

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2217/2016
PERMIT APPLICATION NO. TPA/46434

APPLICANT Japara Property Holdings Pty Ltd
RESPONSIBLE AUTHORITY Monash City Council
SUBJECT LAND 35-39 Regent Sreet, MOUNT WAVERLEY
VIC 3149
WHERE HELD Melbourne
BEFORE Helen Gibson, Deputy President
HEARING TYPE No hearing
DATE OF ORDER 24 October 2016

ORDER

Hearing details

Item	Hearings	Date/Detail
A	Hearing date	26 April 2017
	Commencement time	10:00am
	Duration	4 Days
	Location	55 King St, Melbourne
B	Compulsory conference date	22 February 2017
	Commencement time	10:00am
	Duration	1 Day
	Location	55 King St, Melbourne
C	Practice day hearing date	25 November 2016
	Commencement time	10:00am
	Location	55 King Street, Melbourne

- 1 This proceeding is listed for a practice day hearing, hearing and compulsory conference in accordance with the details set out in **items A, B & C** above. Any changes to the hearing details will be notified by further order of the Tribunal.

- 2 With respect to the practice day hearing, VCAT will publish a detailed schedule of hearing times and room numbers on its website at www.vcat.vic.gov.au at about 5pm the day before the hearing. As this hearing may be listed to a later time on the day, possibly in the afternoon, parties should consult the detailed schedule.

Other key dates

- 3 The following dates are the dates referred to in these orders.

Item	Action	By no later than	Order number
D	Applicant to serve application and specified documents on responsible authority	26 October 2016	4
E	Responsible authority to file with VCAT and serve on the applicant details of notice to be given	31 October 2016	8
F	Applicant to give notice	3 November 2016	5
G	Responsible authority to file PNPE2 material	3 November 2016	10
H	Closing date for objectors and referral authorities to lodge statement of grounds with VCAT and serve on applicant and responsible authority	21 November 2016	6 & 12
I	Applicant to file statement of notice with VCAT	22 November 2016	7

ACTIONS REQUIRED – APPLICANTS

Service of application on responsible authority

- 4 By no later than the date set out in **item D of order 3**, the applicant must serve on the responsible authority:
- a copy of the application and all attachments;
 - other material filed with the Tribunal; and
 - a copy of this order.

Notice

- 5 The applicant must give notice of the application in accordance with the attached directions (as relevant) as follows:

- a By no later than the date set out in **item F of order 3** serve the documents set out below directly or by post on the following persons:
- owners and occupiers of adjoining land;
 - owners and occupiers of opposite land;
 - any additional persons identified by the responsible authority in response to order 8;
 - all relevant referral authorities.

The documents served must include:

- the application for review, including the applicant's statement of grounds, but excluding other attachments;
 - a copy of this order;
 - a blank copy of the attached statement of grounds form (Form A) with the date by which a statement of grounds must be lodged with VCAT, specified in **item H of order 3**, inserted in the form;
 - a cover letter explaining that an application for review has been lodged and VCAT has directed service of the documents.
- b By no later than the date set out in **item F of order 3**, publish a notice of the application by erecting a sign(s) on the land and maintaining the sign(s) in good order and condition for not less than 14 days from the date of erection in accordance with any directions by the responsible authority in response to order 7.
- c Within 7 days from the date set out in **item F of order 3**, publish a notice of the application in a newspaper in accordance with any directions by the responsible authority in response to order 8.

6 All notices must:

- a Specify the closing date, which is the date set out in **item H of order 3**, by which a statement of grounds must be received by the Tribunal and served on the responsible authority and applicant.
- b Specify the date and times scheduled for the hearings and compulsory conference as set out in **items A, B & C of order 1**.
- c If applicable, include a statement setting out those matters within the permit application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.

Statement of notice

- 7 By no later than the date set out in **item I of order 3**, the applicant must file with VCAT:
- a completed statement of notice (Form C);
 - a list of names and addresses of all persons and authorities served;

- a sample of the cover letter sent with the documents served;
- all other information required by Form C.

If a statement of notice is not filed by the specified date, this application may be struck out without further notice. No reminder will be sent.

ACTIONS REQUIRED – RESPONSIBLE AUTHORITY

Extent of notice required

- 8 By no later than the date set out in **item E of order 3**, the responsible authority must file with VCAT and provide the applicant with the names and addresses of all persons to whom the applicant should give notice pursuant to order 5, including all relevant referral authorities and any other form of notice required.
- 9 If the applicant disputes the extent of persons to whom notice should be given or other form of notice, which the responsible authority identifies pursuant to order 8, or the responsible authority fails to provide the information as directed, the applicant may request an urgent practice day hearing to resolve the dispute.

