

Having Your Say

A Guide to Successful Planning and Development Objecting

Version One:

12/05/2016

Darebin Appropriate Development Association

<http://melburb.blogspot.com.au/>



Darebin Appropriate Development Association Inc.

As far as is known at the time of publication, Council and State processes are accurately described but these change from time to time so it is recommended you check for any recent process and legal changes with the appropriate authorities.

The Council web links included specifically relate to City of Darebin websites.

Other Councils will have similar documents on their websites.

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Introduction

This booklet is designed to guide readers through the process of objecting to planning and development proposals at local government and Victorian Civil and Administrative Tribunal (VCAT). At DADA we suggest you work with your community to share the work load.

Step 1: Pre-Sale or Planning Application

Even before a developer has made a planning application at council you may become aware of prospective developments when you see a house and/or land advertised for sale with STCA (see glossary) attached to or mentioned in the add. The sale add may also indicate that the site is an opportunity to demolish and redevelop and some feature a photo of the whole site with borders outlined and the size marked. The bigger the block the more dwellings can be planned and developed.

If you don't want a multi-storey multi-unit next to you make this clear to potential buyers by putting up signs in your and neighbours' front yards that indicate you want to keep your street free from inappropriate development. Signs saying 'We will oppose multi-storey development in our street' make clear your objection to inappropriate development and are not illegal. DADA signs are available from the DADA website (see front page for address) but you could make your own. Keep the message general so it is not specific to the property being sold and doesn't break the laws associated with interfering with sales and auctions.

You are not harming your neighbour's chances of a better price because developers generally like a bargain and won't pay more money than other buyers for house and/or land. They want to make as much money in as short a time as possible. They generally don't live in the local area and therefore don't have a stake in the community.

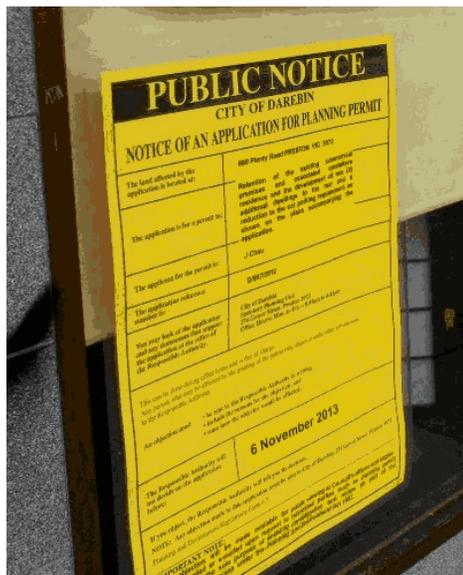


Step 2: The Planning Application

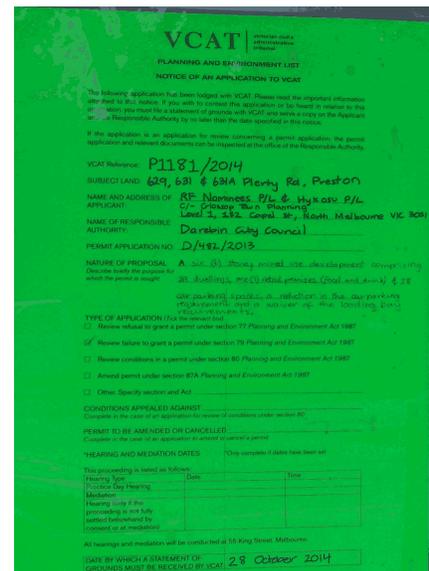
Every council has different processes but here are some basics:

- Neighbours are usually, but not always, notified of the permit application directly by letter from council.
- A notice may also be required to be displayed on the site. Large yellow notices are used at the City of Darebin. The advertising period is at least 14 days.
- Alternatively, the developer may decide to skip the local council process, especially if they think local council may reject the planning application, and go straight to VCAT for approval. If you are a neighbour of the proposed development you should receive a letter from VCAT giving you an opportunity to object to the proposal. Your process starts at Step 5 of this guide.
- Council will/should post the planning application on the council website <http://www.darebin.vic.gov.au/page/HomePage.aspx> and in the local free newspaper.
- Sign up to Planning Alerts - <https://www.planningalerts.org.au/alerts/signup> and get email notification of planning applications near you.
- At this stage it is important to take note of the closing date for objections. There should be at least 14 days to submit an objection from the time the notice is posted.
- Talk to neighbours to see if they share concerns about the possibility of an inappropriate development in the neighbourhood.

