

**Practice Note – PNPE8
Major Cases List (Planning)**

Application	Planning and Environment List
Effective date	3 January 2012
Supersedes Practice Note	PNPE8 issued on 3 May 2010
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 eligibility criteria for the inclusion of a proceeding in the Major Cases List, and the general procedures and timeframes that will apply. These procedures have been modified from the practice note that operated during the pilot scheme for the Major Cases List in 2010-11, including changes resulting from stakeholder feedback received during the pilot.
- 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 s 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
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, mediation or compulsory conference.
Transfer Fee	The fee payable to have an application under section 82 or 82B of the <i>Planning and Environment Act 1987</i> transferred to the Major Cases List
Regulations	Victorian Civil and Administrative Tribunal (Fees) Regulations 2001
Rules	Victorian Civil and Administrative Tribunal Rules 2008

- 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*; and
 - (b) has the same meaning as defined or used in the *Planning and Environment Act 1987*.

Which applications are eligible for inclusion in the Major Cases List?

- 6 An application to the Tribunal under ss 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 application is made on or after 3 January 2012 and:

- (a) the proceedings are in respect of a development that does not include a 'dwelling' (as that term is defined in the Victoria Planning Provisions), and the estimated cost of development is \$5 million or more; or
 - (b) the proceedings are in respect of a development of any kind, and the estimated cost of development is \$10 million or more.
- 7 An application is not eligible for inclusion in the Major Cases List if the application does not meet the eligibility criteria in paragraph 6.
- 8 Other applications in the Planning and Environment List (i.e. other than under ss 77, 79, 80, 82, 82B or 87A of the *Planning and Environment Act 1987*) are not eligible for inclusion in the Major Cases List even if the estimated cost of development meets the eligibility criteria. 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.
- 9 For the purpose of this practice note, the 'estimated cost of development' means the estimated cost of the development for which the permit or permit amendment is sought, but does not include items such as land value, contingency fees or holding costs, consultants' or architects' fees, the value of any material to be extracted from the land as part of the use or development, development levies or contributions, or other items not directly related to the cost of construction or carrying out of the proposed buildings or works or subdivision.
- 10 In forming its view about the estimated cost of the development, the Tribunal will generally use the monetary figure specified in the planning permit application. A permit applicant or permit holder may be required to submit proof of the cost of development (such as a sworn valuation from a quantity surveyor) at the practice day hearing to substantiate any difference between that stated in the planning permit application and that specified in the application to the Tribunal.

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

- 11 For an application under ss 77, 79, 80 or 87A of the *Planning and Environment Act 1987* that is eligible for inclusion in the Major Cases List, 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.

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.

- 12 An application under ss 77, 79, 80 or 87A of the *Planning and Environment Act 1987* will be automatically included in the Major Cases List if the application meets the eligibility criteria in paragraph 6 and the applicant has made the election in accordance with paragraph 11.
- 13 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 ss 77, 79, 80 or 87A of the *Planning and Environment Act 1987*:
 - (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 ss 82 or 82B of the *Planning and Environment Act 1987* included in the Major Cases List?

- 14 For an application under ss 82 or 82B of the *Planning and Environment Act 1987* that is eligible for inclusion in the Major Cases List, the permit applicant may choose to have the proceeding included in the Major Cases List, by:
 - (a) lodging the 'Application by Permit Applicant to transfer a proceeding into the Major Cases List' form with the Tribunal; and
 - (b) paying the prescribed transfer fee under the Regulations.This means that an objector applicant for review will pay the usual application fee to commence an application under ss 82 or 82B of the *Planning and Environment Act 1987*, and the permit applicant may choose to transfer the proceeding to the Major Cases List by paying a separate transfer fee. The Major Cases List transfer form can be found on the Tribunal's website.
- 15 Where there is more than one application under ss 82 or 82B arising from the same permit application, only one transfer form is required, and only one transfer fee is payable, to transfer the proceeding to the Major Cases List.
- 16 If a permit applicant does not choose to transfer an eligible 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?