Practice Note 2 material

- 10 By no later than the date set out in **item G of order 3**, the responsible authority must file with VCAT information about the application as specified in the current version of **VCAT Practice Note PNPE2 – Information from Decision Makers**, unless this material has already been filed in another related proceeding.
- 11 The responsible authority must comply with **VCAT Practice Note PNPE2 – Information from Decision Makers** and serve a copy of the completed table (excluding attachments) on the applicant for review.

ACTIONS REQUIRED – OBJECTORS & REFERRAL AUTHORITIES

Statement of grounds

- 12 If you wish to contest this application, you must, within the time specified in **item I of order 3** (and also set out in the notice):
 - serve a copy of the statement of grounds on which you intend to rely on the person making this application (the applicant);
 - serve a copy of the statement of grounds on the responsible authority;
 - lodge a copy of the statement of grounds with VCAT, indicating that a copy was served on the applicant and the responsible authority and the date(s) this was done. You must ensure your statement of grounds is received by VCAT by the specified date.

ACTIONS REQUIRED – ALL PARTIES

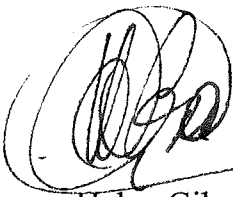
Communicating with VCAT

- 13 All communications to VCAT about this proceeding must quote the VCAT reference number included in this order (see page 1, top right corner).
- 14 A party who communicates in writing with VCAT must serve a copy of that communication on all other parties at the same time and notify VCAT this has been done. The communication must state that a copy was sent to the other parties and list the parties it was sent to. This applies to communications sent by letter, fax or email.

COMPULSORY CONFERENCE

- 15 If details are set out in **item B of order 1**, this application is referred to a compulsory conference in accordance with the details set out in **item B of order 1**. Pursuant to section 84 of the *Victorian Civil and Administrative Tribunal Act 1998* the following directions are given for the compulsory conference:
 - a A natural person who is a party to the proceeding must attend the compulsory conference either in person or by a representative who has authority to settle the proceeding on behalf of that party;
 - a Each body corporate which is a party (including a responsible authority, referral authority or statutory authority) must attend the compulsory conference by a representative who has authority to settle the proceeding on behalf of that party;
 - b If the application or permit application subject to the proceeding was made in the name of a person as agent or consultant for a principal, the principal must either attend the compulsory conference in person or by a representative who has authority to settle the proceeding on behalf of the principal;
 - c Each party should commence the compulsory conference with a short written statement briefly describing the most important issues in dispute from their perspective and what potential solutions they would consider.
- 16 Each party must complete an Opening Statement prior to the date of the compulsory conference and give it to the member on the day. A blank Opening Statement is included in Appendix B.

- 17 The responsible authority must bring to the compulsory conference a copy of the permit conditions or a without prejudice set of draft permit conditions in electronic Word format. If other parties have not previously been supplied with a copy of the conditions, the responsible authority must serve a copy of them on all other parties not less than 5 business days before the compulsory conference.



Helen Gibson

Deputy President



APPENDIX A

IMPORTANT INFORMATION FOR ALL PARTIES

Non-compliance with orders and directions

Please read the orders and following information carefully. Non-compliance with these orders may result in an application being struck out, or other sanctions under the *Victorian Civil and Administrative Tribunal 1998*, including an award of costs.

Major Cases List

This proceeding has been included in the Major Cases List. The Major Cases List is a sub-list of the Planning and Environment List. **VCAT Practice Note PNPE 8 – Major Cases List (Planning)** governs the procedures for matters in this list.

Statement of grounds

If you wish to contest this application or you are a referral authority, you are entitled to become a party to this proceeding if you file and serve a statement of grounds in accordance with this order, unless third party review rights are excluded by the planning scheme or you indicate that you do not intend to participate in the hearing of the proceeding.

If you file a statement of grounds and indicate that you do not intend to participate in the hearing of the proceeding, you will not be a party to the proceeding but your statement of grounds will be considered at any hearing of the proceeding.

The attached statement of grounds form (Form A) should provide sufficient information so that the issues you intend to raise can be clearly identified. Normally VCAT does not have copies of the objections made to the responsible authority so do not assume that VCAT is aware of any statement you may have already made.

If this is an application to review conditions under section 80 of the *Planning and Environment Act 1987*, your statement of grounds can only relate to the conditions that are being reviewed, not to other aspects of the permit.

