

**Practice Note – PNPE8
Major Cases List**

Application	Planning and Environment List
Effective date	14 December 2018
Supersedes Practice Note	Previous version of PNPE8 issued on 1 December 2016
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 and the forms referred to in this practice note are available on the Tribunal’s website at www.vcat.vic.gov.au .

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Introduction

- 1 The Major Cases List is a sub-list of the Planning and Environment List that has been established to expedite the resolution of applications involving larger development projects that may (if approved) contribute materially to economic activity in Victoria. The Major Cases List operates on a user-pays fee basis.
- 2 This practice note sets out the criteria for entering a proceeding in the Major Cases List, and the general procedures and timeframes that will apply.
- 3 In any proceeding, the Tribunal may, at its discretion, vary the operation of a practice note by direction or order.
- 4 This practice note has been issued by the Rules Committee pursuant to section 158 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic)
Daily Hearing Fee	The fee payable for each day of the hearing or part of a day, including an accompanied site inspection, but does not include a practice day hearing or compulsory conference.
Transfer Fee	The fee payable to have an application under sections 82 or 82B of the <i>Planning and Environment Act 1987</i> (Vic) or s 33B of the <i>Environment Protection Act 1970</i> (Vic) entered into to the Major Cases List
Permit	A planning permit under the <i>Planning and Environment Act 1987</i> (Vic), or a licence or works approval under the <i>Environment Protection Act 1970</i> (Vic).
Primary decision maker	The responsible authority under the <i>Planning and Environment Act 1987</i> (Vic), or the Environment Protection Authority under the <i>Environment Protection Act 1970</i> (Vic).
Regulations	<i>Victorian Civil and Administrative Tribunal (Fees) Regulations 2016</i> (Vic)
Rules	<i>Victorian Civil and Administrative Tribunal Rules 2018</i> (Vic)

- 5 A word or term used in this practice note:
- (a) has the same meaning if defined in the Act or in the *Interpretation of Legislation Act 1984* (Vic); and
 - (b) has the same meaning as defined or used in the *Planning and Environment Act 1987* (Vic) or the *Environment Protection Act 1970* (Vic).

Which applications are eligible to be entered into the Major Cases List?

- 6 An application to the Tribunal under sections 77, 79, 80, 82, 82B, or 87A of the *Planning and Environment Act 1987* is eligible for inclusion in the Major Cases List if the proceedings are in respect of a use or development of any kind, irrespective of the estimated cost of development.
- 7 An application to the Tribunal under sections 33, 33A or 33B of the *Environment Protection Act 1970* is eligible for inclusion in the Major Cases List if the proceedings are in respect of a development of any kind.
- 8 Other applications in the Planning and Environment List (i.e. other than under sections 77, 79, 80, 82, 82B or 87A of the *Planning and Environment Act 1987* or sections 33, 33A or 33B of the *Environment Protection Act 1970*) are not eligible for inclusion in the Major Cases List. However, the Tribunal may fix a related application for hearing together with an application already included in the Major Cases List if it is satisfied that it is appropriate to do so.

How is an application under sections 77, 79, 80 or 87A of the *Planning and Environment Act 1987* or sections 33 or 33A of the *Environment Protection Act 1970* included in the Major Cases List?

- 9 For an application under sections 77, 79, 80 or 87A of the *Planning and Environment Act 1987* or sections 33 or 33A of the *Environment Protection Act 1970*, the applicant must elect at the time of commencement of the application if the proceeding is to be included in the Major Cases List, by:
- (a) lodging the relevant 'Application for Review to the Major Cases List' form with the Tribunal; and
 - (b) paying the prescribed application fee under the Regulations.
- 10 The Major Cases List application forms can be found on the Tribunal's website. A different (higher) application fee applies where the applicant elects to have the proceeding included in the Major Cases List.

- 11 An application under sections 77, 79, 80 or 87A of the *Planning and Environment Act 1987* or sections 33 or 33A of the *Environment Protection Act 1970* will be automatically included in the Major Cases List if the applicant has made an election in accordance with paragraph 9.
- 12 If the applicant does not make an election to include the proceeding in the Major Cases List at the time of commencement of the application under sections 77, 79, 80 or 87A of the *Planning and Environment Act 1987* or sections 33 or 33A of the *Environment Protection Act 1970*:
- (a) the application will be subject to the usual (lower) application fee and will be processed and heard in accordance with the usual procedures and hearing timeframes that apply in the Planning and Environment List for applications of that type; and
 - (b) the applicant cannot later apply to have the proceeding transferred to the Major Cases List.