- 17 The Tribunal may remove an application from the Major Cases List if it is not satisfied that the application meets the eligibility criteria in paragraph 6.
- 18 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?

- 19 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.
- 20 For an application under ss 77, 79, 80 or 87A of the *Planning and Environment Act* 1987 that is eligible for inclusion in the Major Cases List, the prescribed application fee must be paid when the relevant Major Cases List application is lodged with the Tribunal.
- 21 For an application under ss 82 or 82B of the *Planning and Environment Act* 1987 that is eligible for inclusion in the Major Cases List, the prescribed transfer fee must be paid when the transfer form is lodged with the Tribunal
- 22 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, mediation or compulsory conference.
- 23 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.
- 24 If payment of a daily hearing fee is required, this will generally also be published in the Daily Law List and/or on the Tribunal's internal Daily Hearing Lists.
- 25 The daily hearing fee is payable by the permit applicant or permit holder, and must be paid by 9:30am on the day of the hearing to which the fee relates. The fee payment must be made by using the 'Payment of Hearing Fee in the Major Cases List' form, which can be found on the Tribunal's website. The form will

be receipted when payment is made and this will be the basis of proof that the fee has been paid.

- 26 Unless the Tribunal directs otherwise, a daily hearing fee will not be refunded if the proceeding is settled, withdrawn or adjourned after the fee is paid.
- 27 The Tribunal may adjourn a hearing if it is not satisfied that the daily hearing fee has been paid.
- 28 Although costs are not often awarded in the Planning and Environment List, the daily hearing fee (or a proportion of it) may be awarded against another party if that other party conducts the hearing in a manner that unnecessarily causes disadvantage or delay for the purposes of s 78 of the Act.
- 29 A hearing day will normally conclude no later than 4.30pm. The Tribunal may occasionally sit beyond this time if convenient to the Tribunal and the parties (as it does from time to time for other cases in the Planning and Environment List), but it will not do so solely to avoid the payment of a daily hearing fee for another hearing day.

How long will Major Cases List proceedings take?

- 30 The following timelines will generally apply to Major Cases List proceedings:

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 weeks

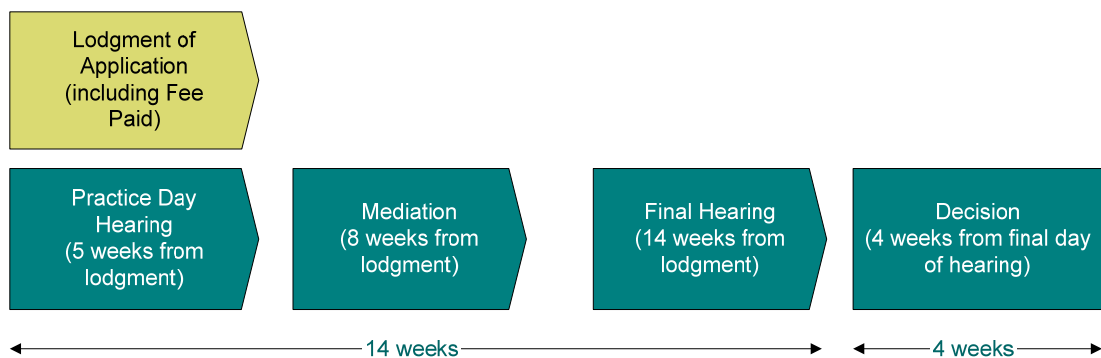
- date of lodgement to mediation (if required).

14 weeks

- date of lodgement to commencement of final hearing.

4 weeks

- from last day of hearing/final submissions to decision.



- 31 If an application under ss 82 or 82B of the *Planning and Environment Act 1987* is transferred to 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 transfer a proceeding under ss 82 or 82B into the Major Cases List if it wishes to obtain the maximum benefit of the expedited Major Cases List hearing timelines.

