

**PRACTICE NOTE – PNPE9
(Amendment of Plans and Applications)**

PLANNING AND ENVIRONMENT LIST

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1. PREFACE

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.

Permit applicants occasionally 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.

As a guiding principle, amendments should not be used to increase materially 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.

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.

Plans may be amended following consultation or mediation between the parties, or as a result of improvements suggested by expert witnesses, or respond to particular issues raised by the responsible authority or objectors during the permit process.

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, when making a decision whether to amend an application in a proceeding.

2. ABOUT THIS PRACTICE NOTE

- 2.1. The Rules Committee issues this Practice Note under section 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.
- 2.2. Nothing in this Practice Note affects the Tribunal's discretion to amend documents in any proceeding before the Tribunal.
- 2.3. This Practice Note comes into effect on 11 July 2011 and applies to any proceeding in the Planning and Environment List referred to in:
 - i) clause 64 of Schedule 1 of the *Victorian Civil and Administrative Act 1998*; or
 - ii) an application to amend a permit under section 87A of the *Planning and Environment Act 1987*.
- 2.4. The practices and procedures of other relevant Practice Notes apply to a proceeding unless modified by this Practice Note or by the Tribunal (see PNPE1, 2, 3, 5, 6 and 8).
- 2.5. In any proceeding, the Tribunal may vary the operation of the Practice Note by direction at its discretion.

2.6. This Practice Note reveals:

- i) clause 11 of Practice Note PNPE1 – General Procedures; and
- ii) schedule 3 of PNPE1 (Forms A and B).

3. DEFINITIONS

In this Practice Note

“Applicant” means—an applicant for a planning permit or for a works approval or licence to which clause 64 of Schedule 1 of the *Victorian Civil and Administrative Act 1998* applies; or an applicant to amend a permit under section 87A of the *Planning and Environment Act 1987*.

“Application” means—

- i) an application for a permit under the *Planning and Environment Act 1987*;
- ii) an application for a works approval or licence under the *Environment Protection Act 1970*; or
- iii) an application to the Tribunal to amend a permit under section 87A of the *Planning and Environment Act 1987*.

“Party” means—a party to a proceeding for the purpose of section 59 of the *Victorian Civil and Administrative Act 1998*. 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.

“Primary decision-maker” means—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 *Victorian Civil and Administrative Act 1998*.

“Responsible authority” means a responsible authority under the *Planning and Environment Act 1987*.

“Statement of grounds” means—a statement of grounds under clause 56 of schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*.

“the Act” means—the *Victorian Civil and Administrative Tribunal Act 1998*.

“Tribunal” means—Victorian Civil and Administrative Tribunal established by the *Victorian Civil and Administrative Tribunal Act 1998*.

4. WHAT LEGISLATION APPLIES

4.1. *Environment Protection Act 1970*

4.2. *Planning and Environment Act 1987*

4.3. *Victorian Civil and Administrative Tribunal Act 1998*

5. NOTICE OF AMENDED APPLICATION

5.1. 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:

- i) file with the Tribunal and serve on all parties to the proceeding, the responsible authority or primary decision-maker, the following documents:
 - a) 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.
 - b) 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.
 - c) a clearly readable, scaled copy, with dimensions, of any amended plans, highlighting where changes have been made.
 - d) details of any other amendment to the application and supporting material.
 - ii) serve the following documents on persons who were notified of the original application or lodged an objection with the responsible authority or primary decision-maker, but who are not parties:
 - a) all documents identified in clause 5.1 i) (a & b);
 - b) a blank statement of grounds (PNPE9 form B).
 - iii) provide notification to persons of how to access copies of amended plans or other amendments to the application and any supporting material by :
 - a) inspecting them during business hours at the main office of the responsible authority or primary decision-maker; or
 - b) requesting the applicant to provide copies (including details of how to make such a request).
- 5.2. 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 C).

6. MINIMUM PERIOD OF SERVICE FOR DOCUMENTS

- 6.1. The provisions of section 141 of the Act apply to this Practice Note.
- 6.2. To calculate the minimum notice period, a notice must be taken to have been served on a person in the case of posting, 2 business days after the day on which the notice was posted.
- 6.3. For the purpose of calculating the minimum notice period where service is by post¹ the following generally applies:
 - i) notice to amend an application pursuant to clause 5 – not less than 33 business days from the day of posting the notice

¹ Please Note: Additional days are required if a public holiday falls within the 2 business day service period, you should contact the Tribunal if unsure how to calculate notice period

- ii) statement of grounds pursuant to clause 7 – not less than 17 business days from the day of posting the notice..
- 6.4. The due date by which a statement of grounds must be lodged with the Tribunal must be the same on all notices whether they are served in person or by post.

7. STATEMENT OF GROUNDS

- 7.1. Upon request, 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.
- 7.2. 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.
- 7.3. Person(s) who are not a party, may become a party if a statement of grounds
- i) is filed with the Tribunal by the due date; and
 - ii) a copy is served on the applicant and the responsible authority or primary decision-maker by no later than the date specified in the notice (the due date).
- 7.4. If a statement of grounds is filed with the Tribunal out of time, the person filing will not be:
- i) a party to the proceeding; and
 - ii) allowed to participate in mediation or be heard at the hearing; unless the Tribunal gives them leave.
- 7.5. The Tribunal may take into consideration any statement of grounds filed out of time subject to the conditions in clause 7.4.
- 7.6. A person, who is not a party and wishes to be heard, must attend the hearing and seek leave from the Tribunal to be heard. Generally, the Tribunal will consider the views of the applicant, responsible authority or primary decision-maker prior to granting leave.

8. APPLICATION OF THIS PRACTICE NOTE

- 8.1. This Practice Note applies to notices to amend plans or applications in the following proceedings:
- i) an application to review a decision by a responsible authority under the *Planning and Environment Act 1987*:
 - a) to refuse to grant a permit under section 77;
 - b) to fail to grant a permit under section 79;
 - c) to grant a permit under section 82;
 - ii) an application to amend a permit under section 87A under the *Planning and Environment Act 1987*;
 - iii) 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*:

- a) to issue a works approval under section 33(1)(a);
- b) to determine an application for a works approval under section 33(1)(b);
- c) to issue a licence under section 33A(1)(a);
- iv) to determine an application for a licence under section 33A (1)(b).

8.2. This Practice Note **does not apply** in the following instances:

- i) an application to review conditions where a permit has issued under section 80 of the *Planning and Environment Act 1987*;
- ii) procedural amendments to applications made under section 127 or clause 64 of Schedule 1 of the Act, such as amending the name of an applicant or the address of the land.;
- iii) circulating draft plans for discussion at mediation; and
- iv) 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

9. WHAT CONSIDERATIONS WILL THE TRIBUNAL TAKE INTO ACCOUNT?

9.1. 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:

- i) the extent and impact of the changes;
- ii) 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;
- iii) 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;
- iv) whether the amendment improves the proposal or responds to issues that have been raised in the course of the decision-making process;
- v) 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;
- vi) whether the amendment involves the consideration of additional planning controls or policies that were not previously relevant; and
- vii) whether any special circumstances would support the amendment.

9.2. 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.

- 9.3. 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.
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