



# VicSmart

A NEW PLANNING PERMIT  
PROCESS FOR VICTORIA

CONSULTATION DRAFT

July 2013

Department of  
Transport, Planning and  
Local Infrastructure





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## MINISTER'S FOREWORD



The Victorian Government is committed to creating a better planning system for Victoria. A system that is efficient, easy to understand and delivers good planning outcomes.

Currently all applications follow a single process regardless of how complex or simple they are. This can result in unnecessary delays and costs in Victoria's planning system. For example, the average planning permit takes almost four months to be assessed by a local council.

VicSmart is a new dedicated, efficient and quick planning permit process for simple, straightforward proposals that will apply across Victoria.

VicSmart has been designed to improve how these applications are handled without reducing the quality of building and development outcomes.

Homes and businesses across Victoria will have access to this simpler and faster planning permit process. It will reduce frustration and unnecessary red tape for families wanting to make simple improvements to their homes and provide a better match between the level of assessment undertaken and the nature and impact of the proposal.

Getting the new VicSmart provisions right is important. Your feedback will help shape the final VicSmart provisions before they are implemented in all planning schemes.

I encourage you to read this discussion paper and tell us what you think by making a submission about the VicSmart planning assessment process. Information about how you can do this is set out on page 22.

**The HON. MATTHEW GUY MLC**  
**Minister for Planning**



## INTRODUCTION

The *Planning and Environment Amendment (VicSmart Planning Assessment) Act 2012* (the VicSmart Act) was enacted in September 2012 to allow a new streamlined permit process to be set up in planning schemes for straightforward, low impact development proposals. The new VicSmart permit process aims to:

- provide a simpler and more consistent permit process through standard statewide requirements
- ensure timely and efficient processing of straightforward, low impact applications
- ensure the level of assessment is proportional to the nature of the proposal
- reduce the regulatory and administrative burden on councils
- provide certainty to applicants and councils about the information required and the matters to be considered when making a decision.

### ***The Planning and Environment Amendment (VicSmart Planning Assessment) Act 2012***

The VicSmart Act amends the *Planning and Environment Act 1987* (the Act) to enable planning schemes to set out a different procedure for classes of application where:

- the notice requirements of Section 52(1) of the Act do not apply
- the further information requirements of Section 54 of the Act do not apply
- third party review rights in Section 82(1) of the Act do not apply
- some decision making considerations in Sections 60(1) and 84B(2) of the Act do not apply
- the Chief Executive Officer of the municipal council (or delegate) is the responsible authority for the application.

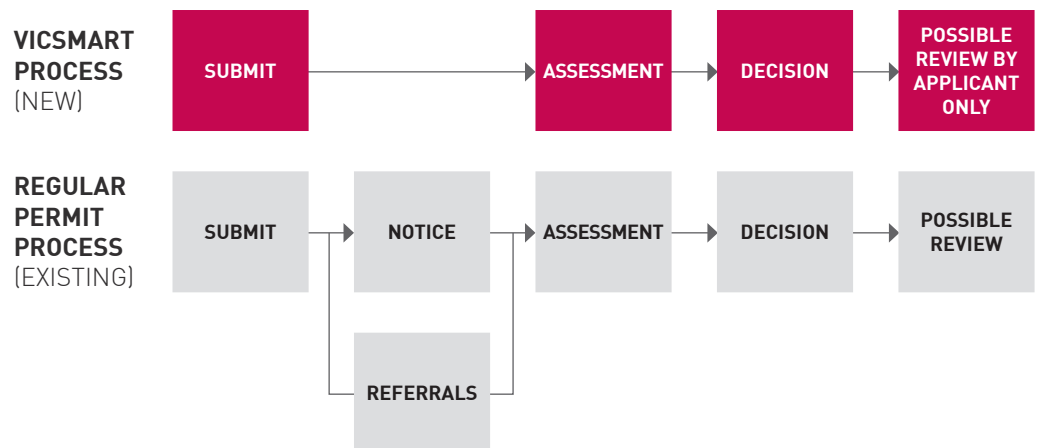


## A NEW PERMIT PROCESS

Once VicSmart is introduced into the Victorian planning system, two permit processes will apply in Victoria – VicSmart and the regular permit process.

