

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1088/2023
PERMIT APPLICATION NO. TPA/51529/A

APPLICANT	Stuart Klees
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	418-424 Haughton Road CLAYTON VIC 3168
HEARING TYPE	Practice Day Hearing
DATE OF HEARING	20 October 2023
DATE OF ORDER	20 October 2023

ORDER

- 1 Pursuant to section 76 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the proceeding is summarily dismissed for want of prosecution.

S P Djohan
Acting Senior Member

APPEARANCES

For applicant	No appearance.
For responsible authority	Sally Moser, town planner, Monash City Council.



REASONS

- 1 This proceeding was commenced by an application made under s.87(3)(d) of the *Planning and Environment Act 1987* (Vic) by the applicant to cancel permit to cancel Planning Permit TPA 51529/A (the ‘permit’). The approved development must commence by 4 March 2025.
- 2 The Tribunal’s initiating order of 8 September 2023 required amongst other things, that the applicant must by 20 September 2023 give a copy of the application and all attachments to the owner and occupier of the subject land and any other person who may have an interest in the outcome of the application. The order also required that the applicant file with the Tribunal a completed statement of service by 22 September 2023.
- 3 The Tribunal’s order also contained the following statement –

If a statement of service is not given to the Tribunal by **22 September 2023**, this application may be struck out. No reminder will be sent.
- 4 A reminder in fact was sent by the Tribunal’s registry staff on 26 September 2023 requesting that the statement of service be filed within seven days.
- 5 The permit applicants at the time the permit was issued (at the direction of the Tribunal) were Stuart Klees, David Klees, Mark Klees and Ellen Klees.
- 6 The current applicant, Stuart Klees, informed the Tribunal –
 - a. by email correspondence dated 26 September 2023 –

I have sold this site and a condition of the sale was to lodge an application to remove the building permit.

This property has since settled.

I will not be attending on the DA nor submitting any further paperwork.

Can the court please make a ruling either way in my absence.
 - b. by email correspondence dated 27 September 2023 –

Note please approve or disapprove as you see fit.

I wish to remove the permit but I cannot spend any further time or attend the meeting.
 - c. by email correspondence dated 28 September 2023 to the responsible authority copying in the Tribunal –

We wish to cancel the permit attached.

We have sold the site on the condition that we lodge an application to cancel the permit.

The property has now been sold.

No one has been engaged. I was the applicant.
- 7 No statement of service has been filed by the applicant.



8 Council is not opposed to the grant of the application but notes that the apparent failure of the applicant to give notice of the application as required by the Tribunal may mean that there are potentially persons who are impacted by the cancellation request that are not aware of the proceeding.

9 I note for completeness that as the permit was issued at the direction of the Tribunal any application to cancel the permit must be made under s.87A of the *Planning and Environment Act 1987* (Vic). That section provides –

Cancellation or amendment of permit issued at the direction of Tribunal

- (1) In addition to the powers conferred by section 87, the Tribunal may cancel or amend a permit that has been issued at its direction if it considered it appropriate to do so.
- (2) The Tribunal may only cancel or amend a permit under this section at the request of –
 - (a) the owner or occupier of the land concerned; or
 - (b) any person who is entitled to use or develop the land concerned.

10 On the information before the Tribunal at present, which is admittedly scant, the applicant has not established that he currently falls within the category of persons described in s.87A(2)(a) or (b).

11 In conclusion, I am satisfied that taken together–

- a. the failure of the applicant to appear at the practice day hearing;
- b. the failure of the applicant to file with the Tribunal a statement of service as ordered by the Tribunal; and
- c. the content of the correspondence from the applicant indicating ambivalence to the outcome of the proceeding and an intention to not participate further in the proceeding,

is a sufficient basis to make an order summarily dismissing all of the proceeding for want of prosecution. I so order.

S P Djohan
Acting Senior Member