(a)



(b)



Public notices posted concerning (a) an application for planning permission to Darebin Council and (b) an appeal lodged with VCAT

Step 3: Planning Application Objections

You have a right to object to the planning application and the proposed development. You don't have to be a direct neighbour, just a concerned citizen. There is no fee for making a planning objection.

You have a very narrow window of opportunity to take action, after which it becomes less easy (but not impossible) to join the process. The earlier a decision is made about objecting the better the chances of a successful outcome.

Get to know your council's specific processes objecting to planning applications.

- Contact the council planning department and ask for plans to be sent to you.
- Look on the council website for electronic copies of the plans that you can download and print- http://www.darebin.vic.gov.au/Page/Page.aspx?Page_Id=8260&h=0
- You will find an example in the appendix of this guide.
- Visit or contact the planning department and ask for copies of plans and reports attached to the planning application.
- Each council will have a process for objecting to planning applications. This usually starts with filling in and submitting a form by the closing date. Sometimes closing dates are flexible, up to the next planning committee meeting. Check with the planning department of council on the real timeline.
http://www.darebin.vic.gov.au/Page/Page.aspx?Page_Id=7582&h=0
- Talk to neighbours and friends and ask them to fill in an objection form.
- An individual objection needs to be submitted by each objector to be counted. Multiple signatures on one form will only count as one objection.
- Common objector grounds include effects on neighbourhood character and community apprehension about the negative effects on local community. See the DADA Common Objection List appendix for ideas.
- Make it easy for others by filling in the key details and points of the objection form. If all that is needed is a signature and date more people are likely to object. Also offer to collect objection forms for drop off to council; this can help in keeping track of the number of objections.
- Develop a website or face-book page for broader community support.
- Contact the local newspapers for an article on the proposed plans and the likely effects.
- Form a team of like-minded folk to door knock and letter drop the neighbourhood with leaflets and blank objection forms.

- Contact your ward Councilors and any sympathetic Councilors to garner their support. Give them as much information as possible so they are well aware of concerns and adverse issues relating to the planning application.
- Ring the council planning section to keep track of the number of objections they have received. In some Councils the number of objections will determine if the application is reviewed by a city planner or goes to a planning or council meeting. It is advantageous to have a committee of elected representatives review the planning application.
- Ask at the council planning office the name of the planner reviewing the application and develop a communication line with them. Ask to see their report and recommendation.
- Ask for a community consultation meeting to discuss your concerns. Ensure a good turn up of community members.
- Objection forms are public documents and your objections and contact details will be shared.

DATE RECEIVED: _____

CITY OF DAREBIN
 Post to: PO BOX 91 Preston 3072
 Town Planning - 8470 8850
 Email: townplanning@darebin.vic.gov.au

OBJECTION TO GRANT OF PLANNING PERMIT

IMPORTANT NOTE:
 Your objection will be made available for public viewing at Council's offices and copies may be mailed or e-mailed upon request to interested parties such as planning permit applicants for the sole purpose of enabling consideration and review as part of the planning permit process under the *Planning and Environment Act 1987*.

Please print clearly.

WHO IS OBJECTING?

I/We (Name in block letters) _____

Owner/s or Occupier/s (Address) _____

Our Postal Address: _____ Postcode: _____

Telephone No: _____ Email: _____

WHAT APPLICATION DO YOU OBJECT TO?

