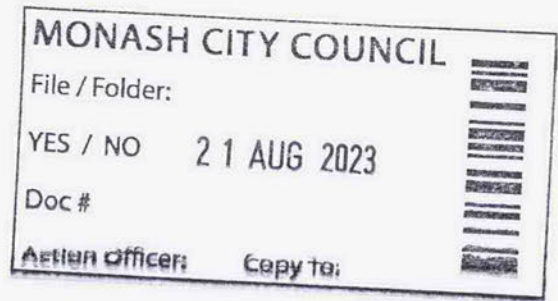


MinterEllison.

18 August 2023



To: *The Addressee*

Dear Sir/Madam

VCAT reference: P942/2023
Planning permit no: TPA/51498/A
12-14 Johnson Street & 1 Mill Road, OAKLEIGH VIC 3166

We act for BCentral Johnson Pty Ltd in relation to this matter.

On behalf of our client we applied to the Victorian Civil and Administrative Tribunal (**VCAT**) pursuant to Section 87A of the *Planning and Environment Act 1987* to amend planning permit no. TPA/51498/A.

The application is to amend the approved development to include two additional apartments in the north east corner of the site on level 6 (adjacent to Haughton Road) and to provide consistent 3.115 metre floor to floor heights at levels 1 to 6. The total number of apartments is increased from 68 to 70. There is no change to the overall building height and no additional dispensation to the statutory car parking requirements sought with this amendment.

The application has been listed for a compulsory conference and a hearing as detailed below.

	Date	Time	Conduct
Compulsory Conference	24 October 2023	10am – 1pm	In person (55 King Street, Melbourne)
Major Cases Hearing	24 January 2024	10am – 4.30pm	In person (55 King Street, Melbourne)

The Monash City Council has identified you as person we are required to give notice of the application.

We enclose copies of:

- the application (excluding attachments); and
- the VCAT initiating orders.

A complete copy of the application, including amended plans, can be inspected at the main office of the Monash City Council and on the Monash City Council's website. Copies can also be obtained by request from our office.

If you want to become a party and take part in this proceeding, you must complete a Statement of Grounds online at www.vcat.vic.gov.au/respondplanning and give a copy to the Monash City Council and the applicant by **6 September 2023**.

Please contact us if you have any queries.

Level 20 Collins Arch 447 Collins Street Melbourne
GPO Box 769 Melbourne VIC 3001 Australia DX 204 Melbourne
T +61 3 8608 2000 F +61 3 8608 1000 minterellison.com

ME_212493259_1

Yours faithfully
MinterEllison



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921



APPLICATION BY A PERMIT HOLDER TO CANCEL OR AMEND A PERMIT

VCAT reference number (Office use only):

WHAT YOU CAN APPLY FOR

If you are a permit holder, owner or occupier of land, or someone entitled to use or develop land, you can apply to cancel or amend a permit under section 87 or 87A of the *Planning and Environment Act 1987*.

An application to amend a permit can only be made under section 87A if the permit, or a previously amended permit, was issued at VCAT's direction.

WHAT DO YOU WANT VCAT TO DO?

1. What do you want VCAT to do?

2. Which section of the *Planning and Environment Act 1987* are you applying under?

WHO IS MAKING THIS APPLICATION?

If there is more than one applicant, you can add joint applicant/s at the bottom of this page.

3. Who is making this application?

4. Full name of the individual, body corporate, company or authority making this application.

5. Are you?

- Owner of the land
 Occupier of the land
 Person entitled to use or develop the land

6. Do you wish to be identified as a person of Aboriginal and/or Torres Strait Islander descent?

7. What is your address?

This will be the address VCAT uses to correspond with you. It must be an address in Victoria. If you have a representative, we will send all our notices to your representative's address instead.

Street address

Suburb

State

Postcode

Phone number

Email

8. Is this a joint application?**IS SOMEONE REPRESENTING YOU?**

If you nominate a representative, we will send all our correspondences to your representative's address instead of your address. It must be an address in Victoria.