VicSmart is a new, shorter permit process designed specifically for simple, straightforward applications. The VicSmart process will be clearly set out in planning schemes so that councils, applicants and the community know in advance where it applies and how it works.

### The two permit processes



### Key features of VicSmart

Key features of the VicSmart process are:

- A decision within ten business days.
- An applicant is expected to submit all the necessary information with the application.
- No need for external referrals. An applicant is expected to obtain any referral authority approval before lodging the application with council.
- Exempt from advertising.
- The application is only assessed against specific pre-set decision guidelines.
- The Chief Executive Officer (CEO) of the council or a delegate will decide the application.
- An applicant has a right of review to VCAT if there is disagreement about whether the decision guidelines have been met.



## Differences between the two permit processes

While the VicSmart and regular permit processes are ‘merit’ assessments where the responsible authority must use discretion in deciding whether or not to grant a permit, the processes differ in some important ways.

VicSmart has fewer steps than the regular permit process and it involves a more tightly focused planning assessment. A comparison of the differences between the two processes is summarised below.

### Key differences

STEPS	REGULAR PERMIT PROCESS	VICSMART PROCESS
Requesting further information under s.54 of the Act	<b>Yes.</b> The statutory clock stops and the application will not be considered until the further information is received.	<b>No.</b> The applicant should submit an application that includes the specified information. If not, the responsible authority can informally ask for any ‘missing’ information but the statutory clock continues to run.
Giving notice of the application under s.52 of the Act	<b>Yes.</b> If responsible authority considers giving notice is necessary.	<b>No.</b> The giving of notice is not required as the only consideration is whether or not the decision guidelines are met.
Referring the application under s.55 of the Act	<b>Yes.</b> If required, the applicant can submit written consent with the application or council can refer the application after it has been received.	<b>No.</b> If required, written consent from a referral authority must be submitted with the application.