Withdrawals

If you are an objector and wish to withdraw your objection at any time after you lodge your statement of grounds, you must inform VCAT, the applicant and the responsible authority in writing. You will then be withdrawn from VCAT's record and receive no further correspondence.

If you are the applicant, any application for withdrawal of the application must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures**.

Adjournments

Applications for adjournment of a hearing are not encouraged and you should not expect that an adjournment will be granted even if all parties consent.

VCAT may refuse an adjournment if it considers that the adjournment is:

- not in the public interest
- prejudicial to the interests of one or more parties or the expeditious determination of the proceeding
- contrary to efficient case management, or
- otherwise not justified.

If you wish to apply for an adjournment, choose the **Application for Consent to adjournment** form on the VCAT website or call us for a hard copy. Any application for adjournment must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures**. Refer to the VCAT website for more detail.

Providing your email address

VCAT will send copies of all orders, including the final decision, to a party's email address. VCAT will not send a hard copy in addition.

A party's email address will be available on VCAT's records for other parties to access. If you 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 hard copy of any order, but you may receive it after other parties have received the order by email and after the order 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.

Inspecting VCAT's file

Any party to the proceeding may inspect the VCAT file relating to the proceeding without a fee. Anyone else can inspect the file, but they must pay a fee. There is a charge for photocopying. To arrange an inspection time, complete the **File and Document Access Request Form** available on the VCAT website.

Compulsory conference

If this proceeding is specified in item B of order 1 as being listed for a compulsory conference, the information about compulsory conferences in Appendix B is relevant.

Hearing fees

If you are the permit applicant or permit holder in this proceeding, you are required to pay a daily hearing fee for each day or part day of hearing. This includes accompanied site visits. You are required to pay your fee at Counter Services on the ground floor at 55 King Street by 9.30am on each day of the hearing. Payment of fees in advance will not be accepted. If you do not pay the fee, your hearing may be adjourned. For the latest fee information or further information regarding this process, please check the VCAT website or phone (03) 9628 9777.

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street Melbourne VIC 3000

GPO Box 5408 Melbourne VIC 3001

Ausdoc DX 210576 Melbourne

Website www.vcat.vic.gov.au

Email vcat-admin@vcat.vic.gov.au

Telephone (03) 9628 9777

Facsimile (03) 9628 9789

APPENDIX B

COMPULSORY CONFERENCE INFORMATION SHEET

What is a compulsory conference?

A compulsory conference is a confidential meeting at which parties, with the assistance of a Tribunal member, can explore options to reach an agreed settlement on all or some of the matters at issue in a proceeding. If it is to be successful, parties must approach the compulsory conference with an open mind and be flexible in considering options that could resolve the case. More information about compulsory conferences is available on VCAT's website at www.vcat.vic.gov.au and in **VCAT Practice Note PNVCAT4 – Alternative Dispute Resolution (ADR)**.

Requirement to attend compulsory conference

If you are a party, you must attend the compulsory conference in person or by a representative who has authority to settle the proceeding on your behalf.

What happens if you do not appear?

If you do not appear or are not represented at the compulsory conference, the matter may be resolved in your absence and you may be struck out as a party. If all the parties present at the compulsory conference agree, the Tribunal may make a final order or make other orders affecting your interests. In particular, the Tribunal may make any of the following orders under the *Victorian Civil and Administrative Act 1998*:

- If you are the applicant to VCAT, your application may be dismissed or struck out.
- If you are not the applicant, you may be struck out as a party to the proceeding. This means that you can take no further part in the compulsory conference or hearing.
- You may be ordered to pay costs in certain circumstances.

Who may attend a compulsory conference?

Only parties to the proceeding may attend a compulsory conference. This means, for example, that people who were late in lodging their statement of grounds or who have indicated that they do not intend to participate in the hearing of the proceeding, and who are not therefore parties to the proceeding, cannot participate in the compulsory conference. It also means that a person who is struck out as a party because they do not attend the compulsory conference, is not entitled to participate in any further compulsory conference and their consent is not required to any orders made to settle the proceeding in whole or in part.

What happens if the compulsory conference is successful?

If the compulsory conference is successful and results in an agreement by the parties present at the compulsory conference, the Tribunal may make a final order to give effect to the agreement without a hearing being required.

What happens if the compulsory conference is not successful?

If the compulsory conference does not succeed and the parties present fail to reach agreement, the Tribunal will make an order listing the matter for hearing. The hearing will proceed on the date specified in the Tribunal's initiating order or other dates or details as to time or duration may be specified.

