

# Changes to the planning permit process

Advisory Note

May 2005

This advisory note provides information and advice about the changes to the planning permit process under the *Planning and Environment Act 1987* as amended by the *Planning and Environment (General Amendment) Act 2004*. The advisory note covers:

- What a time limit on further information means
- How an application can be amended
- What the responsible authority and the Victorian Civil and Administrative Tribunal must consider when making a decision
- How a permit can be amended
- Transitional provisions.

## What does a time limit on further information mean?

### What has changed?

When a responsible authority requests further information under section 54 of the *Planning and Environment Act 1987* within the prescribed time of 28 days, it must also specify a date by which the information must be received. An application lapses if the requested information is not provided by the date specified by the responsible authority. An application that has lapsed cannot be recommenced and a fresh application will need to be lodged.

If a request for more information is made after the prescribed time, no application lapse date can be set.

### What date can be specified?

The lapse date must be 30 days or more after the date of the notice requesting the information.

The date specified by the responsible authority should be reasonable in relation to the nature of the application and the type of information requested.

### What if a request for an extension of time is refused?

An applicant may, under section 54A, apply for an extension of time to give the required information.

If a request to extend the time specified is refused by the responsible authority, the applicant has 14 days from the refusal to supply the information.

An applicant also has a right of review to the Victorian Civil and Administrative Tribunal (VCAT). An application for review must be made before the lapse date of the application.

VCAT will determine whether to uphold the responsible authority's decision or to allow an extended time.

The application does not lapse until the request for extension is finalised.

### How does this affect a request for further information by a referral authority?

The responsible authority can make the request for further information on behalf of the referral authority under section 54. In doing so, it will set a date by which the information must be provided.

The referral authority may suggest to the responsible authority an appropriate timeframe for the submission of the further information.

If the information is not provided by the date specified by the responsible authority, the application will lapse.

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## How can an application be amended?

### What has changed?

A responsible authority may amend an application with the agreement of the applicant after giving notice to the owner. This may only occur before notice is given under section 52.

An applicant may ask the responsible authority to amend an application either:

- before giving notice under section 52; or
- after giving notice under section 52. This enables an applicant to respond to concerns of objectors, a referral authority or the responsible authority.

If an application is amended after notice of the application has been given, the responsible authority must consider whether any further notification or referral is needed because of the changes. A decision is then made on the application in its final form.

### Must an amended application be accepted?

A request to amend an application must:

- be accompanied by the prescribed fee (if any);
- be signed by the owner or be accompanied by a declaration that the owner has been notified of the amendment request.

If this information is submitted, the responsible authority must amend the application in accordance with the request.

The responsible authority may refuse to amend the application if it considers that the amendment is so substantial that a new application for a permit should be made.

### What is the test for further notification or referral of an amended application?

In determining whether or not notice should be given of an amended application, the responsible authority must consider whether, *as a result of the amendment made to the application*, the grant of the permit would cause material detriment to any person.

The responsible authority should only consider the effect of the amendment, not the proposal as a whole, when considering whether further notice is necessary.

If the responsible authority decides that material detriment may be caused as a result of the

amendment, then it must determine the nature and extent of the notice to be given.

It is not necessary to re-notify those persons originally notified unless the changes to the application may cause those persons material detriment.

The responsible authority must consider the objections and submissions made to the original application and any new objections or submissions in making a decision on the application. All parties who make an objection or submission will continue to have a right to ask VCAT to review a decision to grant a permit.

The responsible authority must also consider whether any amendment to the application will adversely affect the interests of any relevant referral authority. If it does, then the application should be referred again.

### What happens to timeframes?

The amended application becomes the application under the Act. This means that the statutory clock begins upon receipt of the amended application.

Because of this, if the responsible authority decides that notification of the amended application is necessary, it must not make a decision in less than 14 days from the giving of the last notice.

If the responsible authority decides that referral of the amended application is necessary, it must not make a decision until 28 days from giving the amended application to the referral agency or sooner if it has received all the replies from referral agencies.

### Will the responsible authority make a decision on the original or the amended application?

Once an amended application has been made, the responsible authority must make a decision on the amended application.

All objections and submissions (made to either the original application or the amended application) must be considered by the responsible authority when making the decision.

### How many times can an applicant amend an application?

There is no limit on the number of times an applicant can request an amendment to an application.

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## What must the responsible authority and VCAT consider when making a decision?