- 32 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.
- 33 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 pay a prescribed fee under the Regulations;
 - (b) 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;
 - (c) makes a late application to transfer a proceeding under ss 82 or 82B of the *Planning and Environment Act 1987* to the Major Cases List;
 - (d) fails to comply with a standard direction or order of the Tribunal;
 - (e) is not ready to proceed to a scheduled hearing; or
 - (f) requests an adjournment.

What general procedures apply to the Major Cases List?

- 34 For an application under ss 77, 79, 80 or 87A of the *Planning and Environment Act 1987* that is included in the Major Cases List, the Tribunal will:
- (a) serve a copy of the application on the responsible authority; and
 - (b) issue standard directions that:
 - request information from the responsible authority about the application;
 - set out all relevant hearing dates;
 - direct notice of the application (if required – see below);
 - set out a timetable for other procedural matters, including the filing and service of all material to be relied upon at the hearing.
- 35 For an application under ss 77, 79 or 80, where notice of the permit application has previously been given, the standard directions will require the applicant to serve the application and standard directions on objectors and relevant referral authorities, including notice of all relevant hearing dates.
- 36 For an application under ss 77, 79 or 87A, where no notice of the permit application or proposed permit amendment has previously been given, the standard directions will (if required):
- (a) set out the minimum notice or advertising requirements;

- (b) direct the responsible authority to provide the applicant with a list of the names and addresses of persons who must be notified, including any relevant referral authorities;
 - (c) direct the applicant to give notice of the application, including notice of all relevant hearing dates, and to file a statement of service confirming it has done so.
- 37 Given the expedited Major Cases List hearing timelines, the applicant and responsible authority must comply promptly with any directions about the giving of notice. If the applicant or responsible authority disagrees with the extent of notice required by the Tribunal and set out in a standard direction, it can make application for an urgent directions hearing (usually to be held at 9:30am, on 48 hours notice) or practice day hearing to seek to amend the standard directions.
- 38 For an application under sections 82 and 82B of the *Planning and Environment Act 1987* that is transferred into the Major Cases List, the Tribunal will generally have already served the permit applicant, responsible authority, and relevant referral authorities with a copy of the application prior to the transfer. Following the payment of the transfer fee, the Tribunal will issue standard directions that:
 - (a) vary (to the extent necessary) any directions made prior to the transfer of the proceeding into the Major Cases List;
 - (b) set out all relevant hearing dates;
 - (c) set out a timetable for other procedural matters, including the filing and service of all material to be relied upon at the hearing.
- 39 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?

- 40 The purpose of the practice day hearing will be to:
 - (a) if necessary, verify that the proceeding meets the eligibility criteria for inclusion in the Major Cases List;
 - (b) determine whether the application should proceed;
 - (c) give further directions about the future conduct of the proceeding, including any changes to the standard directions or allocated hearing dates; and/ or
 - (d) consider any other relevant matters.

- 41 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.
- 42 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?

- 43 A proceeding in the Major Cases List will normally be referred to mediation unless the Tribunal is satisfied that the proceeding is unlikely to settle, in whole or in part, at mediation.
- 44 The Tribunal may refer a proceeding to a compulsory conference as an alternative to mediation.
- 45 In addition to promoting a settlement of the proceeding, a mediation or 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.
- 46 The Tribunal will not ordinarily send parties a separate hearing notice for mediation. The standard direction indicating the date of the mediation will serve as notice of the mediation, unless the mediation date is varied or vacated at the practice day hearing.

Can plans be amended in a Major Cases List proceeding?

- 47 Any application to amend plans or the permit application in a proceeding 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.
- 48 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 mediation and hearing. A permit applicant is therefore encouraged to give notice of any application to amend plans before any mediation. This will enable any possible amendment to the plans to be discussed with the other parties at the mediation.
- 49 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 mediation. 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?

- 50 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.
- 51 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.