

**Practice Note – PNPE9
Amendment of Planning Permit
Applications and Plans**

Application	Planning and Environment Division
Effective date	1 July 2020
Supersedes Practice Note	Previous version of PNPE9 issued on 13 December 2018
Special note	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
Further information	A complete set of current practice notes are available on the Tribunal's website at www.vcat.vic.gov.au .

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Introduction

- 1 The Planning and Environment Division reviews some of the decisions made by responsible authorities on applications for the use and development of land, including decisions on planning permit applications under the *Planning and Environment Act 1987*. The Planning and Environment Division also makes decisions to amend permits issued at its direction.
- 2 Sometimes permit applicants want to change what they have applied for, including the plans submitted with their permit application. A person may also want to change the use and development authorised by a planning permit or plans.
- 3 As a guiding principle, amendments should not be used to materially increase the scale or intensity of a proposal or to introduce significant new aspects that have not already been considered by the original decision-maker.
- 4 If a permit applicant wants to change their permit application after an application for review has been lodged at the Tribunal, then they can only do this if they follow the steps described in this practice note. If an applicant wants to change the application after an application has been lodged with the Tribunal, this can be done if the steps in this practice note are followed.
- 5 The Tribunal will then decide whether to allow the changes sought, usually at the start of the hearing.
- 6 This practice note sets out:
 - what permit applicants must do when they want to amend their permit application after an application for review has been lodged with the Tribunal;
 - what applicants must do if an application is sought to be amended after an application under section 87A of the *Planning and Environment Act 1987* has been lodged with the Tribunal;
 - what other people must do if they want to become involved in the proceeding as a result of a request to amend the permit application or application; and
 - what the Tribunal can do in response to a request to amend a permit application or application.
- 7 In any proceeding, the Tribunal may at its discretion vary the operation of a practice note by direction or order. This may be done as an outcome of a compulsory conference or at a practice day hearing.
- 8 This practice note also sets out what permit applicants and applicants must do if they want the Tribunal to vary any of the requirements of this practice note.
- 9 This practice note has been issued by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

When does this Practice Note apply?

- 10 This practice note applies when a permit applicant or applicant wants to amend the permit application or application in the following proceedings under the *Planning and Environment Act 1987*:

- (a) Section 77 – refusal to grant a planning permit.
 - (b) Section 79 – failure of responsible authority to make a decision on a planning permit application within statutory timeframes.
 - (c) Section 80 – conditions in a permit.
 - (d) Section 82 – decision to grant a permit.
 - (e) Section 87A – application to amend a permit that was issued at the direction of the Tribunal.
- 11 This practice note **does not apply** in the following instances:
- (a) proceedings under other legislation such as environment protection legislation;
 - (b) administrative or corrective amendments to applications, such as amending the name of a permit applicant;
 - (c) circulating draft plans for discussion at a compulsory conference;
 - (d) where the Tribunal has made orders in the particular proceeding which vary or override this practice note; and
 - (e) where notice of the permit application is required but has not yet been given.
- 12 Clauses 13 – 26 apply to proceedings under section 87A of the *Planning and Environment Act 1987* except that a reference to ‘permit applicant’ should be a reference to ‘applicant’ and a reference to ‘permit application’ should be reference to ‘application’.

What must permit applicants do to amend their permit application?

What must be done by the permit applicant?

- 13 If a permit applicant wants to amend their application or application plans, they must follow the steps in column 2 of Table 1 by the corresponding timeframe in column 3.

Table 1: Requirements of permit applicants

1. Step	2. What must be done?	3. When must it be done?
13.1	<p>Give notice of the amendment:</p> <p>The permit applicant must give notice in accordance with clause 14 and Table 2 of this practice note.</p>	<p>Notice given in person or by email: must be delivered or emailed to the recipients at least 30 business days before the first day of the Tribunal hearing.</p> <p>Notice given by post: must be put in the post at least 35 business days before the first day of the Tribunal hearing.</p>

13.2	<p>Confirm with the Tribunal that notice has been given:</p> <p>The permit applicant must file a completed statement of service with the Tribunal using PNPE9 Form B, available on the VCAT website.</p>	<p>Three business days after notice has been given.</p>
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How does the permit applicant have to give notice?

- 14 A permit applicant must give notice of the proposed amended application by:
- (a) giving the people listed in column 2 of Table 2,
 - (b) the documents specified in columns 3 to 7 of Table 2 if there is a tick in the relevant box. The documents must contain the information set out in Table 3.