An applicant should therefore carefully consider the potential consequences of making an election to have a proceeding included or not included in the Major Cases List, at the time of commencement of the application.

How is an application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* included in the Major Cases List?

- 13 For an application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* the permit applicant may elect to have the proceeding entered in the Major Cases List, by:
- (a) lodging the 'Application by Permit Applicant to enter a proceeding into the Major Cases List' form with the Tribunal; and
 - (b) paying the prescribed fee under the Regulations.
- This means that an objector applicant for review will pay the usual application fee to commence an application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970*, and the permit applicant may choose to enter the proceeding into the Major Cases List by paying a separate fee. The Major Cases List transfer form can be found on the Tribunal's website.

- 14 Where there is more than one application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* arising from the same permit application, only one form is required, and only one fee is payable, to enter the proceeding into the Major Cases List.
- 15 If a permit applicant does not choose to enter the proceeding into the Major Cases List, the application will continue to be processed and heard in accordance with the usual procedures and hearing timeframes that apply in the Planning and Environment List for applications of that type.

Can an application be removed from the Major Cases List?

- 16 Once an application has been included in the Major Cases List, the permit applicant or permit holder cannot seek the removal of the proceeding from the Major Cases List or 'opt out' of the Major Cases List. However, the permit applicant or permit holder may lose the benefit of the expedited Major Cases List hearing timelines (without the application being removed from the Major Cases List) in certain circumstances set out in this practice note.

What fees are payable in the Major Cases List?

- 17 The fees for proceedings in the Major Cases List are prescribed under the Regulations. The fees are also set out on the Tribunal's website.
- 18 For an application under sections 77, 79, 80 or 87A of the *Planning and Environment Act 1987* or sections 33 or 33A of the *Environment Protection Act 1970* that is entered into in the Major Cases List, the prescribed application fee must be paid when the relevant Major Cases List application is lodged with the Tribunal.
- 19 For an application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* that is entered into the Major Cases List, the prescribed fee must be paid when the transfer form is lodged with the Tribunal.

- 20 A daily hearing fee is payable under the Regulations for each day or part of a day of a hearing in the Major Cases List. This includes a preliminary hearing or an accompanied site inspection forming part of a hearing, but does not include a practice day hearing or compulsory conference.
- 21 The daily hearing fee is payable for all proceedings in the Major Cases List, even if the hearing does not commence within the expedited Major Cases List hearing timelines set out in this practice note.
- 22 Practice note *PNVCAT6 – Hearing Fees* also applies in relation to hearing fees.

How long will Major Cases List proceedings take?

- 23 The following timelines will generally apply to Major Cases List proceedings:
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|--------------------|---|
| 5 weeks | date of lodgement to practice day hearing.
(A practice day hearing will generally be listed on the Friday following the elapse of 5 weeks from the date of lodgement.) |
| 8-10 weeks | date of lodgement to compulsory conference (if required). |
| 16-22 weeks | date of lodgement to commencement of final hearing. |
| 6 weeks | date of last day of hearing/final submissions to decision. |
- 24 The actual final hearing dates may vary having regard to matters including the nature of the proceeding, pending caseloads in the Major Cases List, and the availability of specialist members (if required). The Tribunal will publish updated information on its website from time to time about current Major Cases List hearing timelines.
- 25 If an application under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* is entered into the Major Cases List, the timelines in this practice note will generally run from the date the transfer fee is paid by the permit applicant, rather than the date of lodgement of the application. A permit applicant should therefore act promptly to enter a proceeding under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* into the Major Cases List if it wishes to obtain the maximum benefit of the expedited Major Cases List hearing timelines.
- 26 The Tribunal may vary the timelines in this practice note or make other procedural orders, in its discretion, having regard to the circumstances of any particular application and/or to facilitate the fair and efficient case management and hearing of proceedings in the Major Cases List. Parties should, however,

be ready to proceed in accordance with the expedited Major Cases List hearing timelines, and the Tribunal will generally only make an order to vary these timelines in exceptional circumstances.

