

1.0 September 2014

Review of the Planning & Environment Regulations 2005

Submission on behalf of Clause 1 Planning

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Introduction

Clause:1 Planning is a specialised consultancy dedicated to assisting property developers, architects, building designers, business applicants and other regular users navigate the increasing complexity of Victoria's State and Local Planning Controls.

Our team works across both metropolitan and regional Victoria and provides a comprehensive list of planning services for a diverse range of clients. Since our inception in 2004 we have provided advice and services on hundreds of projects throughout the state.

The following submission is made on behalf of Clause 1 Planning.

For more information about Clause 1 please visit www.clause1.com.au

Regulation 15

1. What Information is Required to Constitute a Permit Application

The minimum standard of information required to accompany a planning permit application is clearly specified in Regulation 15. The interpretation of Regulation 15 and its relationship with Sec 47 of the Planning and Environment Act 1987 was the subject of the VCAT determination in *ML Design v Boroondara*, P2088 [2005].

In that matter the Tribunal stated:

12. Section 47 of the Act deals with applications for permits and sets out what must accompany an application. Section 47(1)(a) states that an application must be made in accordance with the regulations and regulation 15 of the Planning and Environment Act Regulations 2005 sets out what an application must contain.[5] Section 48(1) requires an application for permit to be signed by the owner of the land or include a declaration by the applicant that the applicant has notified the owner about the application if the application is not the owner.

13. I interpret these provisions to mean that the actual application for permit is the application form that contains the information set out in regulation 15 and that is signed by the owner or contains a declaration as required by section 48(1) (if relevant). The application must be accompanied by the prescribed fee and other information set out in section 47 but the fee and the information do not constitute the application itself. Therefore it is the date upon

which a completed application form is lodged containing all the information required by regulation 15 and which meets the requirements of section 48(1) (if relevant) that is the date upon which the application for permit is received.

14. If the permit application is not accompanied by all the accompanying information required by the rest of section 47, this does not mean that an application has not been received, although it may mean that the application is not complete and cannot be determined until the information is provided. (emphasis added)

We wholly support the Tribunal's above interpretation.

We are aware that a number of Councils are not accepting permit applications that include the minimum information outlined in ML Design. They are using "under the counter" policies to return unacknowledged applications, not lodged in the planning register, that do not include their proprietary wishlist of application material.

We have attached two such examples at Appendix A1 and A2.

Appendix A1:

Includes correspondence from Whitehorse City Council that outlines what they want to be supplied with applications. It also includes correspondence showing how an application within a (then) R1Z with no overlay controls has refused to be received/acknowledged by Council until such time as an accompanying arborist's report was supplied.

Appendix A2:

Includes a copy of correspondence between our office and Brimbank City Council relating to a similar matter, in which Brimbank sets aside the Tribunal's legal interpretation of Reg 15 in the *ML Design* decision.

The attached appendices depict what we believe is a push by some municipalities to increase the minimum information required to accompany a permit application and an unreasonable misinterpretation of Regulation 15 that significantly disadvantages permit applicants.

Other examples we are aware of include Councils refusing to receipt/acknowledge an application until such time as:

- A copy of a redundant restrictive covenant was provided;
- The 'land owner' had signed the application form.

We warn strongly against increasing the requirements of 'what constitutes an application' or providing Council with the opportunity to return applications that meet the existing requirements of Regulation 15. We consider that any such move will significantly disadvantage permit applicants.

In support of this position we note that Section 54 of the Planning and Environment Act 1987 provides a robust opportunity for Council to seek

additional information (without the statutory clock ticking). In addition, any amendment to an application under Sec 50, 50A or 57 allows Council to restart the statutory clock.

Although we applaud any effort by Council to decrease processing times, unreasonably delaying the receipt of an application significantly disadvantages the permit applicant and will not positively influence the times in which Councils determine applications.

Remedy

The first paragraph of Regulation 15 should be reworded to make it clear that:

- i. Items (a) – (f) constitute the minimum requirements for a planning application; and
- ii. An application containing the items (a) –(f) is considered to be received on the day it is received; and
- iii. Additional information, beyond that contained in items (a) –(f), required to accompany an application as specified in the Planning and Environment Act 1987 and subordinate policy can be requested under Section 54 of the Act.

