

**Planning and Environment List
(Major Cases)
Administrative Division**

**Application for Review to the Major Cases List by a Permit Applicant
or Permit Holder under section 77, 79 or 80 of the *Planning and
Environment Act 1987***

Information about Applications in the Major Cases List

The Major Cases List is a sub-list of the Planning and Environment List that has been established to expedite the resolution of applications. Fees in the Major Cases List are higher and it operates on a user-pays fee basis so that its operation does not materially disadvantage the finalisation of other applications in the Planning and Environment List.

An application to the Tribunal is eligible for inclusion in the Major Cases List if the proceeding is in respect of a use or development of any kind irrespective of the cost of development.

Once an application has been included in the Major Cases List, the permit applicant or permit holder cannot seek the removal of the proceeding from the Major Cases List or 'opt out' of the List.

After you lodge your application for review, the Tribunal will issue an initiating order setting out dates for the hearing, compulsory conference and practice day hearing, and giving directions about steps that you and other parties to the proceeding must comply with. The initiating order will set dates by which each step must be completed.

If you fail to comply with the Tribunal's initiating order by the dates specified in the order, your application may be struck out without further notice. If you are unable to comply with any aspect of the initiating order, you must apply to the Tribunal in writing for an extension of time. You cannot change dates without an order by the Tribunal.

If you intend to apply to amend the plans which form part of the permit application, you may only do this in accordance with VCAT's Practice Note PNPE9 – Amendment of Plans and Applications after you have given notice of your application for review as directed by the Tribunal.

The fees for applications in the Major Cases List are prescribed under the *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016* (Fees Regulations). The fees are also set out on the Tribunal's website.

A daily hearing fee is payable under the Fees Regulations for each day or part day of a hearing in the Major Cases List. This includes a preliminary hearing or an accompanied site inspection forming part of a hearing, but does not include a practice day hearing, or compulsory conference.

**Planning and Environment List (Major Cases)
Administrative Division
Section 77, 79 or 80**

VCAT Reference Number (Office Use Only) P 2217 / 2016

Cost of the Development

The estimated cost of this development is: \$22.3 million

The cost of development will normally be the cost specified in the permit application.

Details of Applicant(s)

If the name below is not identical to the name on the permit application lodged with the responsible authority, you will require leave of the Tribunal to amend the name of the permit applicant to accord with the name below. Include the complete name if the applicant is a company; e.g. XYZ Co. Pty Ltd.

Full Name Japara Property Holdings Pty Ltd

Do you require leave of the Tribunal to amend the name of the permit applicant?

Yes No ✓

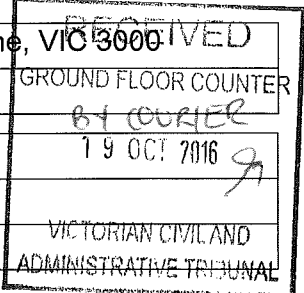
Address of Applicant(s)

All correspondence will be sent to the applicant(s) at this address, unless the 'Details of Representative' section is completed, in which case all correspondence will be sent to the representative address or email.

Address for service

Planning & Property Partners Pty Ltd, Level 2, 91-93 Flinders Lane, Melbourne, VIC 3000

Business phone	8626 9070	After hours phone	
Mobile		Fax number	
Email	little@pppartners.com.au		



Details of Representative

Name/Firm Planning & Property Partners Pty Ltd

Reference Number/ Contact person Paul Little

Address for service

As above

Business phone		After hours phone	
Mobile		Fax number	
Email			

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 19 OCT 2016
 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Statutory basis of the application

You must attach a copy of the responsible authority's decision (except for an application under section 79) No more than one box may be ticked. If your application does not fall under the following sections, do not use this form.

What are you requesting VCAT to review?

- Refusal to grant a planning permit or an amendment to a planning permit under section 77 *Planning and Environment Act 1987*
- Failure to grant a permit within the prescribed time under section 79 *Planning and Environment Act 1987*
- Conditions in a permit under section 80 *Planning and Environment Act 1987*. List disputed conditions below:

Information about the land to which this application and the permit applies

If there is no conventional address (street number, street and locality) insert a land description:

- Certificate of Title volume and folio;
- Lot and lodged plan number;
- Crown allotment; or
- Section number /Township/Parish.

Address or description of the land

35-39 Regent Street, Mount Waverley

Responsible Authority

Monash City Council

Details of the permit application

Permit application number

Proposal

Development of the land for a residential building (aged care facility); removal of existing on-site vegetation (including native); and removal of an existing drainage and sewerage easement.

Is the permit application an application to amend an existing permit? If yes, you need to insert the existing permit number and attach copies of the permit in its current and proposed form.