9. Is someone representing you? If No, skip to Question 11.**10. Details of your representative:**

Organisation name (if applicable)

Full name of representative

Street address

Suburb

State

Postcode

Phone number

Email

ABOUT THE PERMIT TO BE AMENDED OR CANCELLED**11. Address of the land the permit relates to:****12. Permit number:****13. Date the permit was issued:****14. If relevant, date the permit was previously amended:****15. Name of responsible authority:****16. If relevant, the name of any referral authority that was required to be given a copy of the application for the permit or application to amend the permit:**

17. Was the permit, or previously amended permit, issued at the direction of VCAT? If No, skip to Question 19.

Yes

18. If yes, what was the VCAT reference number and/or AUSTLII citation?

Goldman Johnson Pty Ltd v Monash CC [2021] VCAT 382 (Ref. P1573/2020)

19. When does the permit expire?

12/05/2024

20. Do you want to cancel the permit as a condition in another permit?

No

21. What is the development's estimated cost (s87A applications only)?

The estimated cost determines the application fee you must pay. For more details, go to www.vcat.vic.gov.au/planningfees.

Enter the cost in dollars. Do not include commas (,), nor the dollar sign (\$).

\$25,500,000.00

22. If you are applying under section 87 of the *Planning and Environment Act 1987*, do you believe that you are adversely affected by any of the following?

- a material mis-statement or concealment of fact about the permit application
- any substantial failure to comply with conditions of the permit
- any material mistake in the grant of the permit
- any material change in circumstances
- any failure to give notice
- any failure to comply with section 55, 61(2) or 62(1) of the *Planning and Environment Act 1987*

23. Why do you want the permit cancelled or amended?

The permit holder seeks to make changes to the permitted development.

24. Give the name and address of other persons who may have an interest in the outcome of this application.

If you need more space, attach another document. You can add any attachments at the bottom of this form.

Name	Email	Address	Phone number

Name	Interest

HEARING ARRANGEMENTS

You can ask to have your case heard in the Major Cases List (section 87A only) and/or Short Cases List. You can also ask for a practice day hearing or preliminary hearing. We will decide if it is appropriate to grant your request.

Find out more about the [Major Cases List](#) and [Short Cases List](#).

25. Are you applying for any of the following? If you select Short Cases List, skip to Question 27.

- Major Cases List (section 87A only)
 Short Cases List (section 87A only)

26. Are you applying for a practice day hearing or preliminary hearing?

None

If you selected practice day hearing or preliminary hearing, explain why you want this below:

27. Tell us if there is anything else you want us to consider when we arrange a hearing.

For example, provide details of any related current VCAT cases or ask for the hearing to take place at a specific VCAT venue.

PRESENTING YOUR CASE

28. How much time will you need to present your entire case at a final hearing?

Estimate the time you need to present, including time needed by any expert witnesses you will call.

hours minutes

29. How many expert witnesses will you call?

30. List the areas of expertise for your expert witnesses.

HEARING ASSISTANCE

If you are concerned about being in the same room as someone who will attend the hearing, we can make special arrangements to ensure your safety.

We can also arrange to have an interpreter for anyone who needs to attend the hearing or assist people with disability (eg. hearing loops).

These special arrangements are free.

31. Does anyone attending the hearing need an interpreter?

No

If yes, tell us who needs an interpreter and in what language/dialect:

32. Does anyone attending the hearing require any other type of special assistance?

E.g. Hearing loop, wheelchair access, additional arrangements for personal safety.

No

If yes, tell us who needs any other type of special assistance and what they require:

ACKNOWLEDGEMENT

By completing this application, I understand and acknowledge that:

- To the best of my knowledge, all information provided in this application is true and correct.
- 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.

Full name of person completing this form: Jarryd Gray

Date of acknowledgement: 25/07/2023

ATTACH THESE DOCUMENTS TO YOUR APPLICATION

You must attach the following:

- Copy of the title to the land, of not more than 14 days old
- Copy of the permit and a tracked-changed version of amendments asked for, if relevant
- Copy of the current endorsed plans, if relevant
- Copy of the proposed amended plans highlighting changes proposed, if relevant
- Copy of the permit that contains a condition requiring the cancellation or amendment of the permit, if relevant
- Copy of the VicPlan Planning Property Report that details the planning controls that apply to the land (such as zoning and overlays) and whether the land is in an area of Aboriginal Cultural Heritage Sensitivity or is identified as being bushfire prone

- If a cultural heritage management plan (CHMP) under the *Aboriginal Heritage Act 2006* is required, attach the approved CHMP
- If a cultural heritage management plan (CHMP) under the *Aboriginal Heritage Act 2006* is not required, attach a certified preliminary Aboriginal heritage test or other statement of reasons about why a CHMP is not required. This may include a copy of a due diligence statement prepared by an Aboriginal heritage consultant
- Copy of the VCAT decision relating to the permit, if relevant.