Regulation 16

2. Is it the Whole Project Cost or the Difference

When lodging an application to amend a permit under Section 72 of the Planning and Environment Act 1987 some Councils are calculating the required application fee based on the cost of the *entire development* rather than the cost of the *works associated with the amendment*.

For example, a \$7million apartment development (with an existing planning permit) the Section 72 amendment application fee associated with changing the location of a driveway (or other similar, small alteration with potential detriment to neighbours) could range from \$4837 (Class 8) or \$102 (Class 4) depending on Council's interpretation.

Remedy

Regulation 16 should clarify that the required fee relates to the difference in cost between what has been previously approved and what is being sought by the amendment(s).

Regulation 18

3. The Difference in Signs

The size, color and type of public notification signs varies significantly from municipality to municipality. A better outcome would be for all planning permit public notification signs to be a consistent size and type, ideally printed on water-proof paper or laminated to ensure their longevity. Such an approach would increase the public recognition of such signs and assist regular applicants often tasked with erecting them.

Remedy

Form 2 and Form 3 of the regulations should be amended to include a specific graphical appearance, colour, set paper size, content and laminate finish that cannot be varied from municipality to municipality.

4. Rambling Preamble

It is our experience that Council-prepared notices and letters to affected parties follow no prescribed format and often include a description of the proposal which includes non-relevant items, items which are exempt from notice and review and/or other matters that are not relevant to the application, for example – landscaping, number of storeys, inclusion of a basement, earthworks, associated car parking.

Remedy

Regulation 18 should specify the form of preamble/description of proposal for the public notices.

Regulation 19/Schedule 1 Form 4

5. What Changed When

In our experience a number of Councils are not listing a complete history of amendments on planning permits. Anecdotally, it appears that secondary consent alterations to plans (and other endorsed material) are often omitted from a list of amendments on permits. In addition, the format and information included in such lists varies significantly from Council to Council. These issues make it very difficult for the average person to understand that what is currently approved on land for a permit, has undergone multiple (unlisted) amendments.

Remedy

Relevant Forms should be amended to include clear instructions on how amendments are to be listed on any permit. The list of amendments should include a complete history of changes to the use, preamble, conditions, material endorsed under the permit and any other changes including secondary consent alterations.

Regulation 20

6. Referral Speed

There can be better consistency between Council and Referral Authority timeframes, particularly the time in which Council refers an application to a referral authority where that referral authority may request further information. For example, Council providing the referral authority with the application at day 26 and the referral authority requesting further information at (their) day 19 totals 45 days from lodgement to get a request for further information from the referral authority.

Remedy

Section 55(1) of the Planning and Environment Act 1987 requires applications to go to referral authorities “without delay”, this can be amended to specify a time frame within the Regulations. We suggest a referral to the referral authority should be within 7 days of Council receiving the application.

7. Misuse of Clock Resetter

It appears some Councils are increasingly using Sections 50A/57 of the Planning and Environment Act 1987 to “reset the clock” at any time they see fit including well outside the 60 day statutory timeframe, despite not adhering to any of their own statutory clock requirements prior to the point. The example contained at Appendix B is correspondence from Whitehorse City Council. It was received on day 65. In this instance Council did not undertake a preliminary review of the application for approximately 9 weeks and required that the application be amended under Sec 50A (to reset the clock) within 22 days or the application be refused.

Unfortunately it appears that some Councils are increasingly more concerned about their PPARs than the quality of their service delivery.

Remedy

Remove the ability for a Section 50 amendment to restart the statutory clock in cases where Council has not undertaken a preliminary review and made a request for further information within the prescribed 28 day timeframe.

8. Starting the Clock

In many instances Councils are not “starting the clock” until a few days after the applications have been received. This unreasonably prejudices the applicant and results in inaccurate time frames for the purposes of requesting further information and Section 79 applications.

Appendix C provides an example of a planning permit application couriered to Frankston Council which was “dated stamped” by Council a few days after it was actually delivered to Council by registered post.

Remedy

We submit that the regulations make clear that the application is received when it arrives at Council, not when it is date stamped by Council or otherwise.

9. One Bite will Make it Faster

Councils often request further information more than once, the second time after the 28 days. Appendix D contains an example of a second request for further information dated 19 February 2014 by City of Hume sent to the permit applicant, some 60 days after the date of a first request for further information, prior to Council’s receipt of any further information from the permit applicant, yet still with a new lapse date.

