *Planning and Environment Act 1987* specifies that the Minister for Planning is entitled to be a party for certain types of proceedings (e.g. applications under section 39).

The Minister for Planning will also occasionally be joined as a party in a VCAT case about a planning dispute if the issues in the case raise a major issue of policy or relate to the interpretation of the planning scheme.

❖ *Referral authorities*

A referral authority is an organisation that a planning permit application is referred to for specialist advice – usually a government body or service provider.

Determining referral authority

A determining referral authority is automatically a party in a case including the refusal to grant a permit or to challenge permit conditions if it objected to the grant of a permit or if the application for review is of a permit condition required by the authority.

In most other cases, a determining referral authority is eligible to become a party by lodging a statement of grounds after receiving notice of the application.

Recommending referral authority

A recommending referral authority is automatically a party in any application for review at VCAT if the authority was given notice of the application for review under the *Planning and Environment Act 1987*. [Note: a recommending referral authority must be given notice of an application for review under sections 77 or 80 if it objected to the grant of a permit; or, if the application for review relates to a permit condition recommended by the authority.]

In most other cases, a recommending referral authority is eligible to become a party by lodging a statement of grounds.

How or when is an objector a party in a planning case at VCAT?

❖ *Original objectors*

An 'original objector' is a person who objected to a planning permit application before the application was decided by the responsible authority (usually the council).

If the responsible authority decides to give notice to grant a permit, an original objector can seek to review that decision at VCAT. Upon lodging an application under section 82 of the *Planning and Environment Act 1987*, the objector who made the application to VCAT is automatically a party.

If the responsible authority decides to refuse to grant a permit or to impose conditions on the permit, the permit applicant may seek to review that decision at VCAT, and VCAT will require the applicant to give notice of the application for review to all original objectors. In response to the notice, an original objector may get involved in the VCAT case by lodging a statement of grounds and sending a copy to the permit applicant and responsible authority.

Further information about the 'statement of grounds' process, including a copy of the form and information about time limits and fees, is available in the 'Getting Involved' section on the VCAT website. Information about time limits will also usually be included in a VCAT order and the notice sent to the original objector.

The statement of grounds form requires the original objector to make a choice under clause 56(5) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* about whether the objector wants to participate in the hearing. There are important consequences associated with this choice. This is because:

- if the original objector indicates that they intend to participate in the hearing, and pays the fee, the objector automatically becomes a party in the proceeding.

- if the original objector fails to pay the fee, the objector does not become a party.
- if the original objector indicates that they do not intend to participate in the hearing, no fee is payable, and the objector is not a party.

❖ *Non-original objectors*

A person who was not an original objector to a permit application can still lodge a statement of grounds and indicate that they wish to participate in the proceeding. A fee is payable.

The non-original objector does not automatically become a party. That person must attend the hearing and seek leave from VCAT to be joined as a party. That person may be required to explain why they were not an original objector, and why they should be joined as a party. VCAT will also consider the views of the permit applicant and the responsible authority before deciding whether to join the person as a party. The joining of a person as a party is not guaranteed.

❖ *Objectors to amended plans, or applications to amend a permit*

A permit applicant may occasionally seek to amend its permit application or plans in an existing application for review. Alternatively, a permit holder may seek to amend an existing permit or plans (e.g. under section 87A of the *Planning and Environment Act 1987*). In these circumstances, VCAT will usually require the permit applicant or permit holder to give notice to other people. This may include people who were given notice of the original permit application.

A person receiving the notice, and who objects to the application to amend the application, plans or the permit, may get involved in the VCAT case by lodging a statement of grounds. Information about how to do this will be included with the notice. A similar process applies as for original objectors in a review proceeding. If the person indicates that they intend to participate

at the hearing, and pays the fee, they automatically become a party in the proceeding.

❖ *Change of mind by objector about participation in the hearing*

If a person lodges a statement of grounds indicating that they do not wish to participate in the hearing, but subsequently changes their mind and wishes to participate in the hearing and become a party, they must lodge a fresh statement of grounds form and pay the fee. This needs to occur not less than 48 hours before the day of the hearing or compulsory conference.

The person does not automatically become a party. The person must seek leave from VCAT to participate as a party. VCAT will consider the views of the permit applicant and the responsible authority before deciding whether to grant leave and join the person as a party. The granting of leave and joinder is not guaranteed.

How is a person joined as a party?

If a person is not automatically a party or eligible to become a party under the *Victorian Civil and Administrative Tribunal Act 1998* or an enabling enactment (such as the *Planning and Environment Act 1987*), VCAT may still join that person as a party.

Under section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*, any person can apply to be joined as a party. VCAT can also join a party on its own initiative.

VCAT may join a party if it considers that:

- the person ought be bound by, or have the benefit of, a VCAT order.
- the person's interests are affected by the proceeding.
- it is desirable that the person be joined as a party.

The joining of a person as a party is not guaranteed.

VCAT will not normally join a person as a party under section 60 if they are eligible to become a party under another provision.

Role of people who are not parties

A person who does not become a party or is not joined as a party cannot attend the compulsory conference, and their consent is not required to any settlement of the case at VCAT.

The person may still attend a final hearing, but is not entitled to make submissions or to ask questions or cross-examine witnesses. VCAT will still consider their statement of grounds at any hearing.

A person who is not a party will not receive any correspondence or orders from VCAT. Other parties are not required to send them witness reports or other information unless directed by VCAT.

Removal of parties

VCAT may order that a person cease to be a party to a case about a planning dispute at VCAT if it considers that:

- the person's interests are not affected, or are no longer affected, by the proceeding.
- the person is not a proper or necessary party to the proceeding, whether or not the person was one originally.