In addition to the above, please attach any other documents in support of your application.

Keep a copy of these documents for your records.

Attachments to this application:

Title	File Name
	S.87A Application (25.7.23).zip

Large files

For any file larger than 128MB a sharing link is required.

Please list (by line) the name of each file that is bigger than 128MB followed by the hyperlink.

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. We do not accept Pensioner Concession Cards or Department of Veteran Affairs health cards.



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

Which fee category are you applying for?

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. For more information about fee relief, go to www.vcat.vic.gov.au/feerelief.

If you are applying for fee relief, complete the [Fee Relief form](#) below. **If there is more than one applicant seeking a fee waiver or reduction, each applicant must fill out a separate form for your fee waiver application to be assessed.**

Are you applying for fee relief?

No

WHAT HAPPENS NEXT

If you have provided your email address, you will shortly receive an email from us with instructions about next steps including how to make payment (if applicable). If you have not provided an email address and payment is required, VCAT will contact you by telephone about making payment.

After we receive your application and open a VCAT case, we will send you and all other parties an order setting out what happens next, including dates to come to VCAT. The order will tell you the venue, time and date you must go to VCAT.

The order will also have your VCAT reference number. The number starts with 'P' and ends with the year the application was lodged (eg. P1/2020). Quote the reference number in all correspondences and documents about your case.

Contact us if you do not hear from us within two weeks of submitting your application.

NEED HELP WITH YOUR APPLICATION?

If you have any questions about completing this form, contact our Customer Service team:

- email admin@vcat.vic.gov.au
- call 1300 01 8228 (1300 01 VCAT) between 9 am and 4.30 pm Monday to Friday
- go to the Victorian Civil and Administrative Tribunal, Ground Floor, 55 King Street, Melbourne VIC 3000. We are open Monday to Friday from 8.30 am to 4.30 pm.

PRIVACY INFORMATION

For a copy of VCAT's privacy statement, go to www.vcat.vic.gov.au/privacy.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P942/2023
PERMIT NO.TPA/51498/A

APPLICANT BCentral Johnson Pty Ltd

RESPONSIBLE AUTHORITY Monash City Council

REFERRAL AUTHORITY Head, Transport for Victoria
Regional Roads Victoria

SUBJECT LAND 12-14 Johnson Street & 1 Mill
Road
OAKLEIGH VIC 3166

DATE OF ORDER 1 August 2023

ORDER

Hearings

- 1 This application is listed for a compulsory conference and a hearing as detailed below.

The in-person fixture(s) will be conducted at 55 King Street Melbourne. Details will be published in the law list late on the afternoon of the day prior to the hearing.

If there is any change to these details, the Tribunal will notify you.

Compulsory Conference:	
Date and time	24 October 2023 10.00 am – 1.00 pm
Conduct	In Person

Major Cases Hearing:	
Date and time	24 January 2024 10.00 am – 4.30 pm
Conduct	In Person

What the applicant must do

- 2 By **7 August 2023** the applicant must give the following documents to the responsible authority:
 - a copy of the application and all attachments; and
 - any other material given to the Tribunal; and
 - a copy of this order.



- 7 7
- 3 By **21 August 2023** the applicant must give notice of the application in accordance with the directions set out in Appendix A and the information received from the responsible authority in response to Order 5.
 - 4 By **7 September 2023** the applicant must give to the Tribunal:
 - a completed statement of notice; and
 - a list of names and addresses of all persons and authorities who were notified; and
 - a sample of the letter sent with the documents; and
 - all other information required by the statement of notice.

If a statement of notice is not given to the Tribunal by **7 September 2023**, this application may be struck out. No reminder will be sent.

What the responsible authority must do

- 5 By **14 August 2023**, the responsible authority must give the following to the applicant and the Tribunal:
 - the names and addresses of all relevant referral authorities;
 - the names and addresses of all persons it considers may have a material interest in the outcome of this application to amend a permit who should be given notice of the application; and
 - details of any other form of notice which should be given (such as the display of a sign on the land and/or publication of notice in the newspaper).
- 6 By **21 August 2023** the responsible authority must make available for inspection at its main office and display on its website a complete copy of the application and all attachments.
- 7 By **18 August 2023** the responsible authority must give the information required by the Tribunal's Practice Notice **PNPE2 – Information from Decision Makers (PNPE2)** to the Tribunal, unless this material has already been given in another related proceeding. The responsible authority must give a copy of the completed table of PNPE2 to the applicant. The attachments do not need to be given to the applicant.

