# PLANNING AND ENVIRONMENT DIVISION GUIDELINES WITHDRAWAL OF APPLICATIONS

## EFFECT OF WITHDRAWAL

A withdrawal brings a proceeding before VCAT to an end and restores the status quo that existed immediately before the application was lodged.

## APPLICATIONS FOR REVIEW INVOLVING DECISIONS ABOUT PERMITS

Withdrawing an application involving a decision by a responsible authority about a planning permit has the effect of confirming the decision made by the responsible authority. That decision cannot be altered by agreement of the parties if an application is withdrawn. If parties have reached an agreement to alter the responsible authority’s decision in some way, the correct procedure is to seek a consent order to affirm, vary or set aside the decision.

### Section 82 – Objector’s application to review decision to grant a permit

Withdrawal of an objector’s application for review means that the challenge to the notice of decision is removed. Section 65(3)(b) of the *Planning and Environment Act 1987* requires the responsible authority to issue a permit in the form of the notice of decision.

If there is more than one application under section 82, the withdrawal of one application does not affect the other applications for review, which will proceed to hearing and determination in the normal way. It simply means that the objector who has withdrawn their application is no longer a party to the proceeding. If there are multiple applications under section 82, all must be withdrawn to enable the responsible authority to issue a permit in accordance with the notice of decision under section 65(3)(b) of the *Planning and Environment Act 1987*.

If an agreement has been reached by all the parties to modify plans or a permit condition, a consent order should be requested that varies the decision of the responsible authority and grants a permit subject to the modified conditions (or plans).

### Section 77 – Permit applicant’s application to review decision to refuse

Withdrawal of a permit applicant’s application to review the decision of a responsible authority to refuse to grant a permit means that the refusal stands and no permit can be issued unless a new application for planning permit is made.

If agreement has been reached by all parties, including objectors who are parties to the proceeding, for a permit to be granted subject to conditions, a consent order should be requested to set aside the decision of the responsible authority and grant a permit subject to conditions. If the permit applicant and the responsible authority agree but not all objectors who are parties to the proceeding, then the application must proceed to a hearing and the Tribunal must make a determination.

### Section 79 – Permit applicant’s application in respect of failure

Once an application for review of a responsible authority’s failure to grant a permit is made, the responsible authority may decide on the application for permit but must not issue or give a permit, notice of decision or notice of refusal to anyone except in accordance with section 84 of the *Planning and Environment Act 1987*. It is not open to a permit applicant to cancel the effects of lodging a failure application by seeking to withdraw it. An applicant cannot go back to a point in time in the process before the application for review was made and seek to reactivate the responsible authority’s ability to make a decision and then to continue to follow the processes that would normally flow from this under the *Planning and Environment Act 1987*. (See *Precision Projects Unlimited Pty Ltd v Bayside CC* [2007] VCAT 381)

Under section 4(2)(d) of the *Victorian Civil and Administrative Act 1998*, a failure to make a decision is a deemed refusal. The effect of withdrawal of a failure application in the event is that the deemed refusal stands. The permit application effectively lapses and no permit may be granted.

If the responsible authority decides to grant a permit and there are no objectors, or all the objectors agree, then pursuant to section 84 of the *Planning and Environment Act 1987*, the Tribunal may direct the principal registrar to advise the responsible authority that a permit in accordance with the responsible authority's decision may be issued. Alternatively, and preferably, the parties may seek a consent order, which embodies their agreement to set aside the responsible authority’s decision (deemed refusal) and grant a permit subject to conditions.

If not all objectors agree or the permit applicant disputes any aspect of the responsible authority’s decision, the application must proceed to a hearing and be determined by the Tribunal.

### Section 80 – Permit applicant’s application to review conditions

Withdrawal of a permit applicant’s application to review conditions means that the conditions in the permit or notice of decision remain unchanged.

If agreement is reached by all parties to the proceeding to modify or delete any conditions, a consent order should be requested to vary the responsible authority’s decision.

## INTENTION UNCLEAR

If a request to withdraw an application is made and it is unclear whether the applicant understands the effect of the withdrawal or in fact wishes to achieve a different outcome, the Tribunal may write to the applicant to clarify their intentions before giving leave to withdraw the application or may list the matter for a practice day hearing to consider the request for withdrawal.