

Victorian Town Planning

A Year in Review

Design Matters National Inspo+Expo 2021

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1 | Overview

1. COVID Changes
2. Planning Scheme Amendments
3. Notable VCAT Cases
4. Useful Links
5. Questions Welcome



1 | Covid Changes

VCAT Fully Digital

<https://clause1.com.au/vcat-reforms-in-2020>

<https://clause1.com.au/vcat-hearing-fees-%e2%80%af/>

- PED 2020-2021 continued changes
- Online hearings (likely to continue, hybrid)
- Application forms electronic – updated Practice Notes
- Hearing fees payable upfront in full (reimbursement)
- Pre-filing of submissions
- Short cases list revamped (templated submissions)
- Compulsory conferences for objector appeals
- Compulsory conferences for major cases
- File naming conventions
- Tribunal Book

1 | Covid Changes

VCAT Timeframes

Major Cases: 5mths

Standard Cases: 6-7mths

Short Cases: 3mths

Council's Electronic and Remote

- Mostly moved to online
- Electronic lodgement (applications/RFIs/etc)
- Working from home
- Mixed results

1 | Planning Scheme Amendments

VC188 Removes Bushfire Recovery Exemptions

- Deleted *Clause 52.13 2009 Bushfire Recovery Exemptions*
 - *52.13 allowed temp accommodation, removal of vege, emergency work etc*
- However, the following can still be used to provide powerful exemptions from permit triggers in fire affected areas
 - *52.07 Bushfire recovery*
 - *52.12 Bushfire Protection: Exemptions*
 - *52.14 2009 Bushfire Replacement Buildings*

1 | Planning Scheme Amendments

VC203 Changes to Environmental Protection

- Update numerous parts of the VPP to bolster environmental protections.
- Impacts for potentially contaminated land & related assessments

V10 Buffer Area Overlay (BAO)

- In 2020 Threshold Distances (buffers) updates via VC175
- BAO used to protect industry and infrastructure from incompatible encroachment

VC196 Extractive Industry Protection

- Similar to the above, seek to protect extractive industry from incompatible urban/use encroachment
- Introduces new State Resources Overlay with referral to the *Secretary administering the Mineral Resources Act*
- New *Clause 52.09 Extractive Industry and Extractive Industry Interest Areas*

VC193 Food & Drink Exemptions

- State of Emergency Recovery Exemptions (currently until Oct 21)
- Exempts the need for a permit to extend outside

1 | Planning Scheme Amendments

VC148 Structure of all planning schemes are changing

<https://clause1.com.au/?s=VC148> | <https://clause1.com.au/?s=VC148+part+2>

<https://www.planning.vic.gov.au/schemes-and-amendments/Amendment-VC148-reforms>

- Some schemes have already changed to new format e.g. Moonee Valley
- Most notably removes content from LPPF at Clauses 21-22 and relocates it into Clause 10-19 of the PPF (planning policy framework)
- Designation of “L” for local, “S” = State and “R” = Regional
- Above links provide details and a ‘finder tool’ to help locate policy in its new location

1 | Planning Scheme Amendments (Maybe)

Secondary Dwelling Pilot Program (code assessment)

clause1.com.au/?s=c190 | <https://clause1.com.au/?s=pilot+program>

- Moreland C190 – Code Assessment for second dwellings
- Pilot program in Moreland, Murrindindi, Bendigo and Kingston Councils
 - Similar to Moreland's criteria
 - 10 application receive as part of the pilot
 - 4 of the 10 were eligible and assessed via VicSmart pathway
 - 2 proposals contained additional dwelling with 2 bedrooms
 - The other 2 with one bedroom
 - Watch this space

1 | VCAT Decisions

Existing use rights (Clause 63.10)

Brooks v Stonnington CC (Red Dot) [2021] VCAT 930 (18 August 2021)

- Proposed demolition of single storey shop and construction of multi-level mixed use building, part C1Z & part GRZ. Shop prohibited in GRZ
- Conflicting caselaw
- Tribunal found
 - Existing use rights for shop/retail extinguished when demolition takes place
 - Applicant needs to
- Implications – Farming Zone etc/VicSmart applications

1 | VCAT Decisions

Dependent Persons Unit

Mornington Peninsula S v Premier Homes Pty Ltd (Red Dot) [2021] VCAT 94
<https://clause1.com.au/?s=dependent+>

- Council sought determination from VCAT to confirm if six buildings constructed as DPUs met the scheme's definition
- Definition includes 'moveable building'
- Emphasis on 'designed to be moved'
- Tribunal found on facts of these cases that the buildings ticked the box – and could avoid a planning permit.

1 | VCAT Decisions

Garden Area: older considerations

- Definition in scheme – update 2018
<https://clause1.com.au/?s=garden+area+clarification>
- The lot/multiple lots
<https://clause1.com.au/?s=the+lot>
- Garden Area and Height Controls: Mandatory part of application?
<https://clause1.com.au/?s=garden+area>
- Getting an exemption from GA requirements
clause1.com.au/getting-an-exemption-to-the-garden-area-requirements/

1 | Notable VCAT Cases

Garden Area: Amended applications and accrued rights

Owen v Boroondara CC (Red Dot) [2021] VCAT 175 (5 March 2021)

- Amending a permit that was approved prior to GA requirements
- Objector's appeal
- Does the earlier approval provide an accrued right/trump the GA requirements
- No increase or decrease

Garden area in subdivision

Priestley v Horsham RCC (Red Dot) [2021] VCAT 639 (16 June 2021)

- 4 lot subdivision
- Council included condition requiring inclusion of 25% GA per lot
- Objector appeal
- Tribunal confirmed – application must include the GA

1 | Notable VCAT Cases

Interpreting Mandatory Height & Storey Exemptions

Burnley Maltings Pty Ltd v Yarra CC [2021] VCAT 337

- NRZ & GRZ: 2 & 3 storey / 9m & 11m height controls

A building may exceed the applicable maximum building height or contain more than the applicable maximum number of storeys if:

It replaces an immediately pre-existing building and the new building does not exceed the building height or contain a greater number of storeys than the pre-existing building...

- Or or And or Nor
- Implications

1 | Useful Links

The Startingpoint

Subscribe to receive regular updates on planning issues relevant to Victorian planning permit applicants [here](#).

Austlii <http://www.austlii.edu.au/>

VCAT <https://www.vcat.vic.gov.au/>

Planning Schemes Online

<https://www.planning.vic.gov.au/schemes-and-amendments/browse-planning-schemes>

Amendments online

<https://www.planning.vic.gov.au/schemes-and-amendments/about-planning-schemes>

VicPlan

<https://mapshare.vic.gov.au/vicplan/>

Questions

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