Environment Defenders Office

Objections Kit

Objections Kit

A guide to objecting to an application for a planning permit

About the Environment Defenders Office (Victoria) Ltd

The Environment Defenders Office (Victoria) Ltd ('EDO') is a Community Legal Centre practising public interest planning and environment law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest planning and environmental law.

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SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

While all care has been taken in preparing this publication, it is not a substitute for legal advice in individual cases. For any specific questions, seek legal advice.

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1.0 Introduction

1.1 How is use and development of land regulated in Victoria?

The use, development and protection of land in Victoria is primarily regulated by planning schemes made pursuant to the *Planning and Environment Act 1987* (**PE Act**). The PE Act is administered by the Minister for Planning.

Planning schemes set out objectives, policies and controls for the use, development and protection of land within municipal districts. They must conform to the Victorian Planning Provisions (VPPs), which are standard planning provisions to ensure that planning schemes throughout Victoria are expressed in uniform language.

The PE Act can be found at **www.dms.dpc.vic.gov.au** under 'Victorian Law Today'. The VPPs and General Practice Notes can be found at **www.dse.vic.gov.au** under 'planning'.

Responsible Authorities (usually the local council) grant or refuse planning permits under the PE Act. The permit applicant usually has to give notice of a permit application at the direction of council.

Generally, affected individuals have the opportunity to object to the grant of a permit. Where a permit is granted, they are entitled to appeal against that decision to the Victorian Civil and Administrative Tribunal (**VCAT**). However, objector rights can be, and often are, modified by the planning scheme. This may exclude the right to appeal a decision to grant a planning permit.

1.2 What is a planning permit?

A planning permit may be required under specific provisions within a planning scheme before land can be used or developed. For example, zoning provisions generally regulate planning permit requirements for the use and development of land within that zone.

It may be necessary to obtain a planning permit to operate a retail business, or a particular industry, in a given zone. Where development is proposed, planning permits may be required to construct a building, carry out works or clear native vegetation. Development requirements usually appear in zoning provisions, overlays and in the "Particular Provisions".

Planning permits are different from building permits, which relate to the actual construction of a building or development. Sometimes a building permit and a planning permit will both be required for a development.

To find out whether a particular use or development requires a planning permit, check the relevant planning scheme. Planning schemes may be found at **www.dse.vic.gov.au/planningschemes/**.

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1.3 Who administers planning schemes?

Responsible Authorities are bodies designated to administer and enforce planning schemes (Section 14 PE Act). Where a permit, the planning scheme or a section 173 agreement has been contravened, the Responsible Authority often seeks enforcement orders and may commence prosecution in the Magistrate's Court. A Responsible Authority may be:

- the relevant municipal (or local) council;
- the Minister for Planning ('Minister'); or
- anyone specified in the planning scheme as a Responsible Authority for that purpose.

(Section 13 PE Act)

1.4 What other bodies are involved?

Responsible Authorities may be required to submit copies of planning permit applications to 'Referral Authorities' (section 55 PE Act). Referral Authorities are specified in planning schemes and include:

- the Environment Protection Authority (**EPA**);
- the Department of Sustainability and Environment (**DSE**);
- the Department of Human Services; and
- water and fire authorities.

Referral Authorities are listed in clause 66 of the General Provisions section of the VPPs and planning schemes. Sometimes other provisions within the planning scheme may specify that a person or body is a Referral Authority.

Referral Authorities consider permit applications and impose conditions. If they object to the granting of the permit or stipulate conditions in the permit, the Responsible Authority must follow their decision. (Sections 56, 61(2) and 62(1)(a) PE Act)

If a Responsible Authority fails to refer a permit application to a Referral Authority when it should have, the Referral Authority may request that VCAT either cancel or amend the permit. (Sections 87(3) and 89(1)(2) PE Act)

The requirements of Referral Authorities can be overturned on appeal at VCAT.

2.0 Planning Permit Applications

2.1 How is a permit application made?

An application for a planning permit must be made to the relevant Responsible Authority, usually the local council, in accordance with the regulations (section 47(1)(a) PE Act).

Application forms can be obtained from the Relevant Authority and must be filled out and lodged with them.

2.2 Who must be given notice of a permit application?

The notice requirements set out in section 52(1) of the PE Act must be complied with, unless the planning scheme specifies that a permit application is exempt.

Where, as will usually be the case, an application is not exempt, notice of an application must be provided pursuant to section 52(1) of then PE Act, unless the Responsible Authority is satisfied that the grant of the permit would not cause material detriment to any person.

In particular, the Responsible Authority must give notice of the permit application to:

- the owners and occupiers of adjoining land, unless the Responsible Authority is satisfied that the grant of the permit would not cause any material detriment (section 52(1)(a));
- any local council that is materially affected (section 52(1)(b))
- Referral Authorities (section 52(1)(c));
- the owners and occupiers of land benefited by a registered restrictive covenant, if the application is to remove or vary the restrictive covenant, or would result in a breach of the restrictive covenant (section 52(1)(ca));
- any other persons the Responsible Authority considers may suffer material detriment if the permit is granted (section 52(1)(d).

