

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

<b>Application</b>	Planning and Environment List
<b>Effective date</b>	13 December 2018
<b>Supersedes Practice Note</b>	Previous version of PNPE9 issued on 1 July 2016
<b>Special note</b>	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
<b>Further information</b>	A complete set of current practice notes are available on the Tribunal’s website at <a href="http://www.vcat.vic.gov.au">www.vcat.vic.gov.au</a> .

**Contents**

<b>Topic</b>	<b>Page No</b>
Introduction	2
Definitions	2
When does this practice note apply?	3
How is Notice of an Amended Application or Plan given?	4
What is the Minimum Period of Service for Documents?	5
What are Statement of Grounds and how are they provided?	5
What Considerations will the Tribunal Take Into Account?	7

## Introduction

- 1 The Planning & Environment List reviews decisions made by authorities in relation to the development and use of land. This includes a review of decisions made by a responsible authority whether to grant, refuse, or amend a planning permit, works approval or licence; or to impose conditions.
- 2 Permit applicants sometimes seek to amend an application or the plans that form part of an application. The ability to amend plans introduces certainty to the planning and environmental approval process and saves time and resources of authorities, applicants, objectors and the Tribunal by enabling improvements to be made to a proposal without a new application being required.
- 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 been considered by the responsible authority or primary decision-maker at first instance.
- 4 It is also important to give the responsible authority and those potentially affected by amended plans a reasonable opportunity to consider them before a hearing.
- 5 Plans may be amended following consultation or a compulsory conference between the parties, or as a result of improvements suggested by expert witnesses, or respond to issues raised by the responsible authority or objectors during the permit process.
- 6 This practice note sets out the procedures to be followed by applicants when submitting amending plans or seeking to revise other aspects of an application; and details the considerations the Tribunal will take into account when making a decision whether to amend an application in a proceeding.
- 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. A representative order may be applied for in cases where the number of persons to be served with notice is substantial.
- 8 This practice note has been issued by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

## Definitions

Word	Definition
<b>Act</b>	<i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic)
Applicant	An applicant for a planning permit or for a works approval or licence to which clause 64 of Schedule 1 of the Act applies; or an applicant to amend a permit under section 87A of the <i>Planning and Environment Act 1987</i> (Vic).
Application	An application for a permit under the <i>Planning and Environment Act 1987</i> (Vic); an application for a works approval or licence under the <i>Environment Protection Act 1970</i> (Vic); or an application to the Tribunal to amend a

	permit under section 87A of the <i>Planning and Environment Act 1987</i> (Vic).
Party	A party to a proceeding for the purpose of section 59 of the Act. It does not include a person who made an objection to the responsible authority or primary decision maker unless that person is the applicant for review, has been joined under s 60 of the Act, or has become a party by filing a statement of grounds within time and who has not made a statement under clause 56(5) of Schedule 1 of the Act that the person does not intend to participate in the hearing of the proceeding.
Primary decision maker	The Environment Protection Authority or a delegated agency in respect of an application for a works approval or licence within the meaning of clause 64(1) (b) of Schedule 1 of the Act.
Statement of grounds	A statement of grounds under clause 56 of schedule 1 of the Act.
<b>Rules</b>	<i>Victorian Civil and Administrative Tribunal Rules 2018</i> (Vic)

- 9 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).

### When does this Practice Note apply ?

- 10 This practice note applies to notices to amend plans or applications in the following proceedings:
- (a) an application to review a decision by a responsible authority under the *Planning and Environment Act 1987* (Vic):
    - (i) to refuse to grant a permit under s 77;
    - (ii) to fail to grant a permit under s 79;
    - (iii) to grant a permit under s 82;
  - (b) an application to amend a permit under s 87A under *the Planning and Environment Act 1987* (Vic);
  - (c) an application to review the refusal of the Environment Protection Authority or a delegated agency in relation to a decision under the *Environment Protection Act 1970* (Vic):
    - (i) to issue a works approval under s 33(1)(a);
    - (ii) to determine an application for a works approval under s 33(1)(b);
    - (iii) to issue a licence under s 33A(1)(a);
    - (iv) to determine an application for a licence under s 33A (1).

- 11 This practice note **does not apply** in the following instances:
- (a) an application to review conditions where a permit has issued under s 80 of the *Planning and Environment Act 1987* (Vic);
  - (b) procedural amendments to applications made under s 127 or clause 64 of Schedule 1 of the Act, such as amending the name of an applicant or the address of the land;
  - (c) circulating draft plans for discussion at a compulsory conference; and
  - (d) amending an application where no previous notice of the application has been given and where the Tribunal (after considering the views of the responsible authority or primary decision-maker) has allowed the amendment prior to directing that notice of the amended application be given. Any subsequent amendments need to comply with this practice note

### How is Notice of an Amended Application or Plan given?

- 12 An applicant who wishes to apply to the Tribunal to amend an application must at least 30 business days prior to any date set for the hearing of the proceeding give notice as follows. The provisions of clauses 13 and 14 apply to calculating dates.

#### Notice to parties

- (a) The applicant must file with the Tribunal and serve on all parties to the proceeding, the responsible authority or primary decision-maker, the following documents:
  - (i) A completed notice of amendment of an application ([PNPE9 form A](#)), which includes the date by which a statement of grounds must be lodged with the Tribunal.
  - (ii) A statement in writing:
    - describing the changes from the previous plans or other changes made to the application; and
    - setting out why the changes are applied for and demonstrating how they will improve the proposal or respond to issues that have been raised in the course of the decision-making process.
  - (iii) A clearly readable, scaled copy, with dimensions, of any amended plans, highlighting where changes have been made.
  - (iv) Details of any other amendment to the application and supporting material.