What is the permit application number? _____ D

What is proposed? _____

What is the address of proposed development? _____

Who has applied for the permit? _____

WHAT ARE THE REASONS FOR YOUR OBJECTION?

If there is not enough room, attach a separate page

Office Use Only: EDMS GEAC

HOW WILL YOU BE AFFECTED BY THE GRANT OF A PERMIT?

IMPORTANT NOTES ABOUT OBJECTIONS TO PERMIT APPLICATIONS

1. This form is to help you make an objection to an application in a way which complies with the Planning and Environment Act 1987, and which can be readily understood by the responsible authority. There is no requirement under the Act that you use any particular form.
2. Make sure you clearly understand what is proposed before you make an objection. You should inspect the application at the responsible authority's office.
3. To make an objection you should clearly complete the details on this form and lodge it with the responsible authority as shown on the Public Notice - Application for Planning Permit.
4. An objection must -
 - a. State the reasons for your objection; and
 - b. State how you would be affected if a permit is granted.
5. The responsible authority may reject an application which it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector. In this case, the Act applies as if the objection has not been made.
6. Any person may inspect an objection during office hours.
7. If your objection related to an effect on property other than at your address as shown on this form, give details of that property and of your interest in it.
8. To ensure the responsible authority considers your objection, make sure that the authority receives it by the date shown in the notice you were sent or which you saw in a newspaper or on the site.
9. If you object before the responsible authority makes a decision, the authority will tell you its decision.
10. If despite your objection the responsible authority decides to grant the permit, you can appeal against the decision. Details of the appeal procedures are set out on the back of the Notice of Decision which you will receive. An appeal must be made on a prescribed form (obtainable from the VCAT (Victorian Civil & Administrative Tribunal)) and accompanied by the prescribed fee. A copy must be given to the responsible authority. The closing date for appeals is 21 days of the responsible authority giving notice of its decision.
11. If the responsible authority refuses the application, the applicant can also appeal. The provisions are set out on the Refusal of Planning Application which will be issued at that time.

Signature: _____ Date: _____

The Darebin Council form 'Objection to Grant a Planning Permit' with sections for (A) your contact details, (B) the property details, (C) your reasons for objecting here or on additional pages, (D) your signature (or typed name) and today's date,

Step 4: Council Decides

There are generally two phases to the decision process for planning applications. In the first a council planning employee will review the application in light of state regulations and council planning bylaws. If there are not enough objections (check on the actual number needed) to ensure the application goes to a planning committee meeting then the planning officer may make a determination themselves. They may grant the permit or recommend changes to bring the permit in line with legislation so that it can be granted. Likewise a planning or council meeting might grant the application with or without any recommendations made by a planning officer, or may reject the application on any grounds described in the recommendation, or for other reasons.

- Discuss the application with the planning officer, relate your concerns and listen to concerns they may have about the application or recommendations they may be considering.
- Contact local ward Councilors and sympathetic Councilors and discuss your concerns. Ask for their support to reject the planning application.
- Invite Councilors to meetings with co objectors to discuss concerns.
- Invite Councilors to view the proposed site from the street and your own property.
- The Darebin Planning Committee meets on a fortnightly basis (except January) to review and decide upon planning applications. The meeting is open to the public and can be watched live or from the archive here; <http://www.darebin.vic.gov.au/en/Your-Council/How-council-works/Meeting-Agendas-and-Minutes>
- Attend council and/or planning meetings where the application is to be discussed. Be prepared to make a statement on behalf of yourself and encourage other objectors to do the same. Generally only 5 minutes is allocated for a verbal submission at Council Planning Committee. It is best if an adjacent neighbour speaks. You can pass around copies of prepared submission for Councilors follow and use as reference. You can use visual aids to help.
- Organize for as many objectors as possible to attend council and planning meetings, because the weight of numbers will be more persuasive to elected representatives.
- Encourage objectors to attend the Planning Committee Meeting and show their support for the objection by clapping at the end of the verbal submission and by clapping if the panel makes the correct decision.