Note that the Responsible Authority may give any further notice that it considers appropriate of an application that is likely to be of interest or concern to the community (section 52(3)). This allows the Responsible Authority to consider objections from a larger group of people than might normally be entitled to object, and also to require notice in circumstances where the planning scheme provides that an application is exempt from section 52(1).

2.3 Who must give notice of a permit application?

The permit applicant must give notice of a permit application, if directed by the Responsible Authority. Otherwise, notice may be given by the Responsible Authority itself.

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2.4 How is notice of a permit application given?

How notice is given depends, for example, on whether a person is the owner of an adjoining property, or someone who is potentially affected for other reasons.

Adjoining owners and occupiers

Because the right to notice is fundamental to the objectives of the PE Act, Responsible Authorities usually ensure that adjoining owners and occupiers are informed by letter.

Others

In order to try to ensure that all other people who are entitled to object receive adequate notice, the following methods may be employed:

- placing a sign on the subject land;
- by publishing a notice in the local newspaper(s);
- giving the notice personally or sending it via post; or
- in any other way considered appropriate by the Responsible Authority.

(Section 52 PE Act)

2.5 What if I was entitled to notice but did not receive it?

Before a permit is issued

Ask the Responsible Authority to consider your objection anyway. If the Responsible Authority has already decided to grant a permit, you can apply to VCAT for leave to be joined as a party to an appeal, or for leave to seek review of any decision of the Responsible Authority to grant the permit.

After the permit is issued

If you were not given notice and believe you should have been, you can apply to VCAT to cancel or amend the permit. (Section 87(1) PE Act)

For more information see EDO *Enforcement Kit*, Section 5.0.

2.6 Can I inspect the permit application?

Applications must be made available to the public, so you can inspect a permit application at the offices of the Responsible Authority until the completion of any appeals process. It is a good idea to make an appointment. (Section 51 PE Act and General Practice Note, December 1999, *Improving Access to Planning Documents,* DSE website.)

A copy of every permit issued must also be available for public inspection, free of charge at the offices of the Responsible Authority. (Section 70 PE Act)

3.0 Objections

3.1 Can I object to a permit application?

If you may be affected by the grant of a permit, you can object to the grant of a permit. (Section 57(1) PE Act)

Note

Even if the planning scheme does not require you be given notice of the application, you may still object. However the Responsible Authority is not required to take your objection into account. Similarly, VCAT may refuse to consider your objection if you are not affected by the proposal or if it does not raise relevant considerations. (Section 60(3) PE Act)

3.2 Can a group of people object to a permit application?

A group of people may make an objection together.

The group may designate a person to receive notice of the objection on their behalf and give the Responsible Authority the name and address of the person who is to receive notice of the decision. (Section 57(3) PE Act)

Often this is a good idea because on appeal VCAT prefers to avoid hearing multiple submissions covering the same issues. Having an objector representative may help you to coordinate your case, save time and money, and make your presentation more effective.

3.3 How do I object to a permit application?

Objections must:

- be in writing;
- clearly state the reasons for the objection; and
- clearly state how the person making the objection would be affected by the grant of the permit.

(Section 57(2) PE Act)

The Responsible Authority will probably have a prescribed form. You should contact them and enquire before you lodge an objection. You should lodge your objection with the Responsible Authority.

3.4 What time limits apply?

Responsible Authorities may decide to grant or refuse a permit within 14 days of giving notice of the application. (Section 59 PE Act)

Generally, you should lodge your objection within 14 days of notice of the application. However, you should contact the Responsible Authority to confirm what time frames apply.

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3.5 On what grounds can I object?

An objection should identify how you are affected by the proposal and should address all relevant planning considerations. You should be conscious that including irrelevant matters may undermine your best arguments. For example, it is best to avoid objections based on concerns about property values.

Often there is a long history of grievances between neighbours. Rather than focus on why the permit applicant is a bad person, you should focus on why the proposal is flawed.

The items set out below at Sections 4.1 and 4.2 must be considered by a Responsible Authority and are a good starting point in drafting your objection.

In an urban or residential context, the following are often important considerations:

- detriment to the amenity of the area, including the features, benefits or advantages of the local environment which people currently enjoy;
- effect on views, noise, traffic or general atmosphere of area; and
- impact on the preferred or existing character of the neighbourhood.

Handy tips

Tell the council officer something new. Ask yourself what is it that you know about the area that is worth protecting, before you start to research the planning scheme requirements.

Keep your points succinct. Use headings and bullet points to make your submission easy to read and follow.

Send your objection by email so that the planning officer can cut and paste from it.

Spend time looking at the plans in order to explain the practical problems of the proposal and how they might reasonably affect you. If you can't get to the Council office, ask for a copy to be posted to you.

You should also take the opportunity to speak at any Council hearing if you can. (See VCAT Brochure, *Submissions in the Planning List*, available on the VCAT website.)

4.0 Decisions on permit applications

4.1 What must the Responsible Authority take into account?

The Responsible Authority **must** take into account the following:

- The relevant planning scheme
- All objections and submissions which it has received, if notice of the application was required;
- Any decision and comments of referral authorities; and
- Any significant effects the Responsible Authority considers the use or development may have on the environment, or which the Responsible Authority considers the environment may have on the use or development.