Table 2: Information to be provided to various categories of people

1.	2. People to be given documents	Documents to be given				
		3. Cover letter	4. PNPE9 Form A	5. Statement of changes	6. Amended application/ plans	7. Supporting material
14.1	Responsible authority	✓	✓	✓	✓	✓
14.2	Referral authorities (updated list to be obtained – see clause 15).	✓	✓	✓	✓	✓
14.3	Other parties to the Tribunal proceeding	✓	✓	✓	✓	✓
14.4	People who have already filed a statement of grounds with the Tribunal, but indicated they do not intend to participate in the hearing.	✓	✓	✓		
14.5	People who objected to the permit application, but have not filed a statement of grounds with the Tribunal. Note: This does not apply to applications under section 87A of the <i>Planning and Environment Act 1987</i> .	✓	✓	✓		

14.6	<p>Persons the responsible authority required to be notified of original permit application (updated list to be obtained– see clause 15).</p> <p>In applications under section 87A of the <i>Planning and Environment Act 1987</i> notice must be given to all persons who were originally notified of the application under section 87A.</p>	✓	✓	✓		
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Table 3: Information that must be contained in the documents served

Document	Information that must be contained in document
Cover letter	<p>Must advise the recipient, as appropriate:</p> <ul style="list-style-type: none"> • if they are not a party to the Tribunal proceeding but wish to be, or if they are already a party and want to amend their statement of grounds, they must lodge a completed statement of grounds form with the Tribunal (available on the VCAT website); • the date by which statement of grounds forms must be lodged with the Tribunal (date to be calculated by the permit applicant in accordance with clause 16 of this practice note); • they can obtain more information including copies of amended plans and supporting material from the permit applicant; • the date of any hearing and/or compulsory conference.
PNPE9 Form A	<p>Must be:</p> <ul style="list-style-type: none"> • in the form available on the Tribunal website and completed with relevant information.
Statement of changes	<p>Must contain:</p> <ul style="list-style-type: none"> • a full list of any amended plans, including the drawing number, revision number and the date of each plan; • a full list of any plans which are not being amended, but which are to remain part of the application plans; • a list specifying the precise nature of all changes from the previous plans or other changes made to the application. Any new or removed features and increases or reductions in features originally proposed must be clearly and accurately described. For example, “An increase in the building’s setback from the east boundary by 1m to 3.5m;” • the reasons why the permit applicant wants to make the changes; • a detailed explanation of each of the changes and how that will improve the proposal or respond to issues that have been raised about the proposal.
Amended application/ plans	<p>Must:</p> <ul style="list-style-type: none"> • highlight where changes have been made using notations or other graphic symbols (e.g. ‘cloud’). Examples of modified features include building heights, setbacks from boundaries, window location and design, number and dimension of car spaces, garden area, site coverage, permeability, building materials, proposed floor and site levels including any earthworks and vegetation to be removed; • include plans which are readable, able to be scaled and contain key dimensions.
Supporting material	<p>Must include sufficient information to allow the Tribunal and parties to assess the amended plans/application, such as:</p> <ul style="list-style-type: none"> • updated garden area plans including updated calculations; • updated shadow diagrams; • updated streetscape diagrams showing proposed and existing buildings; • updated traffic and car parking assessments; • an updated waste management plan; • an updated planning assessment, including assessment under clause 54, 55, 56 or 58 of the Planning Scheme; • an updated sustainability assessment.

Updating the list of people originally notified

- 15 No more than 14 days before giving notice under clause 13, the permit applicant must obtain from the responsible authority an updated list of:
- (a) the current owners and occupiers of the properties to whom notice of the permit application was given; and
 - (b) all relevant referral authorities.

Calculation of date by which statement of grounds must be lodged

- 16 The date that the permit applicant must include in PNPE9 Form A as the date by which a statement of grounds must be lodged with the Tribunal must be:
- (a) the same on all notices; and
 - (b) must be not less than **19 business days** after the day the permit applicant gave the last of the notices required by clause 13.

What must permit applicants do if they want to vary the requirements of this practice note?

- 17 If a permit applicant wants the Tribunal to make orders which vary the requirements of this practice note, then they should write to the Tribunal, all parties to the proceeding and referral authorities:
- (a) requesting a practice day hearing;
 - (b) explaining the orders that the permit applicant would like the Tribunal to make and why they consider those orders are appropriate;
 - (c) attaching a copy of the amended application including any application plans in their proposed amended form; and
 - (d) if the other parties consent to the request, attaching a copy of the consent of the other parties including a statement from each party giving reasons for their consent.
- 18 The above does not apply to a request made during a compulsory conference.