#### Notice to non-parties

- (b) The applicant must serve the following documents on any referral authorities, persons who were notified of the original application, or lodged an objection with the responsible authority or primary decision-maker, or lodged a statement of grounds with the Tribunal, but who are not parties (this includes any persons who have lodged a statement of grounds and made a statement under clause

56(5) of Schedule 1 of the Act that the person does not intend to participate in the hearing of the proceeding):

- (i) all documents identified in clause 12(a), (i) and (ii); and
  - (ii) a blank statement of grounds with the following details completed:
    - subject land site address;
    - VCAT reference number; and
    - date by which a statement of grounds must be lodged with VCAT.
- (c) provide notification to persons of how to access copies of amended plans or other amendments to the application and any supporting material by:
- (i) inspecting them during business hours at the main office of the responsible authority or primary decision-maker; or
  - (ii) requesting the applicant to provide copies (including details of how to make such a request).

#### **Statement of service**

- (d) Within three business days of giving notice to amend an application, the applicant must file with the Tribunal a completed statement of service ([PNPE9 form B](#)).

#### **Forms available on the website**

The forms referred to in this clause are available on the Tribunal website.

### **What is the Minimum Period of Service for Documents?**

- 13 A notice or other document under this practice note will be taken to have been served on a person –
- (a) in the case of delivery in person—at the time the document is delivered;
  - (b) in the case of posting—two business days after the day on which the notice was posted;
  - (c) in the case of facsimile or other electronic transmission—at the time the facsimile or transmission is sent. If a facsimile or other electronic transmission is sent after 4.00 p.m. on any day, it must be taken to have been sent on the next business day.
- 14 For the purpose of calculating the minimum period where service is by post the following generally applies:
- (a) notice to amend an application pursuant to clause 12 – the notice should be posted not less than 33 business days prior to the first day of hearing.
  - (b) Statement of grounds – the date by which a statement of grounds must be lodged with the Tribunal should be not less than 17 business days from the day of posting the notice required by clause 12.

- 15 The due date by which a statement of grounds must be received by the Tribunal must be the same on all notices whether they are served in person, electronically or by post.

### **What are Statements of Grounds and how are they provided?**

- 16 Upon request or as directed by the Tribunal, the responsible authority or primary decision-maker must provide the applicant with the names and addresses of any person who must be given notice under this practice note. Applicants, responsible authorities and primary decision-makers must ensure that the names and addresses of persons to be given notice under this practice note are up to date and take account of any changes of ownership or new dwellings.

#### **Amended statement of grounds by party**

- 17 A person who is already a party to the proceeding may amend their statement of grounds at any time prior to the hearing in response to any notice of an amended application by filing with the Tribunal and serving on the applicant and the responsible authority or primary decision-maker a copy of their amended statement of grounds. If no amended statement of grounds is filed a party can rely upon their original statement.

#### **Statement of grounds lodged by non-party**

- 18 A person who is not a party, may become a party if:
- (a) a statement of grounds is lodged with the Tribunal by the date specified in the notice (the due date);
  - (b) in the statement of grounds the person states they intend to appear and present a submission at the hearing;
  - (c) the relevant fee is paid when the statement of grounds is lodged with the Tribunal;
  - (d) a copy is served on the applicant and the responsible authority or primary decision-maker by no later than the due date.

- 19 If a statement of grounds by a non-party:

- (a) is lodged with the Tribunal out of time; or
- (b) states that the person does not intend to participate in the hearing of the proceeding; or
- (c) the relevant fee is not paid;

the person lodging the statement of grounds will not be a party to the proceeding and will not be allowed to participate in any compulsory conference or be heard at the hearing unless the Tribunal gives them leave or joins them as a party.

- 20 Subject to clause 19, the Tribunal may still take into consideration any statement of grounds by a non-party.
- 21 A person who is not a party and wishes to be heard, must file and serve a new statement of grounds which states the person intends to appear and present a

submission at the hearing, and must pay the relevant fee not less than 48 hours before the hearing. The person must attend the hearing and seek leave from the Tribunal to be heard. Generally, the Tribunal will consider the views of the applicant and the responsible authority or primary decision-maker before deciding whether to grant leave. However, this does not mean that the person will necessarily become a party to the proceeding unless the Tribunal makes an order to join the person as a party.

### **What Considerations will the Tribunal Take Into Account?**

- 22 The decision of the Tribunal to amend an application to which this practice note applies is discretionary. In exercising its discretion, 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 have been given reasonable notice of the application in 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 or primary decision-maker at the first instance;
  - (f) whether the amendment involves the consideration of additional planning controls or policies that were not previously relevant; and
  - (g) whether any special circumstances would support the amendment.
- 23 The Tribunal will normally consider an application to amend plans or amend an application at the commencement of the hearing, although an application may be dealt with at a practice day hearing or otherwise at the direction of the Tribunal.
- 24 If the Tribunal amends an application, the application (as amended) is substituted as the application in the proceeding. If an application is not amended, the hearing will proceed only in relation to the plans and material that were before the responsible authority or original decision-maker.

**- END OF PRACTICE NOTE -**