Statement of grounds

- 8 If you want to become a party and take part in this proceeding, you must complete a Statement of Grounds online at www.vcat.vic.gov.au/respondplanning and give a copy to the responsible authority and the applicant by **6 September 2023**.

(Note: you must also pay a fee. Information regarding fees is available at www.vcat.vic.gov.au/fees. A fee does not apply to referral authorities.)



What all parties must do

- 9 No later than **5 business days** before the hearing, the parties must provide an electronic copy of their submissions and associated material (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to admin@vcat.vic.gov.au
- 10 All expert evidence must be filed and served in accordance with the Tribunal's Practice Note PNVCAT2 Expert Evidence.

Compulsory conference

- 11 All parties must attend the compulsory conference either in person or by a representative who has permission to settle the proceeding on their behalf.
(Note: See more information in Appendix B of this order).
- 12 No later than **10 business days** before the compulsory conference the applicant must give all parties a copy of any amended plans it wants to discuss or rely upon at the compulsory conference.
- 13 No later than **5 business days** before the compulsory conference the responsible authority must give the Tribunal and all parties a copy of draft permit conditions that may be discussed at the compulsory conference. A copy of the conditions must be brought to the compulsory conference in electronic Word format.
- 14 Any document to be relied on for the compulsory conference that is provided to the Tribunal must be clearly marked "**For Compulsory Conference**".

Requests for procedural orders

- 15 Any request for procedural orders from the Tribunal must be made in writing and a copy must be given to all parties.

Peter Gaschk
Member



HELP AND SUPPORT

Information for all parties is available at the Tribunal's website
www.vcat.vic.gov.au

For information about what happens after you make your application, visit
www.vcat.vic.gov.au/afterapplyplanning

For information about responding to an application visit
www.vcat.vic.gov.au/respondplanning

If you are not able to access the website, contact the Tribunal on 1300 01 8228
Monday to Friday 9.00am to 4.30pm to request a paper copy.

To find out about the Tribunal's support services such as interpreters, disability
support and security, visit www.vcat.vic.gov.au/support



APPENDIX A

HOW MUST THE APPLICANT GIVE NOTICE OF THIS APPLICATION?

This order requires the applicant to give notice of the application. Notice must be given to the following persons:

- the owner and occupier of the subject land,
- any persons who may have a material interest in the outcome of the application who are named in the application,
- any additional persons identified by the responsible authority in response to Order 5,
- all relevant referral authorities.

The notice must comprise the following

- a copy of the application (the attachments do not need to be given),
- a copy of this order,
- a description of the proposed changes to the permit, including details of the changes from the previous plans,
- a letter that must:
 - explain that an application to amend a permit has been made to the Tribunal,
 - advise that a complete copy of the application, including amended plans, can be inspected at the main office of the responsible authority and on the responsible authority's website
 - advise that a copy of the amended plans and/or other attachments can be obtained by request from the applicant
 - specify the date in Order 8 as the date by which any Statement of Grounds form must be given to the Tribunal, to the responsible authority and to the applicant,
 - advise that they must provide a completed Statement of Grounds form in order to take part in the proceeding,
 - specify the date and time scheduled for the hearing
 - if applicable, include a statement identifying those matters within the application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.
- If the responsible authority has advised that a sign must be displayed on the land, this must be done by the date specified in Order 3. You must use the sign provided by the Tribunal and it must be completed to include all the required information. You must maintain the sign in good order and condition for not less than 14 days from the day it is put up on the land.
- If the responsible authority has advised that notice of the application must be published in a newspaper, this must be done within 7 days of the date specified in Order 3.

The sign displayed on the land and the notice published in the newspaper must:

- Explain that if a person wants take part in this proceeding, they must complete a Statement of Grounds form (available at www.vcat.vic.gov.au/respondplanning) and specify that the completed Statement of Grounds form must be given to the Tribunal, to the responsible authority and to the applicant by the date specified in Order 8.
- Specify the date and time of the hearing as specified in Order 1.
- If applicable, set 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*.

Dispute about notice

If the applicant disagrees with the responsible authority about the extent of notice to be given, or the responsible authority fails to give the information by the date specified in Order 5, the applicant may request an urgent practice day hearing to resolve the dispute.



APPENDIX B

COMPULSORY CONFERENCE INFORMATION SHEET

What is a compulsory conference?