- 27 The permit applicant or permit holder may lose the benefit of the expedited Major Cases List hearing timelines (without the application being removed from the Major Cases List) if the permit applicant or permit holder:
- (a) fails to provide a fully completed application form containing all of the relevant information, plans and attachments required by the relevant application form and this practice note;
 - (b) fails to pay a prescribed fee under the Regulations;
 - (c) delays the giving of notice of an application to third parties (if required) or fails to provide a statement of service in relation to such notice;
 - (d) makes a late application to enter a proceeding under sections 82 or 82B of the *Planning and Environment Act 1987* or section 33B of the *Environment Protection Act 1970* into the Major Cases List;
 - (e) fails to comply with a standard direction or order of the Tribunal;
 - (f) is not ready to proceed to a scheduled hearing; or
 - (g) requests an adjournment.

What general procedures apply to the Major Cases List?

- 28 The practices and procedures of other relevant practice notes apply to a proceeding in the Major Cases List unless modified by this practice note or by the Tribunal. This includes practice notes applying to proceedings in all Lists of the Tribunal, as well as other practice notes operating specifically in the Planning and Environment List.

What happens at the practice day hearing?

- 29 The purpose of the practice day hearing will be to:
- (a) consider whether the compulsory conference should proceed;
 - (b) give further directions about the future conduct of the proceeding, including any changes to the standard directions or allocated hearing dates; and/ or
 - (c) consider any other relevant matters.

- 30 The Tribunal will not ordinarily send parties a separate hearing notice for a practice day hearing. The standard direction indicating the date of the practice day hearing will serve as notice of that hearing.
- 31 The parties are expected to attend or be represented at the practice day hearing. An objector party may authorise another objector to represent his or her interests. Failure to attend at a practice day hearing may lead to orders being made in the absence of that party.

Are there other ways to resolve a dispute?

- 32 A proceeding in the Major Cases List will normally be referred to compulsory conference unless the Tribunal is satisfied that the proceeding is unlikely to settle, in whole or in part, at compulsory conference. In addition to promoting a settlement of the proceeding, a compulsory conference may be used to clarify or narrow the issues in dispute. This will ensure that any final hearing proceeds efficiently and deals with the substantive issues.
- 33 The Tribunal will not ordinarily send parties a separate hearing notice for compulsory conference. The standard direction indicating the date of the compulsory conference will serve as notice of the compulsory conference, unless the compulsory conference date is varied or vacated at the practice day hearing.

Can plans be amended in a Major Cases List proceeding under the *Planning and Environment Act 1987*?

- 34 Any application to amend plans or the permit application in a proceeding under the *Planning and Environment Act 1987* in the Major Cases List must still comply with the requirements set out in *Practice Note PNPE9 – Amendment of Plans & Applications*, unless the Tribunal makes an order to the contrary.
- 35 Given the expedited Major Cases List hearing timelines, there will generally be insufficient time for a permit applicant to give notice of an application to amend plans in compliance with Practice Note PNPE9 between the dates scheduled for the compulsory conference and hearing. A permit applicant is therefore encouraged to give notice of any application to amend plans before any compulsory conference. This will enable any possible amendment to the plans to be discussed with the other parties at the compulsory conference.

- 36 The Tribunal will only make an order to reduce the times specified in Practice Note PNPE9 in exceptional circumstances. This may, in appropriate circumstances, include a further amendment to plans arising from compulsory conference. However, there is no guarantee that the Tribunal will reduce the time for the giving of notice of amended plans, and a late application to amend plans may lead to an adjournment and/or the permit applicant losing the benefit of the expedited Major Cases List hearing timelines.

Can a proceeding in the Major Cases List be adjourned?

- 37 An adjournment of a hearing in the Major Cases List will only be granted in exceptional circumstances. The non-availability of witnesses or legal counsel will not normally be accepted as providing a basis for the grant of an adjournment
- 38 If a permit applicant or permit holder wishes to adjourn a hearing because it is not ready for the hearing or for some other reason, the Tribunal may grant the adjournment on the basis that the permit applicant loses the benefit of the expedited Major Cases List hearing timelines.

- END OF PRACTICE NOTE -