(Section 60(1)(a) PE Act)

4.2 What else might the Responsible Authority take into account in appropriate circumstances?

Other matters the Responsible Authority may take into account, where appropriate are:

- Any significant social and economic effects of the use or development;
- Strategic plans, policy statements, codes or guidelines that have been adopted by a Minister, government department, public authority or local council;
- Any amendment to the planning scheme which has been adopted by a planning authority;
- Any agreements between the Responsible Authority and the land owner which affect the land under section 173; and
- Any other relevant matter.

(Section 60(1)(b) PE Act)

Note

If the Responsible Authority considers an objection has been made primarily to secure or maintain a financial advantage for the objector, the Responsible Authority may reject the objection and proceed as if the objection had not been made. For example, a shopping centre owner objecting to a proposal for a nearby retail use because it will cause competition might be found to be made to secure financial advantage.

(Section 57 PE Act)

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4.3 What decision can the Responsible Authority make?

The Responsible Authority may decide:

- to grant a permit;
- to grant a permit subject to conditions; or
- to refuse to grant a permit on any ground it thinks fit.

(Section 61(1) PE Act)

The Responsible Authority must refuse to grant the permit if the relevant Referral Authority objects to the grant of the permit. (Section 61(2) PE Act)

If the land is coastal Crown land, the Minister administering the *Coastal Management Act 1995* must consent before a permit to develop the land can be granted. (Section 61(3) PE Act).

4.4 Can I appeal the Responsible Authority's decision?

Generally, an objector is entitled to appeal to VCAT in respect of a decision of a Responsible Authority to grant a planning permit.

For further information see EDO Fact Sheet 2.3 *Planning Permit Appeals* and the EDO Appeals Kit.

See also VCAT website under 'Planning and Environment' and 'How to make an application to VCAT'.

5.0 Minister's power to decide an application

5.1 When can the Minister consider a permit application?

Minister's 'call-in' power

Before a Responsible Authority has made a decision about a planning permit, the Minister for Planning may 'call in' the application if it appears to the Minister that:

- the planning application raises a major issue of policy and the determination of the application may have a substantial effect on the achievement or development of planning objectives;
- the decision on the application has been unreasonably delayed to the disadvantage of the permit applicant; or
- the use or development to which the application relates is required to be considered by the Minister under another law.

(Section 97B PE Act)

Also see General Practice Note, *Ministerial Powers of Intervention in Planning and Heritage Matters*, (December 1999), DSE website.

A Responsible Authority can also request that the Minister make the decision in relation to an application.

(Section 97C PE Act)

5.2 Can I make submissions to the Minister?

Where an application is to be decided by the Minister, the Minister must, unless certain exceptions apply, appoint a planning panel (**Panel**) and refer any submissions or objections received to the Panel.

The Panel must give anyone who made a submission or raised an objection, or any other person affected by the permit application, a reasonable opportunity to be heard, and must consider their submissions or objections.

(Section 97E PE Act).

5.3 What decision can the Minister make?

After considering any Panel report, the planning scheme and any other matters, the Minister may:

- grant the permit;
- grant the permit subject to conditions; or
- refuse to grant the permit.

5.4 Can I appeal the Minister's decision?

You cannot appeal to VCAT, and VCAT cannot cancel or amend a permit, if the Minister has made a decision in respect of an application for a planning permit in accordance with the above process.

(Section 97M PE Act)

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6.0 Useful information

6.1 Useful addresses

Environment Protection Authority
40 City Road, Southbank 3006
Ph: (03) 9695 2722

Information Victoria
356 Collins Street, Melbourne, 3000
Ph: 1300 366 356

Planning Information Centre, DSE
Upper Plaza, Nauru House
80 Collins Street, Melbourne, 3000
Ph: (03) 9655 8830

Victorian Civil and Administrative Tribunal
55 King Street, Melbourne, 3000
Ph: 9628 9777

6.2 Useful websites

Department of Sustainability and Environment:
www.dse.vic.gov.au

http://www.dse.vic.gov.au/planningschemes/

http://www.dse.vic.gov.au/shared/ats.nsf/webviewdisplay?openform

Environment Protection Authority:
www.epa.vic.gov.au

Commonwealth Department of the Environment and Water Resources:
www.environment.gov.au

Victorian Civil and Administrative Tribunal:
www.vcat.vic.gov.au

http://www.vcat.vic.gov.au/CA256DBB0022825D/page/Planning+and+Environment-Legislation-Practice+Notes?OpenDocument&1=65-Planning+and+Environment~&2=35-Legislation~&3=10-Practice+Notes~

http://www.vcat.vic.gov.au/CA256DBB0022825D/page/Planning+and+Environment-Hearings?OpenDocument&1=65-Planning+and+Environment~&2=15-Hearings~&3=~

Humane Society International:
www.hsi.org.au

Victorian Government:
www.vic.gov.au

6.3 Legal advice

LEGAL ADVICE SHOULD BE SOUGHT IN SPECIFIC CASES

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