Remedy

We submit that the regulations make clear that Council can make only one further information request (subject to any additional information required arising directly from the submission of further information via the initial request).

10. RFI Allsorts

It is our experience that requests for further information for similar applications with the same planning controls (ie zones and overlays) result in a huge variety of information being requested across different Councils. The impact on the applicant is that it is absolutely impossible to be sure you have supplied all the information that Council ‘might’ request. In our experience a lot of these requests from Council are attempts to manipulate the statutory clock and increase the gross time they have to meet their PPARs targets.

Remedy

Ideally, more instruction should be provided to Council governing the ambit of what information can be sought. Uniformity across the state on this issue will greatly enhance productivity and consistency of decision making.

11. Short Lapse Date Timeframes

Councils rarely provide more than 30 days to provide request for further information responses pursuant to Section 54 of the Planning and Environment Act 1987, including complex applications which require third party reports and other multi-disciplinary input. Some Councils refuse to allow additional extensions beyond the initial 30 days. This timeframe is considered too short.

Remedy

A minimum of 60 days should be provided to supply a response to Council's request for further information. This would reduce time and paperwork of applying and granting extensions, and if made within time does not penalise or disadvantage Council.

12. Prejudging Requests

Some Councils write to applicants informing them that they will give only one extension to a lapse date. Appendix E contains an example of such correspondence from Whitehorse Council. This practice appears to pre-judge the merits of any request to extend the lapse date for a request for further information and appears to be an attempt to intimidate applicants.

Remedy

Provide an additional Form within the regulations that stipulates the format and content of a Section 54 request for further information.

13. Referral Backlogs

For Council decisions on applications that are required to be referred to a referral authority, we are finding the time frames stretching out unreasonably. For example, the CFA backlog means applications take far longer where the CFA is a referral authority (or even an "affected party"). Councils are very reluctant to make a decision without the advice, however late. In practice, Councils will not ignore a referral authority being later than 28 days with advice.

Remedy

The Regulations should clearly state that if a referral authority does not respond to Council within 28 days from the date the referral is received the Authority is accepted to not object to the proposal and a decision must be made.

Regulation 25/34A

14. Sec 82 Appeal Timeframe

The Notice of Decision time frame, particularly with the recent changes to the VCAT processes, can be made more clear. Prior to the recent changes to VCAT's processes, 21 days after the responsible authority gave notice often became 25-26 days total and there was uncertainty about what the "cutoff date" was. Councils appear to be uncertain about how to calculate these dates now that the VCAT processes have changed and that it is now the responsibility of Councils to calculate the end date for objector appeals.

Remedy

The end date for appeals to be lodged (received by the Tribunal) by objectors (Section 82) should be specified in the Notice of Decision or at least in the cover letter from Council with the Notice of Decision. The same principle can apply for Regulation 34A (referral authority review under Section 82AAA).

This additional information could be added to all relevant Forms.

Regulation 27/Schedule 1 Form 7

15. Grounds for Decisions

Grounds of Refusal by Council are often very general, making it difficult for applicants to really understand Council's concerns. Ideally any refusal to grant a permit should include specific Clauses within the Planning Scheme upon which the Responsible Authority has relied to formulate their position.

Remedy

Instructions to Council on this matter could be added to all relevant Forms

Regulation 30

16. Perhaps the Largest Waste of Time in the Current System

The ability to appeal unreasonable requests for further information via Section 78 of the Planning and Environment Act 1987 is significantly restricted by the VCAT application fees (which may outweigh the cost of obtaining the information) and additional time delays.

Remedy

As discussed above additional guidance should be given to Council by the way of a new Form that stipulates the format and content of a Section 54 request for further information.

Although beyond the scope of this (regulatory) review – work should be undertaken to significantly reduce the cost and time associated with reviewing unreasonable, expensive and time wasting Section 54 further information requests.

Regulation 31

17. How Long the Tick Tock

There still appears to be confusion among Councils regarding the calculation of the 60 day time frame.

Remedy

It may be helpful to include a Form similar to the VCAT “Calculation of elapsed days in failure applications” table within the regulations.