Step 5: VCAT Review

If Council rejects the planning application the developer may exercise their right to have the decision reviewed at the Victorian Civil and Administrative Tribunal (VCAT)

<http://www.vcat.vic.gov.au/> Every objector is given the opportunity to make a presentation at a VCAT hearing reviewing the planning application. Objectors are generally notified by mail and are required to submit a Statement of Grounds form with basic information on points of objection. See appendix for a blank Statement of Grounds document or can be found here; <https://www.vcat.vic.gov.au/resources/document/pnpe9-form-b-statement-grounds>

An application for a hearing at VCAT attracts a fee. It is usually the case that developers make the application after council has rejected a planning application. In this situation they will pay the application fees and your contribution as an objector does NOT attract a fee. You can make a presentation to the tribunal without (expensive) legal help.

For situations where Council have approved the planning permit, and you wish to challenge this decision using VCAT, then you must start the appeal process and pay the fees.

It may be possible to spread the fee by objecting as a group rather than individually. Be aware that objectors may be charged costs if they lose a case at VCAT and are deemed vexatious objectors. Pensioners can apply for fees to be waived.

- When filling in the Statement of Grounds form it is best to list the grounds under broad and general headings. Giving too much detailed information ahead of the hearing aids the developer and/or their representatives in preparation of a case against your objections.
- Be sure to cover all issues and concerns under the broad and general headings in the Statement of Grounds because the applicant and/or their representative may argue that you cannot introduce new concerns if they were not initially listed.
- VCAT run free workshops to help prepare to present at a hearing.
- Attending VCAT hearings as an observer is beneficial to your preparation.
- You must tick the box saying you will attend the hearing and speak if you want to be considered as a party to a hearing. Otherwise your objections will be considered from the form but you cannot be represented as a party by anybody else.
- It is a good strategy to make a visual presentation and to make an early request for any audio visual support needed.
- Lobby all other objectors to ensure that they send a Statement of Grounds to VCAT even if they don't intend appear. Again, the weight of numbers may count. You can request a list of the objectors from the Council Planning Department.

- You may seek your own legal/planning advice and you can split the cost across objectors. Be aware that if you include the advice in your submission it may be subpoenaed in full by the Member at the hearing. Not all the expert advice is advantageous.

VCAT | victorian civil
administrative
tribunal

PLANNING AND ENVIRONMENT LIST

PNPE3 FORM B – STATEMENT OF GROUNDS

NOTICE OF AN AMENDMENT OF AN APPLICATION

To: The Principal Registrar
Victorian Civil and Administrative Tribunal
Ground Floor, 55 King Street
MELBOURNE VIC 3000

Re: «SiteAddress» **A** VCAT Reference No: «CaseCode» **B**

I intend to appear and present a submission at the hearing, if I am available on the allocated date.
 I am unable to attend the hearing, but wish my statement of grounds to be considered.

Approximate time to present my case to VCAT, including any expert witnesses: ___ hours ___ mins

Set out a concise summary of grounds, attaching additional sheets as required.

D

E I certify that I have served a copy of this Statement of Grounds:

(tick box) on / / (insert date) on the Applicant
 (tick box) on / / (insert date) on «Primary/Respondents»

Failure to serve a copy of your Statement of Grounds on BOTH the Responsible Authority and the Applicant may result in you being unable to be heard at the hearing or have your objections considered.

Name of objector or referral authority: _____
 Address for service: _____
Address for service of documents must be in Victoria (Please see Rule 4.06, VCAT Rules 2008)

F

Phone (BH) _____ Mobile _____ Fax No (BH) _____
 Signature _____ Date _____

Email address (see important note on back of form)
 Councils and many frequent VCAT users receive VCAT decisions via email. If you would like to receive this decision via email please provide your email address.