- Yes No

Existing permit number

Please provide the following information and material about the permit application to assist the Tribunal to process your application as expeditiously as possible.

<p>Provide a copy of the permit application, all supporting material submitted to the responsible authority and the latest set of plans which currently form part of the application. Plans must be in not less than A3 size.</p>	<p>A copy of the permit application and all plans and supporting material provided to the responsible is provided at Appendix B.</p> <p>It is noted that the further information request was not made within the prescribed timeframe and therefore the statutory clock continued to run since lodgement. Additional application material has been provided for <u>information purposes</u> and forms as Appendix C.</p>
<p>What is the name of the relevant planning scheme, the zone and any overlay or other control applying to the subject land?</p>	<p>Monash Planning Scheme General Residential Zone – Schedule 2 Special Building Overlay Vegetation Protection Overlay – Schedule 1</p>
<p>Set out each specific provision under the planning scheme pursuant to which a permit is required.</p>	<p>Clause 32.08-4 – Construct or extend a residential building Clause 42.02-2 – Remove, destroy or lop vegetation Clause 44.05-1 – Construct a building or construct or carry out works Clause 52.02 – Removal/variation of easement Clause 52.17-2 – Remove, destroy or lop native vegetation</p>
<p>Is the proposal exempt from the notice requirements or review rights under the <i>Planning and Environment Act 1987</i>? - If so, specify by what provision in the planning scheme.</p>	<p>No. ✓</p>
<p>Was notice of the current application given under relevant provisions of section 52 of the <i>Planning and Environment Act 1987</i> by you or the responsible authority?</p>	<p>No. The application for review was lodged prior to the application being publicly advertised, we request that the Tribunal direct notice to be given. ✓</p>
<p>In relation to Aboriginal Cultural Heritage and the need for a Cultural Heritage Management Plan (CHMP):</p> <p>(a) Is the location of the proposed use and / or development on or partly on an area of Cultural Heritage sensitivity as defined under Divisions 3 or 4 of the <i>Aboriginal Heritage Regulations 2007</i>?</p> <p>(b) Is the proposed use and / or development of the land a high impact activity as defined under Division 5 of the <i>Aboriginal Heritage Regulations 2007</i>?</p> <p>(c) Is the activity exempt from a CHMP under Division 2 of the <i>Aboriginal Heritage Regulations 2007</i>?</p> <p>(d) Is the activity exempt from a CHMP because of significant ground disturbance?</p> <p>(e) If a CHMP is required, has CHMP been provided and approved? If so please provide a copy.</p>	<p>a) Yes</p> <p>b) No – an ‘aged care facility’ is not listed as a high impact activity and significant ground disturbance has previously occurred on the land. ✓</p> <p>c) No.</p> <p>d) Yes – the land has undergone significant ground disturbance in the past and has removed the potential for it to contain undisturbed deposits of Aboriginal Cultural Heritage material.</p> <p>e) N/A</p> <p>A Cultural Heritage Due Diligence Advice has been prepared by <i>Pragmatic Cultural Heritage Services</i> and forms part of the Appendix B documents.</p>
<p>Are there any questions of law likely to arise? If so, provide details.</p>	<p>No.</p>

Reasons for reviewing the decision (Statement of Grounds)

A "statement of grounds"

- is a short but precise list of issues you wish to raise with VCAT, which contests the decision made by the responsible authority. The Planning and Environment Act 1987 and planning schemes define the issues VCAT can consider. VCAT must have regard to the matters set out in section 84B of the Planning
- is not required for an (failure to grant a permit within the prescribed time) application under section 79 of the Planning and Environment Act 1987.

Set out a short statement of the grounds you rely on to support your application. Attach a separate sheet if necessary.

N/A

Attachments

Attach the following documents to this application. Tick and reference the attachments provided. Attach a separate schedule of attachments if necessary.

<input type="checkbox"/> Statement of Grounds, if a separate sheet is necessary	Ref. No.	
<input type="checkbox"/> Copy of the relevant notice of refusal, permit or notice of decision to grant or amend a permit (sections 77 & 80)	Ref. No.	
<input checked="" type="checkbox"/> Calculation of elapsed days (section 79 only). See VCAT website <i>Calculating elapsed days in failure applications</i> .	Ref. No.	Appendix A
<input type="checkbox"/> Copy of the permit to be amended in its current form and in its proposed form (where application is to amend an existing permit)	Ref. No.	
<input checked="" type="checkbox"/> Copy of the permit application, all supporting material submitted to the responsible authority and the latest set of plans which currently form part of the application. Plans must be in not less than A3 size.	Ref. No.	Appendix B
<input type="checkbox"/> Copy of any council report about the permit application (if available)	Ref. No.	
<input type="checkbox"/> Copy of Cultural Heritage management Plan (if relevant)		
Other attachments (if relevant)		
<input checked="" type="checkbox"/> Further application material	Ref. No.	Appendix C
<input type="checkbox"/>	Ref. No.	
<input type="checkbox"/>	Ref. No.	