Regulation 33(2)

18. Lapse Dates Rigid and Costly

We support the concept of lapse dates to ensure applications keep moving through the process, however the rigidity with which they are currently applied is unreasonable. For example, an applicant that submits further-information on time may have their application lapsed if something in Council’s Section 54 request is overlooked or if the responsible authority is not satisfied that the information has been satisfactorily supplied.

Remedy

Alter Regulation 33(2) to allow an application for review to be lodged pursuant to Section 81(2) within 21 days of Council providing written notice that an application has lapsed.

Other Issues of Note

19. Inconsistent Fees

The cost of notice under Section 52 of the Planning and Environment Act 1987 results in a wide variety of costs between Councils. We submit that the regulations provide for a consistent cost structure across Victoria, which may be stipulated in the Planning and Environment (Fees) Further Interim Regulations 2013.

For example, a recent application for a second dwelling on a lot within the City of Port Phillip resulted in a request for notice fees to Council in excess of \$2700 (subsequently negotiated down to \$2000), where 267 affected parties were sent letters by Council. An application with the same number of affected parties at the City of Stonnington (based on the Stonnington advertising fees (non-statutory) at the time of writing) would be \$1551 plus GST, Hume \$4085 inclusive of GST or Maribyrnong \$846 inclusive of GST.

20. Section 173 Pro forma

In addition to comment made above relating to new and amended Forms, a pro forma Section 173 agreement could be included within the regulations to avoid legal cost with preparation and review of such documents.

We note that some Council's currently provide a proforma for some commonly used Section 173 agreements (e.g. Boroondara in relation to the Car Parking overlay).

21. Council Incentive

It is our position that the Regulations direct the "responsibility" of any review process back to the applicant. If Council cannot meet their time frame obligations it is the applicant that bears the risk, cost and delay of either waiting or appealing that breach.

We understand that permit approvals benefit the permit applicant. However, the penalties on the applicant for not complying with timeframes are significant. Council's penalty is far less.

At \$805.10, VCAT application for review fees for even small matters, creates a significant disincentive to challenge unreasonable common Council practices. In a number of cases we feel Councils are happy to extend time frames knowing that permit applicants cannot afford the time or expense of VCAT. On this basis, it is our position that the time frames in the Regulations need to provide a greater incentive, or disincentive, for Councils to comply with them.

22. Jingle Bells & Public Notification

Almost all municipal council's implement policies that change the public notification requirements over the Christmas period. Some Council's implement block-out periods, others require longer notification periods than the specified 14 days. The dates, timeframes and structure of these requirements vary significantly from municipality to municipality and in many instances substantially disadvantage the permit applicant.

We note that such 'Christmas Notification Changes' are not authorised by the P&E Act or associated Regulations.


It is our submission that the regulation should make it clear that such deviations from the legislative notification requirements are prohibited.

Alternatively, if it is deemed that the Christmas period warrants special notification requirements that such requirements be regulated and made consistent across Victoria.

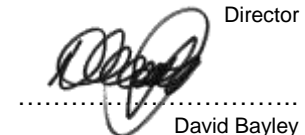
Closing

The examples used in the appendices accompanying this submission are indicative of issues regularly faced by permit applicants working in some Victorian municipal Councils.

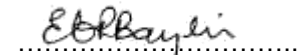
Should you have any queries in regards to the above submission please do not hesitate to contact our office.



.....
Ashley Thompson
Director



.....
David Bayley
Senior Planner



.....
Emily Bayliss
Senior Planner

Clause1 Pty Ltd
Phone: 03 9370 9599
Fax: 03 9370 9499
Email: enquiries@clause1.com.au
Web: www.clause1.com.au

Appendix A1

Correspondence from Whitehorse City Council including checklist Council requires to be completed, including a statement that they will not accept applications.



MINIMUM STANDARDS OF INFORMATION REQUIRED TO BE SUBMITTED FOR A PLANNING APPLICATION CHECKLIST

Council's Statutory Planning Unit is committed to reducing the time taken to process planning applications and to enable applications to be decided in a timely manner. The following is a list of the minimum information required to be submitted with any Planning Application.

NOTE: This checklist must be completed by the applicant or owner and attached to any Planning Application.

If your application does not satisfy the required detail, the application may not be accepted.

Please ☒ the items you have submitted.