Victorian Civil and Administrative Tribunal (VCAT)
 Administrative Division: Planning and Environment List
 55 King Street, Melbourne VIC 3000 Website: www.vcat.vic.gov.au Telephone: 03 9628 9777
 GPO Box 5408, Melbourne VIC 3001 Email: vcat.admin@vcat.vic.gov.au Facsimile: 03 9628 9789
 Ausdoc: 03 2105 9100 Melbourne

Important note about providing your email address

VCAT does not offer this service in addition to providing a hardcopy: it is an alternative. Please note that your email address will be available on VCAT's records for other parties to access. If you would prefer to receive a hardcopy of the decision by post or do not want other parties to have access to your email address, **do not** provide your email address.

If VCAT does not have your email address, you will be sent a hardcopy of the decision but you may receive it after other parties have received the decision by email and after the decision has been published.

VCAT does not accept any responsibility for emails not received due to changes in address, firewall or other security measures that may be attached to your email account.

VCAT Planning and Environment List form A statement of grounds, with sections for (A) the site address, (B) the VCAT case number, (C) check box for participation in the hearing, (D) your (very brief) statement of grounds (topics without details, though you can attach additional sheets), (E) your certification (promise) that a copy of this document was served (to Council and developer's representative) and (F) your contact details with signature (or typed name) and today's date.

Step 6: VCAT Hearing

It can take months before a hearing date is set unless the development is large enough to go on the major case list, in which case it can be fast-tracked. You might decide if you have the funds, to hire a planning lawyer to represent you at VCAT. You can represent yourself; it is not impossible and there is the advantage that you can make points and present a personal case and personal issues planning lawyers are reluctant to address.

- Plan to share the workload. While you wait for the hearing date, work with other objectors/parties to decide who will present each aspect of the objection.
- It is best to divide the grounds between objectors rather than repeat the same message over and over. The VCAT Member hearing the case is likely to cut short any repetition of arguments on the same or similar grounds. Annoying the VCAT Member is not a productive method.
- If you are arguing with the Council against the developer then it is worth working with /briefing the council representative on the objectors' grounds beforehand. When you meet with the council representative you can discuss the case and strategy.
- Read the expert witness evidence statements and prepare questions for the expert witnesses. It is best if you can divide this workload with other objectors, so that objectors only need to develop expertise in one area of the application.
- On the day of the hearing be sure to arrive early. There is airport style security to get into the building and, depending on the size of the queue, this can take some time.
- Do not carry any sharp metal objects; they will be taken from you at security.
- When you enter the hearing room there will be a sheet on the table for you to sign. This helps The Member recognize the parties to the hearing.
- There is a protocol of respect to The Member. Before they enter the room they should knock on the door so that you know to stand. The Member will indicate when you should sit. You must stand before The Member leaves the room as well.
- The Member should explain the process at the start of the hearing but if you are unsure about anything don't be afraid to ask questions for clarification.
- For case where council refused to grant the permit, the sequence is usually; council submission, objectors submission, appeal on behalf of the developer perhaps with additional presentations from expert witnesses. Council and objectors then have right of reply. The hearing may last ½ day. To a full day, or run over several days sometimes separated by considerable gaps.
- The Member will likely visit the site after the hearing.
- The Member may make a decision on the day of the hearing or some time later (a few weeks), after which you will receive their written ruling. The key message is easy to find in the introduction and summary.
- Prepare multiple copies of your presentation (at least 6), stapled and hole-punched. Number each paragraph. Include images to help give the member the view from your place and emphasise the negative impact. At the end of your presentation extend an invitation for the member to visit your place.
- The hearings are recorded so try not to say anything in the hearing room you don't want either The Member or the applicant's representatives to hear. It is advised that during breaks you convene outside the hearing room to discuss strategy.
- Do not let the applicant's lawyers interrupt your presentation. If they do this more than once and the Member doesn't stop them then you need to ask the Member to ask them to stop interrupting.

- Try not to be intimidated by the lawyers. They all have their individual quirks to attempt intimidation, whether it is the number of 'suits' they bring, talking quietly so you can't hear them, shaking their heads or shouting 'I object' loudly at things you say or writing copious notes. If you can't ignore these behaviors then asking the Member to sort them is the best approach.