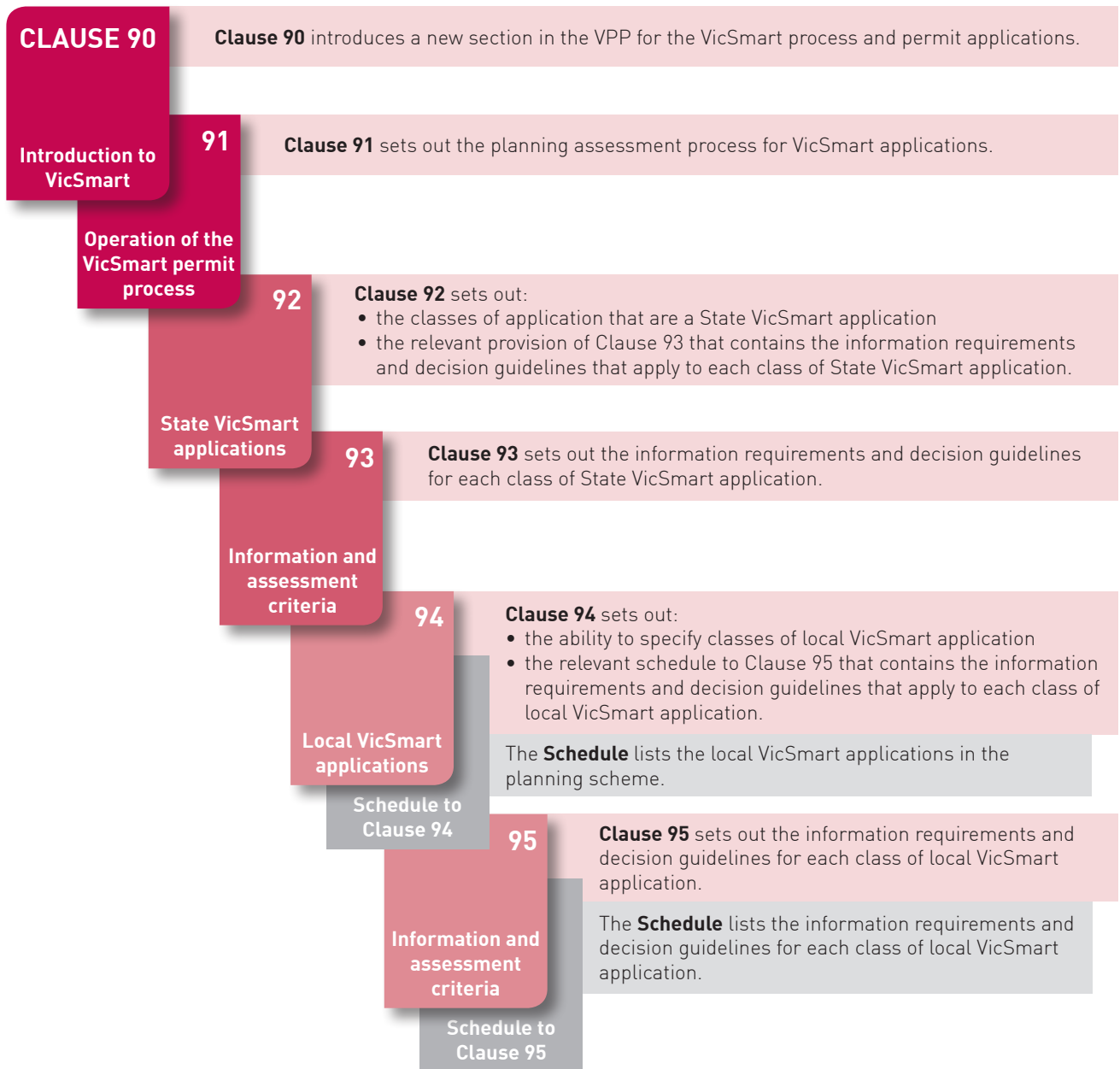
STEPS	REGULAR PERMIT PROCESS	VICSMART PROCESS
<b>Matters to be considered when assessing the application</b>	Full assessment against the requirements of s.60 of the Act, SPPF, LPPF and local provisions.	Only assessed against the VicSmart decision guidelines.
<b>Deciding the application</b>	Council (or delegate).	Chief Executive Officer (or delegate).
<b>Third party review rights</b>	<b>Yes.</b> Unless specifically exempt in the planning scheme.	<b>No.</b> Only an applicant has a right of review about whether the decision guidelines have been met.
<b>Statutory decision time</b>	<b>60 calendar days.</b> Applicant may apply for a review if no decision is made within time.	<b>10 business days.</b> Applicant may apply for a review if no decision is made within time.



## The VicSmart planning provisions

New clauses are proposed to be introduced into the *Victoria Planning Provisions* (VPP) and all planning schemes to implement the VicSmart planning provisions.

### VICSMART PLANNING PROVISIONS







## OPERATION OF THE PROVISIONS

### Clause 90

Clause 90 is an introductory clause that sets out the clauses that make up the VicSmart planning provisions.

The VicSmart planning provisions do not trigger the permit requirement for a VicSmart application. The permit requirement is triggered in the zone, overlay or particular provision.

The VicSmart planning provisions set out the VicSmart assessment process, the classes of application that must be determined by the VicSmart process and the information requirements and decision guidelines for each class of application.

### Clause 91

Clause 91 sets out:

- the criteria for when an application is a VicSmart application
- the operational provisions for the VicSmart process.

#### **When is an application a VicSmart application?**

An application is a VicSmart application if:

- the application is for a permit under a provision listed in Clause 92 or in the schedule to Clause 94
- all the permit triggers for the application are listed in Clause 92 and the schedule to Clause 94. If the application requires a permit under a provision of the planning scheme that is not listed in Clause 92 or the schedule to Clause 94, it is not a VicSmart application
- any permit issued will not result in a breach of a registered restrictive covenant
- where referral is required under Clause 66, the application:
  - has been considered by the referral authority within 3 months prior to the application being made to the responsible authority; and
  - the referral authority has stated in writing that it does not object to the granting of the permit for the proposal.