### What has changed?

Section 60(1) and sections 84B(1) and (2) of the *Planning and Environment Act 1987* have been changed to clarify the matters that the responsible authority and VCAT must consider in making decisions.

The new section 84B makes it clear that in considering an application for review, VCAT must consider the matters that the responsible authority was required to have considered.

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## How can a permit be amended?

### What has changed?

The legislation makes it possible to apply to amend a permit. An application to amend a permit, which includes plans, drawings or other documents approved under a permit, follows the same process (sections 47 to 62) as an application for a permit including the requirements for giving notice and referral of the amended permit.

The provisions in relation to amendments to permits under sections 72 and 73 have been repealed. The provisions in relation to correcting mistakes remain.

### Who may request an amendment to a permit?

A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to a permit.

If the applicant is not the owner then under section 48(1) the application must be either signed by the owner or the applicant must provide a declaration that the owner has been notified about the application.

### Is the process any different for the amendment of plans?

No, the amendment of plans is the amendment of a permit and the same process is followed. The legislation repeals section 62(3) of the *Planning and Environment Act 1987* although transitional provisions apply.

## What notification and referral tests will need to be met?

Because an amendment to a permit is considered in the same way as an application for a permit, the responsible authority must consider whether:

- Any notification is necessary under section 52. The nature and extent of notification should be based only on the nature of the changes proposed by the applicant.
- Referral is required by the planning scheme.

## What is the outcome of a request for an amendment to a permit?

The consideration of the application including notification and referral should be based only on the changes proposed by the applicant.

If agreed and there are no objectors, the responsible authority must issue an amended permit.

If the amended permit is subject to conditions, the conditions must relate to the amendment to the permit and must form part of the permit.

If there are objections, the responsible authority must issue a notice of decision to amend a permit or a notice of its refusal to grant an amendment to a permit. These notices are prescribed in the Planning and Environment Regulations.

## Is there a timeframe for the consideration of an amendment to a permit?

The same statutory timeframes that apply to an application for a permit apply to an application to amend a permit. This includes the timeframes relating to notification, referral and appeal.

## How many times can an applicant amend a permit?

There is no limit to the number of times an applicant can request an amendment to a permit.

## Is there a fee for the amendment of a permit?

A fee does not currently exist for the amendment of a permit. A Regulatory Impact Statement is required to bring one into effect.

### **Will the new permit supersede the previous permit?**

Once a permit has been amended, the original form of the permit is superseded, and can no longer be acted on. Amending a permit does not change its expiry date, although the person seeking an amendment may at the same time ask for an extension of time under section 69. A planning permit should include the issue date (a mandatory requirement) and the date on which the permit expires.

If the permit is amended, the amended permit must include a table indicating the date and nature of amendment. This requirement is prescribed in the Planning and Environment Regulations.

The Planning Register should record the latest version of the permit. There is no need to cancel previous versions of the permit. Applicants and the responsible authority should note file copies appropriately.

### **Is there a right of review of the decision about an amendment to a permit?**

Because an amendment to a permit is considered in the same way as an application for a permit, the same rights of review exist.

If the responsible authority determines not to issue an amended permit, the applicant has a right of review to VCAT. The applicant also has a right of review against any conditions placed on the amended permit.

Third parties will have a right of review against the decision to grant an amendment to a permit.

### **Will this process apply to permits issued at the direction of VCAT or the Minister for Planning?**

No, this process will not apply to those permits issued at the direction of VCAT. To amend a permit issued at the direction of VCAT an application will need to be made to VCAT under section 87.

The process will not apply to permits issued by the Minister for Planning under Division 6 (Powers of Minister in relation to applications) of the *Planning and Environment Act 1987*. These can be considered as an application for an amendment to the Minister under Division 6 (section 97I).

### **Will this process apply to permits issued under the combined permit and amendment process (Division 5)?**

If a planning authority agrees to combine the permit and amendment process, the requirements of sections 50 and 50A apply in relation to making changes to an application before notice is given. The requirements relating to the seeking of further information under section 54 and amending an application after notice is given do not apply, as there is a different process under this Division.

An application may be made to amend a permit granted under this Division.

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## Transitional provisions

Despite the repeal of section 62(3) this provision (amendments to plans) will continue to apply to any permit granted before or within 3 months after the provision is repealed by the new legislation.

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## When do the changes come into effect?

The changes to the planning permit process come into effect when the *Planning and Environment (General Amendment) Act 2004* is proclaimed.

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