What must you do if you are given notice that a permit applicant wants to amend the permit application?

What must you do if you are already a party to the Tribunal proceeding?

- 19 If you are already a party to the proceeding and you receive notice that the applicant wants to amend its permit application or permit application plans, you may:
- (a) do nothing, and continue to rely on the statement of grounds that you have already filed with the Tribunal;
 - (b) amend your statement of grounds;
 - (c) object to the request for the amendment to the permit application, explaining the reasons for your objection.

What must you do if you are not already a party to the Tribunal proceeding?

- 20 If you are not a party to the proceeding and have been notified that the permit applicant wants to amend its permit application or permit application plans, you may:
- (a) if you do not want to be involved in the proceeding – do nothing;

- (b) if you want to become a party to the proceeding –
 - (i) lodge a statement of grounds (form available from the VCAT website) with the Tribunal by the date specified in the notice;
 - (ii) tick the box in the statement of grounds form indicating that you intend to appear and present a submission at the hearing;
 - (iii) pay the relevant fee; and
 - (iv) give a copy of the statement of grounds to the permit applicant and the responsible authority by the date specified in the notice.
- (c) if you do not want to become a party to the proceeding, but would like to provide a statement of grounds for the Tribunal’s consideration:
 - (i) lodge a statement of grounds (form available from the VCAT website) with the Tribunal by the date specified in the notice;
 - (ii) tick the box in the statement of grounds form indicating that you do not intend to appear and present a submission at the hearing;
 - (iii) give a copy of the statement of grounds to the permit applicant and the responsible authority by the date specified in the notice.

Note: If you choose this option (c), you will not be a party to the proceeding and will not be able to participate in any compulsory conference or be heard at the hearing and you will not receive any further correspondence from the Tribunal.

What happens if your statement of grounds is lodged late or you did not pay the fee?

- 21 If your statement of grounds:
- (a) is lodged with the Tribunal after the date specified in the notice; or
 - (b) the relevant fee is not paid;
- unless the Tribunal orders otherwise, you will not be a party to the proceeding and will not be able to participate in any compulsory conference or be heard at the hearing. The Tribunal will still consider your statement of grounds when it makes its decision.

What does the Tribunal do when it receives a request to amend the permit application?

When will the Tribunal make a decision on the amendment request?

- 22 The Tribunal will normally consider a request to amend a permit application including proposed amendments to plans at the commencement of the hearing. However, an application may be considered earlier than this, for example at a practice day hearing.

What will the Tribunal consider when deciding whether to grant the amendment request?

- 23 In deciding whether to amend a permit application including any plans, the Tribunal may consider the following matters, as relevant:
- (a) the extent and impact of the changes;
 - (b) whether all parties and potentially affected persons including referral authorities have been given sufficient time to consider the proposed amendment before a hearing;

- (c) whether the time limits in this practice note have been complied with and any prejudice to a party or potentially affected person arising from any non-compliance;
- (d) whether the amendment improves the proposal or responds to issues that have been raised in the course of the decision making process;
- (e) whether the amendment materially increases the scale or intensity of a proposal or introduces significant changes or new aspects that have not been considered by the responsible authority at the first instance;
- (f) in the case of proceedings under s. 80 of the *Planning and Environment Act 1987*, whether the proposed amendment relates to the condition(s) under review;
- (g) whether the amendment involves the consideration of additional planning controls or policies that were not previously relevant; and
- (h) whether any other circumstances would support the amendment.

What happens if the Tribunal decides to allow the amendment request?

- 24 If the Tribunal amends a permit application, this is substituted as the application in the proceeding. This means that the Tribunal Member hearing the proceeding will consider the merits of the amended permit application including any amended plans.
- 25 In a proceeding for the review of permit conditions under section 80 of the *Planning and Environment Act 1987*, the Tribunal may allow an amendment request conditionally, pending the final determination of the proceeding. This would enable the hearing to proceed on the basis of the applicant's 'preferred' permit application or plans. However, there would be no formal substitution of the application or plans at the hearing in a manner that may pre-empt the outcome in the proceeding, or create possible anomalies for the permit or plans if the application for the review of particular permit conditions is wholly or partly unsuccessful.

What happens if the Tribunal decides to refuse the amendment request?

- 26 If the Tribunal refuses the request to amend the permit application, the hearing will proceed only in relation to the plans and material that were before the responsible authority. If parties had prepared for the hearing based on the assumption that the plans would be amended and are not in a position to make submissions in circumstances where the plans are not amended, then the **Tribunal may consider whether the hearing should be adjourned.**

- END OF PRACTICE NOTE -