If a referral authority objects to the granting of the permit, the application is not a VicSmart application.



### **What happens to an application that requires a permit under more than one provision?**

If an application requires a permit under another provision of the scheme that is not identified as a VicSmart application, then the application cannot be assessed under the VicSmart process and the regular permit process for the application will apply.

### **What is the VicSmart planning assessment process?**

Clause 91 also contains the operational provisions for the VicSmart process.

In particular, it:

- exempts a VicSmart application from:
  - the notice requirements of section 52(1) of the Act
  - the further information requirements of section 54 of the Act
  - the matters a responsible authority must consider in sections 60(1)(b) to (e) and (1A) of the Act
  - the requirements set out for the granting of a permit if there are objectors under sections 64(1), (2) and (3) of the Act
  - third party rights for a review under 82(1) of the Act
  - the matters VCAT must take into account in sections 84B(2)(b) to (ja) of the Act
- requires a VicSmart application to be submitted with the relevant information listed in Clause 93 and the schedule to Clause 95
- sets out the matters to be considered by the responsible authority in deciding a VicSmart application.



## Clause 92

Clause 92 lists the State VicSmart applications, which apply in all planning schemes. The list will be set by the Minister for Planning.

Clause 92 directs the council and applicant to the appropriate Clause 93 provision that sets out the information requirements and decision guidelines for each class of application.

The clause cannot be locally varied.

## Clause 93

This clause sets out the information requirements and decision guidelines for State VicSmart applications. The same requirements apply in every planning scheme.

The clause cannot be locally varied.

The information requirements and decision guidelines have been tailored to the nature of the proposed development and the reason why a permit is required. For example, in the case of an application to remove a tree (Clause 93.08) the information requirements require the applicant to provide details about the tree and the reasons for its removal and the decision guidelines only address issues relevant to making a decision about whether a tree should be removed or not.

For some classes of application, there are specific requirements that must be met. For example, development in a Special Building Overlay must be consistent with any local floodplain development plan prepared for the area (Clause 93.10-2).

A responsible authority cannot ask an applicant to provide more information than is listed in Clause 93. However, the responsible authority may waive or reduce the required information if it is satisfied that it can assess the application without the information.

## Clause 94

Clause 94 allows a council to specify local classes of VicSmart applications in addition to the State VicSmart applications. Local VicSmart applications can be specified for any class of application in a zone, overlay or particular provision in the planning scheme.



## Clause 95

Clause 95 enables a council to set out the information requirements and decision guidelines for a local VicSmart application.

### Other planning scheme changes

In addition to the VicSmart planning provisions, planning schemes will be amended to specify the CEO of the council as the responsible authority for a VicSmart application in Clause 61.



## CLASSES OF APPLICATION

Twelve classes of State VicSmart applications are proposed.

CLASS OF APPLICATION	WHERE THIS WILL APPLY
<p><b>1</b> Subdivide land to realign the common boundary between 2 lots</p>	<ul style="list-style-type: none"> <li>▪ All residential zones</li> <li>▪ All industrial zones</li> <li>▪ All commercial zones</li> <li>▪ Capital City Zone</li> <li>▪ Docklands Zone</li> </ul>
<p><b>2</b> Subdivide land into lots each containing an existing building or car parking space where the development has been approved under the planning scheme and has been completed in the past 5 years</p>	<ul style="list-style-type: none"> <li>▪ All residential zones (except LDRZ)</li> <li>▪ All industrial zones</li> <li>▪ All commercial zones</li> <li>▪ Capital City Zone</li> <li>▪ Docklands Zone</li> </ul>
<p><b>3</b> Subdivide land into 2 lots where the development on the land is approved under the planning scheme and the development has commenced</p>	<ul style="list-style-type: none"> <li>▪ All residential zones (except LDRZ)</li> <li>▪ All industrial zones</li> <li>▪ All commercial zones</li> <li>▪ Capital City Zone</li> <li>▪ Docklands Zone</li> </ul>
<p><b>4</b> Construct or extend a front fence within 3 metres of a street</p>	<ul style="list-style-type: none"> <li>▪ All residential zones (except LDRZ)</li> </ul>
<p><b>5</b> Construct a building or construct or carry out works with an estimated cost up to \$50,000 where the buildings and works are not within 30 metres of land (not a road) which is in a residential zone</p>	<ul style="list-style-type: none"> <li>▪ All industrial zones</li> <li>▪ All commercial zones</li> </ul>
<p><b>6</b> Construct a building or construct or carry out works with an estimated cost up to \$50,000</p>	<ul style="list-style-type: none"> <li>▪ Capital City Zone</li> <li>▪ Docklands Zone</li> </ul>