What happens if the compulsory conference is partially successful?

If the parties present reach agreement about some issues but not others, the hearing will proceed. If the parties present agree, the Tribunal may make an order that limits the issues to be considered at the hearing or excludes certain issues from consideration. The Tribunal may make further orders that restrict the ability of parties to contest at the hearing any matters resolved at the compulsory conference.

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What should you bring to the compulsory conference?

Please complete the Opening Statement at Compulsory Conference form, which is enclosed, and bring it with you to the compulsory conference. Do not file it with the Tribunal prior to the compulsory conference, as it is confidential. The applicant for the permit should bring an extra copy of any relevant plans including elevations.

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PLANNING AND ENVIRONMENT LIST OPENING STATEMENT AT A COMPULSORY CONFERENCE

VCAT reference number	
Applicant	
Responsible authority	
Other parties	

Each party must complete this opening statement prior to the date of the compulsory conference and give it to the member on the day. The statement must not be filed with VCAT prior to the compulsory conference because it is confidential. Its purpose is to clarify the respective positions of each of the parties to the application by identifying the issues that the parties consider most important to them and possible solutions.

Name of party signing form	
----------------------------	--

Most important issues in dispute from your perspective (including any legal matters) Attach additional pages if required

What potential solutions would you consider? Attach additional pages if required

Signature: _____ **Date:** _____

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PLANNING AND ENVIRONMENT LIST

STATEMENT OF GROUNDS

Use this form to set out your reasons for contesting a planning and environment case at VCAT. These written reasons are called your statement of grounds.

DATE STATEMENT OF GROUNDS MUST BE RECEIVED BY VCAT This is on the notice you received or the sign on the site		
Subject Land	35-39 Regent Sreet, MOUNT WAVERLEY VIC 3149	VCAT Ref: P2217/2016

Name

PLEASE PRINT CLEARLY

Address for service

Email address

If you do not give us an email, printed orders may arrive after the decision is published and after other parties get it by email.

Telephone/Mobile

PARTICIPATION IN HEARING

Please tick appropriate box

<input type="checkbox"/>	I intend to appear and present a submission at the hearing. Fees apply
<input type="checkbox"/>	I do not intend to participate in the hearing, but want VCAT to consider my statement of grounds. No fee If you choose this, you will not be a party to the proceeding. VCAT considers your statement of grounds in any contested hearing but will not send you further correspondence.

FEES

You may have to pay a fee if you intend to appear or present a submission at the hearing. If you do not pay the fee at the time of lodging this form, you will not be a party and will not be entitled to take part, even if you indicated that you wanted to participate. For fee information, visit vcat.vic.gov.au. You do not have to pay a fee if you are a permit applicant or holder, the determining or recommending referral authority, a person responding to an enforcement order application, or an applicant for a works authority or licence.

PRESENTING AT THE HEARING

If you intend to appear at the hearing, please provide the following information

Time required to present my complete case at the hearing (submissions plus witnesses)	
Number of expert witnesses I intend to call (if any)	
Witness area(s) of expertise	

For information about witnesses and evidence, visit vcat.vic.gov.au and see Practice Note PNVCAT2 – Expert Evidence.

THIS STATEMENT OF GROUNDS IS LODGED BY OR ON BEHALF OF

OBJECTOR/S

- A person who objected to the original application to the council
- A person who did not object to the original application to the council but now wants to object
- A person responding to an application to amend plans or make other changes to an existing application
- A person responding to a notice by a permit holder to amend a permit

PERMIT APPLICANT OR PERMIT HOLDER

- A permit applicant responding to an objector's application for review
- A permit holder responding to a non-permit holder's application to amend or cancel a permit

REFERRAL AUTHORITY

- Determining referral authority
- Recommending referral authority

ENFORCEMENT ORDERS

- A person responding to an application for an enforcement order

ENVIRONMENT APPLICATIONS

- Objector/s to a works approval application made to the Environment Protection Authority
- A works approval applicant
- An objector to an application made for a licence to take or use water or for works under the Water Act 1989
- An applicant for a licence to take and use water
- An applicant for a works licence or licence for underground disposal using a bore

OTHER

- Specify _____

JOINT STATEMENT OF GROUNDS

Complete this section if you are a spokesperson for people lodging a joint statement of grounds.

- Attach a list of the names and addresses of all the people you represent, showing whether you have their individual consent.
- Be aware you may be asked to provide VCAT with a copy of their written consent.

I certify that I have consent to act as spokesperson for the attached list of people where this is a joint statement of grounds:

- Yes
- No

We will only communicate with the nominated representative for a joint statement of grounds.