A VCAT round the table informal hearing. Here the presiding Members are sitting on the right side of the table and the parties to the left. Expert witnesses may sit at the end depending on the space available.

- Pre prepare questions for expert witnesses but don't be afraid to ask other questions that arise from their presentations. You do not need to follow the lawyer's creed of not asking questions you don't know the answers to. It is fair to be asking for clarification from witnesses on matters not fully explained or understood. This, with luck, throws up new issues not previously discussed and may help guide the Member to a more thorough decision.
- It is helpful to have friends and supporters sitting in the room even if they are not a party to the proceedings. They can watch and provide feedback for you while you concentrate on other things.
- Invite the member to view the development site from your house. Members often visit sites to verify claims made in the hearing.

- Pre prepare a list of permit conditions should the application be granted. Council will have a list that you can support and add to. Advice here is to put in any condition you want and let the member decide if it is reasonable or doable.
- It can be very difficult to read The Member's thoughts; they would make great poker players, so don't feel down heartened if you are not getting positive feedback in the hearing. It is not a good measure of the Member's thinking on the matter.
- Conversely don't read anything into positive responses from The Member.
- If you are unwell or suffer from a condition that makes sitting through the hearing difficult, you should alert the presiding Member to this and be prepared to ask for a break if you need one.
- If you forget to ask a question or make a comment in your presentation, ask the presiding Member if you can address that as soon as you realize or remember. Often during a break you get time to reread your notes or remember something you forgot.
- Do not be tempted to drag out proceedings on the date/s scheduled if it looks like time is running out. Instead indicate that you have commitments and can't stay longer and would prefer to come back on another day. This will allow even more grace time to review proceedings and presentations. Lawyers are busy people so there might be quite a long time between hearing dates, with luck.

Step 7: After VCAT

Again, you may be waiting for months to receive the VCAT ruling and order. The result will arrive sooner if VCAT has your email address.

The only way a decision can be challenged is through a Supreme Court proceeding. However if you have any concerns about the process you may provide feedback to VCAT.

- You can download a copy of the order from the VCAT site and you can also request, for a fee, a copy of the recording and/or transcript of the hearing from VCAT.
<https://www.vcat.vic.gov.au/help-faqs/audio-cds-and-transcripts-hearings>
- If the application you oppose is denied by VCAT then you should celebrate your victory. You worked hard for it and it is no small feat.
- The order will contain the details of the ruling and conditions if the permit is granted.
- There is usually a timeline attached to an approved permit. Generally the building must commence within two years of the permit date and be completed within five years of the permit date. Developers can ask for, and generally automatically receive, an extension. You should be prepared to dispute this with council.
- Once building commences it is important that you ensure the developers/builders adhere to the order. It is council's role to enforce the order so if you notice that the builder/developer is not adhering to the order contact the council enforcement officer.

- It is possible for builders/developers to change the building as they build, differing from the agreed plans. They then apply for a retrospective variation or variation to the permit conditions. It is important that you ensure you are notified of any variation applications. Tell council you wish to be contacted should there be an application for a variation.

Finally

Please provide feedback through the DADA website <http://melburb.blogspot.com.au/> to help improve our guide and;
GOOD LUCK.

Glossary

STCA stands for “Subject to Council Approval” and is typically used to describe the subdivision / development *potential* of a property.

For example:

- “*Multi-unit site (STCA)*”
- “*Dual occupancy site STCA*”
- “*Development site (STCA)*”

In Victoria all that the term STCA can legally refer to is exactly that: *potential*.

Appendix

1. DADA Common Objection List
2. DADA Summery Checklist for Planning Applications
3. Examples of Community Flyers
4. Darebin Blank Objection Form
5. VCAT Statement of Grounds form

Other Resources:

DADA has monthly meetings, usually on the 2nd Tuesday of the month. Check the DADA Website for details. <http://melburb.blogspot.com.au/>