CLASS OF APPLICATION	WHERE THIS WILL APPLY
<b>7</b> Construct a fence in an overlay	<ul style="list-style-type: none"> <li>▪ Environmental Significance Overlay</li> <li>▪ Significant Landscape Overlay</li> <li>▪ Design and Development Overlay</li> </ul>
<b>8</b> Remove, destroy or lop one tree	<ul style="list-style-type: none"> <li>▪ Environmental Significance Overlay</li> <li>▪ Vegetation Protection Overlay</li> <li>▪ Significant Landscape Overlay</li> <li>▪ Neighbourhood Character Overlay</li> </ul>
<b>9</b> The following applications in a Heritage Overlay: <ul style="list-style-type: none"> <li>▪ subdivide land as in classes 1, 2 and 3 above</li> <li>▪ an application currently exempt from notice (other than a tennis court)</li> <li>▪ a solar energy facility attached to a dwelling</li> </ul>	<ul style="list-style-type: none"> <li>▪ Heritage Overlay</li> </ul>
<b>10</b> Subdivide land as in classes 1, 2 and 3 above and to construct a building or to carry out works in a Special Building Overlay	<ul style="list-style-type: none"> <li>▪ Special Building Overlay</li> </ul>
<b>11</b> To display a sign if: <ul style="list-style-type: none"> <li>▪ the sign is not within 30 metres of land which is in a residential zone</li> <li>▪ the sign is not internally illuminated, floodlit, electronic or animated</li> <li>▪ the total display size of the sign does not exceed 10 square metres</li> </ul>	<ul style="list-style-type: none"> <li>▪ All industrial zones</li> <li>▪ All commercial zones</li> <li>▪ Capital City Zone</li> <li>▪ Docklands Zone</li> </ul>
<b>12</b> Reduce or waive the required number of car parking spaces	<ul style="list-style-type: none"> <li>▪ All zones</li> </ul>



# THE VICSMART ASSESSMENT PROCESS

The VicSmart assessment process involves three simple steps to a decision:

## SUBMIT

The application is submitted with all the information specified in Clauses 93 and 95.

## ASSESS

A council officer assesses the application against the decision guidelines specified in Clauses 93 and 95.

## DECIDE

The Chief Executive Officer (or delegate) decides to approve or refuse the application.