Hearing time and complexity

Estimate the time it will take you to present your complete case at the hearing (submissions plus witnesses) and the number of expert witnesses you intend to call, if any.

Time to make submissions & present evidence: Hours Minutes

Number of witnesses: Expertise:

See VCAT's Practice Note PNVCAT2 – Expert Evidence for information about the obligations of expert witnesses and what must be included in the report of an expert witness.

Acknowledgement

I acknowledge that:

- To the best of my knowledge, all information provided in this application is true and correct and that no details relevant to the application have been left out.
- I approve the information that has been provided.
- It is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

Category of person completing this application:

- Applicant in person Authorised Representative

Name of person completing this application (print)

Date

Checklist

Before you lodge this application, make sure that:

- You have completed all details and responded to all questions.
- All documents regarding fees (e.g. fee waiver documents, credit card form or cheque) are supplied with your application.
- You have attached and properly referenced all of the attachments listed in this form.

Fees

You must pay the relevant application fee at the same time you lodge this form. Fees may change each year. To find out about the current fee, visit the VCAT website www.vcat.vic.gov.au or call VCAT on 9628 9777.

Application Fee	\$3,889.30
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Fees can be paid via money order, cheque, cash or credit card.

Money orders and cheques are to be made payable to 'VCAT'. Cash payments will only be accepted if you are delivering this application in person to VCAT. Do not send cash in the mail. If faxing the application, you can only pay by credit card.

If you wish to pay the fee by credit card, please fill in the details on the next page.

**PLANNING AND ENVIRONMENT LIST GUIDELINES
ELAPSED DAYS IN FAILURE APPLICATIONS CALCULATOR**

THE FOUR STEPS TABLE

Before completing the four steps table, it is important to read understand the notes set out on the back of this form.

Step 1	The date the permit application was first received by the Responsible Authority.	16 August 2016 (Day 1)
	The date the permit applicant applied to amend the permit application.	N/A
	The date the permit applicant agreed to an amendment of the permit application.	N/A
	The date further information required within the prescribed time is given to the Responsible Authority.	N/A
	Start date: the most recent of above dates	16 August 2016

Step 2	Start date	16 August 2016
	Date VCAT application received	19 October 2016
	Total days counted	65

Step 3	Date notice requirement made	N/A
	Date last notice given	N/A
	Notice days counted	0

Step 4	Total days counted in Step 2	65
	Notice days counted in Step 3	0
	Total days minus Notice days	65

If the total days minus the notice days is less than 60 days, the application is premature.

THE FOUR STEP CALCULATOR

Step 1 - Ascertain the start date

Step 2 - Count the total days that have elapsed from the start date to the date the application review was or is to be received by VCAT.

Step 3 - Count the “notice” days that elapsed while giving notice of the permit application under section 52 of the Planning and Environment Act 1987.

Step 4 - Calculate the number of prescribed days that have elapsed by subtracting the “notice” days counted in Step 2, from the total days counted in Step 1. If the total days minus the notice days is less than 60 days, the application is premature.

Use the coloured tables overleaf as an aid to undertaking this calculation.

NOTES ON THE FOUR STEP CALCULATOR

Step 1 and the start date

The start date is the most recent of the dates determined as follows:

- 1 The date the permit application was first received by the Responsible Authority.
- 2 The date the permit applicant applied to amend the permit application under section 50 of the Planning and Environment Act 1987. (See section 50(7)(b))
- 3 The date the permit applicant agreed to an amendment of the permit application proposed by the Responsible Authority pursuant to section 50A of the Planning and Environment Act 1987. (See section 50A(5)(b))
- 4 The date more information is given to the Responsible Authority in accordance with a written request made within the prescribed time under section 54 of the Planning and Environment Act 1987. (Clause 18(b) of the Planning and Environment Regulations 2015 provides that the prescribed time in respect of a responsible authority’s request for more information is 28 days. This is calculated from the date written notice of the requirement is despatched to the permit applicant (See *Wilbow Corporation Pty Ltd v Boroondara CC* [2006] VCAT 437)).

Step 3 – The giving of notice

For the purposes of counting the days that elapsed giving notice:-

- 1 The date a requirement to give notice of a permit application is made is the date the written requirement is despatched to the permit applicant by the Responsible Authority.
- 2 The date the last notice was given is usually the most recent of the following dates:
 - (a) The date the last notice was posted, or;
 - (b) The date the last notice was erected upon the land, or;
 - (c) The last date a notice was published in a newspaper.