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STATEMENT OF GROUNDS

A short summary of my reasons for contesting the VCAT application is

<input type="checkbox"/>	In the box below
<input type="checkbox"/>	attached

SERVE A COPY

You must serve a copy of your statement of grounds on both the responsible or relevant authority and the applicant by the date that appears in the notice you received and on the sign at the site – the same date on the front of this form. If not, we may not be able to hear your views or consider your objections.

You must certify that you have done so and complete the acknowledgement on this form.

CERTIFICATION

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

Please tick appropriate box and insert relevant date

<input type="checkbox"/>	on	/	/	(insert date) on the applicant
<input type="checkbox"/>	on	/	/	(insert date) on the respondents (responsible/relevant authority)

ACKNOWLEDGEMENT

I understand and acknowledge that:

- To the best of my knowledge, all information provided in this form is true and correct
- It is an offence under section 136 of the *Victorian civil and Administrative Tribunal Act 1998*

Full name of person completing this statement
of grounds form: _____

Date: _____

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ABOUT VCAT FEES

VCAT fees are charged according to three levels:

- **corporate fees** for businesses and companies with a turnover of more than \$200,000 in the previous financial year, corporate entities and government agencies
- **standard fees** for individuals, not-for-profit organisations, and small businesses and companies with a turnover of less than \$200,000 in the previous financial year. Companies must provide a statutory declaration to support this claim
- **concession fees** for people who hold the Australian Government Health Care Card. You must provide a copy of your card with your application.

To find out if you need to pay an application fee and how much it costs, visit the fees page at www.vcat.vic.gov.au

FEE RELIEF

We can reduce or not charge (waive) a VCAT fee in certain circumstances.

Some people are automatically entitled to a full fee waiver. You can also apply for fee relief if paying the fee would cause you financial hardship.

Visit www.vcat.vic.gov.au for more information about fee relief.

Are you applying for fee relief?

- No- complete **fee payment** section
- Yes- complete **fee relief form** and attach it to this application form

FEE PAYMENT

Complete this section unless you are applying for fee relief or no fee is payable.

Choose the fee level:

- Corporate Standard Concession

Amount Charged _____

CARD DETAILS

Cards Accepted VISA MASTERCARD

Cardholder Name _____

Card Number _____

Card Expiry /

Signed _____

Date / /

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PLANNING AND ENVIRONMENT LIST

FORM C – STATEMENT OF NOTICE

To be completed by or for the Applicant

Subject Land	35-39 Regent Sreet, MOUNT WAVERLEY VIC 3149	VCAT Ref: P2217/2016
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I, (Print full name)
of

..... (Print address)

STATE to the Victorian Civil and Administrative Tribunal (VCAT) that:

1. I *am/*act for the Applicant in the application to VCAT with the above reference number
(*delete whichever does not apply)
2. On **(date of service)** I served a copy of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order on the responsible authority.
3. **Only tick this box if there are no objectors or referral authorities to serve.**
 There are no objectors or referral authorities to serve.
4. **(Only complete if applicable)** I caused Notice of the Application to VCAT to be given by publishing the notice in the following newspapers.

Name of Newspaper	Date of Publication

I attach clippings of the notices published.

5. **(Only complete if applicable)** On **(date of erection)** I caused Notice of the Application to VCAT to be given by erecting a sign on the subject land.

Such notice was maintained in good condition on the land for not less than 14 days until it was removed on **(date of removal)**

I erected the following number of signs in the following locations:

Number of signs erected (total)	
Location of signs erected: Specify each street frontage or other location	

I attach the following document **(tick as applicable)**

- Original sign erected on the land
 True copy of the completed sign erected on the land

6. On (*date of service*) I served the following documents on each of the persons specified below by post*/in person*. (**delete whichever does not apply*)

Documents served:

- a copy of the application (excluding attachments) and any documents, plans or covering letter required to be served by VCAT's initiating order;
- a copy of the VCAT initiating order;
- a copy of a blank Form A – Statement of Grounds.

Persons served: (*tick as appropriate*)

- any referral authorities
- those persons set out in the attached list I obtained from the relevant municipal council or other responsible authority
-
- any person directed by the Tribunal
- any other person or authority

I attach copies of the following documents.

Documents attached: (*tick as appropriate*)

- list of names and addresses of all persons or authorities served
- copy of sample cover letter sent with documents served

I understand that knowingly giving false or misleading information to VCAT may result in imprisonment or fine (section 136 of the *Victorian Civil and Administrative Tribunal Act 1998*).

SignatureDate.....