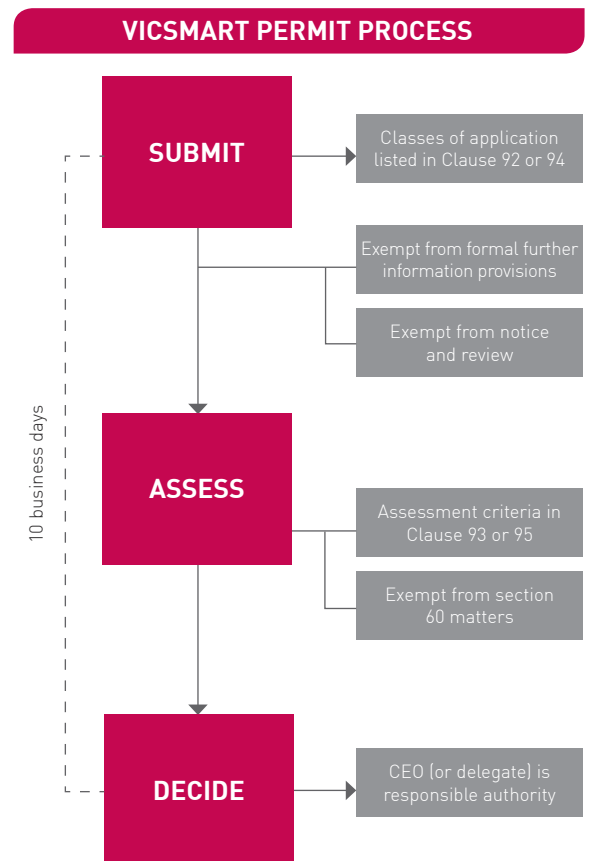
## SUBMIT

### Pre-application discussions

Before lodging an application, an applicant will benefit from discussing the proposal with the responsible authority to:

- determine whether the application is a VicSmart application
- identify the information requirements and decision guidelines that apply to the application
- obtain any checklists or other information that will help the applicant to prepare the application.

Pre-application discussions with the applicant to discuss the required information will help to ensure that an application is lodged with the right information.





## **Submitting a complete application**

Applicants are expected to submit the right information at the start of the process.

All information to be submitted with a VicSmart application will be listed in the VicSmart planning provisions. The responsible authority may waive or reduce the required information if it is satisfied that it can assess the application without the information. The responsible authority cannot ask for more information than the planning scheme requires.

If an application is submitted with missing information, council is encouraged to contact the applicant directly by phone or email to enable the applicant to submit the information quickly so that council has sufficient information to determine an application within the appropriate time.

However, this is not a formal request under section 54 of the Act and it will not stop the statutory 'clock' for deciding the application.

## **Registering the application**

Only one planning application register will continue to operate. VicSmart applications will be recorded in the same register already kept by the responsible authority for applications under section 49 of the Act.

It is proposed to amend the Regulations to require the responsible authority to specify in the register whether an application is a VicSmart application.

The register will therefore include both applications for which the council is the responsible authority as well as those for which an officer of the council is the responsible authority.

## **ASSESS**

### **Assessing a VicSmart application**

The VicSmart process is designed for straightforward, low impact applications. A VicSmart application will only be assessed against pre-set decision guidelines that are clearly set out in the VicSmart planning provisions for that class of application. Unlike a code, the assessment will be performance-based in accordance with the principles of the VPP. In all cases, the decision maker will need to judge an application on its merits.





### **How are referrals dealt with?**

Some applications will require referral authority approval. Where a VicSmart application has a referral requirement under Clause 66 of the planning scheme, the applicant must obtain the written consent (with or without conditions) of the referral authority prior to lodging the application with council and submit the written consent with the application. The written consent of the referral authority must be obtained within three months prior to lodging the application.

If the applicant does not obtain this consent or the referral authority objects, the application is not a VicSmart application and must be processed through the regular permit process.

At this stage, only one class of State VicSmart application that requires referral under Clause 66 is proposed – applications under the Special Building Overlay. Melbourne Water has agreed to include this class of application in the VicSmart process and is currently developing a process to directly deal with VicSmart applications.

### **Can a VicSmart application be assessed under the regular permit process?**

If a proposal meets the criteria for a VicSmart application, it must be assessed using the VicSmart process. A responsible authority cannot choose to assess the proposal using the regular permit process.

All other applications will continue to proceed through the regular permit process.

### **Why is notice of a VicSmart application not required?**

A VicSmart application is exempt from third party notice and review because the types of applications being considered for VicSmart have limited onsite and offsite impacts and are already deemed to be consistent with policy. Many of the proposed classes of application are already exempt from notice and review under the planning scheme.



## DECIDE

### Who decides a VicSmart application?

All planning schemes will be amended to nominate the CEO of the municipal council as the responsible authority for a VicSmart application. The CEO may delegate responsibility to the planning manager or other officers of the council.

Section 188 of the Act enables planning authorities and responsible authorities to delegate powers.

A decision is required to be made within 10 business days. After 10 business days, an applicant will have a right of review for a failure by a council to decide.