A compulsory conference is a private meeting between the parties to the proceeding.

With the assistance of a Tribunal member the parties can explore options to reach an agreement on all or some of the matters in dispute. The parties should come with an open mind and flexibility in considering options that could resolve the case.

Unless all parties agree, evidence of anything said or done in the course of a compulsory conference (including any document provided to the Tribunal for the purpose of the compulsory conference) is not admissible in any hearing before the Tribunal in the proceeding.

More information about compulsory conferences is available on the Tribunal'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 written permission to settle the proceeding on your behalf. If you do not attend, 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 that may affect you in an adverse way.

The Tribunal may make any of the following orders under the *Victorian Civil and Administrative Tribunal Act 1998*:

- If you are the applicant, your application may be dismissed or struck out.
- If you are not the applicant, you may be struck out as a party. This means that you can take no further part in the proceeding, including the hearing.
- The matter may also be settled, approving the proposal with or without changes.
- You may be ordered to pay the costs of the other parties in certain circumstances.

Who may attend a compulsory conference?

Only parties to the proceeding may attend a compulsory conference.

A person is a 'party' to the proceeding if the person:

- lodged an objection to the planning application
- has given a completed Statement of Grounds form to the Tribunal by the due date and paid the fee
- has indicated in their Statement of Grounds form that they intend to participate in the hearing

The following persons are NOT a party to a proceeding:

- a person who did not lodge an objection to the permit application
- a person who did not give their Statement of Grounds form by the due date and/or did not pay the fee



- a person who has indicated on their Statement of Grounds that they do not intend to participate in the hearing

If you are not a party to the proceeding but wish to be heard, you can attend at the start of the compulsory conference and ask the Tribunal to join you as a party to the proceeding. You will need to explain why you should be joined as a party to the proceeding. Other parties will also be given the opportunity to tell the Tribunal whether they agree or disagree about you being joined as a party. The Tribunal will then make a decision to join you as a party or not.

If you are not joined as party, you cannot take any further part in the compulsory conference and the Tribunal may make a final order or make other orders that may affect you in an adverse way.

A party who is struck out because they do not attend a compulsory conference cannot participate in any further compulsory conference or hearing.

What happens if agreement is reached at the compulsory conference?

If the parties present at a compulsory conference reach agreement, the Tribunal may make a final order to give effect to the agreement without a hearing being required. This can include allowing the proposal with or without changes.

What happens if agreement is not reached at the compulsory conference?

If parties present at the compulsory conference do not reach an agreement, a hearing date/s will be confirmed. An order will be issued by the Tribunal.

What happens if a partial agreement is reached at the compulsory conference?

If the parties 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 specifies issues that will not be able to be considered. The Tribunal may also make further orders that restrict the ability of parties to raise any matters that were resolved at the compulsory conference.

What should you bring to the compulsory conference?

Parties should come to the compulsory conference with a summary of their issues and solutions. This could include possible changes that could be made to the proposal in order to address your concerns or the concerns of other parties. The attached 'Summary of Issues and Solutions for a Compulsory Conference' may be used. The applicant for the permit should bring an extra copy of any relevant plans including elevations.



PLANNING AND ENVIRONMENT LIST SUMMARY OF ISSUES AND SOLUTIONS FOR A COMPULSORY CONFERENCE

VCAT reference number	P942/2023
Applicant	BCentral Johnson Pty Ltd
Responsible authority	Monash City Council
Your name	

It is suggested that each party identify key issues and potential solutions before the compulsory conference. This will help to clarify the key issues that the parties consider most important to them and possible solutions.

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

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

Signature: _____ **Date:** _____



PLANNING AND ENVIRONMENT LIST

STATEMENT OF NOTICE

To be completed by or for the Applicant

Subject Land	12-14 Johnson Street & 1 Mill Road OAKLEIGH VIC 3166	VCAT Ref: P942/2023
---------------------	---	----------------------------

I,(Print full name)
of(Print name of firm, if relevant)
.....(Print address)
.....

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

- On (**date of service**) I served on the responsible authority a hard copy and a copy in electronic PDF form of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order.
- (**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.

- (**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



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

Documents served:

- a copy of the application (excluding attachments) and any other relevant documents required to be served by VCAT's initiating order;
- a copy of the VCAT initiating order;

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

ALTERNATIVELY

5. There are no objectors or referral authorities to serve because:

- The responsible authority did not require notice to be given to anyone
- The application is exempt from third party notice and review rights

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.....