### Review rights

An applicant's rights for a review at VCAT will not alter. An applicant will be able to apply for a review for:

- failure to grant a permit within the prescribed time – 10 business days
- refusal to grant a permit
- conditions in a permit
- refusal to extend the time to commence or complete a development or use.

The VicSmart process does not provide third parties with review rights. The VicSmart process will exempt third party review rights under section 82(1) of the Act.

### The process for review of a VicSmart application at VCAT

A new streamlined process will be established at VCAT to review a VicSmart application. VCAT will be able to schedule hearings and make decisions on VicSmart matters in a short timeframe.

A VCAT form will be developed to streamline an application for a review relating to a VicSmart application. The form will require an applicant to submit all the information necessary for a review to be determined.



The information to be submitted by the applicant will include:

- a copy of the decision
- all application documents and plans
- a copy of the covenant if the land is burdened by a registered restrictive covenant
- a copy of the written response from the referral authority if the application required referral under Clause 66 of the planning scheme
- a copy of the council officer's report, which should include details of the zoning and planning controls
- a calculation of elapsed days from when the permit application was lodged with the responsible authority (where the review is for a failure to decide within the prescribed time).

The applicant will be required to serve a complete copy of the application and all the accompanying material on the responsible authority.

Upon receipt of the application for review, a council will be advised that an appeal has been lodged and the date of the hearing. Councils will not be required to complete the information required under *Practice note 2: Information from decision makers*.

VCAT will make a decision at the hearing.



## IMPLEMENTING VICSMART

To implement VicSmart, changes will be necessary to the VPP, all planning schemes, the Regulations and VCAT procedures.

The VicSmart planning provisions and Regulations will be finalised once the consultation process is completed.

To ensure a smooth transition to the new VicSmart process, councils, the development industry and the community will be given time to become familiar with the final provisions and to enable training, education and changes to council administrative and planning processes to occur.

### **Proposed changes to the Planning and Environment Regulations**

It is proposed to amend the Regulations to:

- prescribe a time of 10 business days to lodge an application for review of a failure to grant a permit under section 79 of the Act for a VicSmart application. This means that an applicant may apply to VCAT for a review if the Council CEO (or delegate) fails to make a decision on a VicSmart application within 10 business days.
- require the responsible authority to specify in the planning register whether an application is a VicSmart application.

The prescribed times for an applicant to apply for a review of a refusal, conditions in a permit and extension of time requests will be the same as those for a regular permit application, so no changes to the prescribed times for these matters are proposed.

### **Proposed changes to the VPP**

The VPP and planning schemes are proposed to be amended to:

- designate the CEO of the council as the responsible authority for VicSmart applications in Clause 61
- introduce a new section in the VPP (Clauses 90 to 95) that sets out the VicSmart operational requirements and VicSmart classes of application, information requirements and decision guidelines.



## What will councils need to do to administer VicSmart?

Councils will need to:

- ensure that their administrative processes allow for the shortened decision-making time frame
- put in place appropriate delegation
- set up a new decision making process for VicSmart applications
- review planning department structure and internal council referrals (for example, engineering, building, urban design or heritage) to meet for the VicSmart timelines.

The Department of Transport, Planning and Local Infrastructure, in partnership with the Municipal Association of Victoria, are undertaking a project to provide advice on how VicSmart can be administratively implemented at council. We will be working with a number of councils seeking their advice and input to develop best practice advice, training and tools.



## NEXT STEPS

Comments are sought on the proposed VicSmart planning provisions, including the classes of application, information requirements and decision guidelines.

To read the detailed VicSmart provisions and the amending Planning and Environment Regulations and to make a comment go to [www.dpcd.vic.gov.au/vicsmart](http://www.dpcd.vic.gov.au/vicsmart) and follow the online instructions.

If you require an interpreter please call Information Victoria 1300 366 356 (local call cost) or TTY +61 3 9603 8806 (8.30am – 5.00pm Monday to Friday).

The closing date for making comments is Friday 30 August 2013.

### Need further information?

For further information, please contact Statutory Systems on (03) 9947 1226.

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