1. "Application for Planning Permit" or "Application to Amend a Planning Permit" form completed and signed. ☐
2. Full payment of appropriate application fee. ☐
3. A current and full copy of title (including title plan) and details of any Restrictive Covenants or other restrictions on the title. This title must have been searched within the last three months. ☐
4. A feature survey to Australian Height Datum (AHD) of the site (existing boundaries, fencing, buildings, levels, easements, vegetation and any other relevant features) and immediate surrounds (including adjoining properties, footpath and nature strip details). This only applicable to development applications. ☐
Levels to Reference Level (RL) are considered acceptable for development of two or less residential dwellings, provided that land is not subject to any flooding overlay and/or is not included within Council's Flood Prone Area.
5. A construction impact assessment undertaken by a qualified Arborist in accordance with Australian Standard 4970-2009, if the proposal may result in impact or damage to existing vegetation on or immediately adjoining the subject site. This only applicable to development applications. ☐
6. A covering letter or written submission detailing what is proposed and responding to the relevant provisions of the Whitehorse Planning Scheme. ☐
7. Three (3) sets of professionally drafted plans (Site and Surrounds Context, Existing and Proposed Site and Elevation Plan) at 1:100 scale and A1 size or larger for developments folded to A4 size and not stapled. ☐
8. Electronic documentation – application documentation and plans must be provided within a media storage device (e.g. CD, DVD, USB flash drive) in PDF format, with plans and documents separated and named as appropriate. (Please see over for naming conventions.) ☐

The address of the site and the submission date must be clearly indicated on the storage device.

It is suggested you contact a Council Planning Officer to confirm any other details required within your application.

The quality and content of the information submitted will not be assessed at the time the application is lodged. This checklist ensures all documents are submitted so that Council can commence the assessment of the application. Further information may be required to be submitted to Council.

A copy of the "Application for Planning Permit" or "Application to Amend a Planning Permit" form, and fee schedule are available on Council's website (<http://www.whitehorse.vic.gov.au>).

Address: _____

Declaration:

I declare that I am the applicant and/or owner of the land and all of the above listed information has been submitted to Council with my application.

Name: _____ (Please print clearly)

Signature: _____ Date: _____



Whitehorse City Council
379-397 Whitehorse Road
Nunawading VIC 3131
Locked Bag 2 Nunawading DC VIC 3131
DX13209 MITCHAM

ABN: 39 549 568 822

Telephone: (03) 9262 6333
Fax: (03) 9262 6490
TTY: (03) 9262 6325
TIS: 131 450

customer.service@whitehorse.vic.gov.au
www.whitehorse.vic.gov.au

27 June, 2013

Enquiries: Statutory Planning Unit
Telephone: (03) 9262 6303

Clause 1 Pty Ltd
PO Box 305
FLEMINGTON VIC 3031

Dear Sir/Madam,

Changes to Submission of Planning Application

Council's Statutory Planning Unit is committed to reducing the time taken to process planning applications and to enable applications to be decided in a timely manner. To allow our Unit to achieve this objective some changes will be required to our current procedure.

From 1st July 2013, all Planning Applications, Amendments to a Planning Permit and Secondary Consent requests will not be accepted unless all of the following are received:

- "Application for Planning Permit" or "Application to Amend a Planning Permit" form completed and signed.
- Full payment of appropriate application fee.
- A current and full copy of title (including title plan) and details of any Restrictive Covenants or other restrictions on the title. This title must have been searched within the last three months.
- A covering letter or written submission detailing what is proposed and responding to the relevant provisions of the Whitehorse Planning Scheme.
- A construction impact assessment undertaken by a qualified Arborist in accordance with Australian Standard 4970-2009, if the proposal may result in impact or damage to existing vegetation on or immediately adjoining the subject site.
- Three (3) sets of professionally drafted plans (Site and Surrounds Context, Existing and Proposed Site and Elevation Plan) folded to A4 size, not stapled, and generally at 1:100 scale.
- Electronic documentation – application documentation and plans must be provided within a media storage device (e.g. CD, DVD, USB flash drive) in PDF format, with plans and documents separated and named as appropriate.
- The address of the site and the submission date must be clearly indicated on the storage device.

If one or more of the above items are not submitted, your application will not be accepted.

If you have any queries on this matter, please contact Council's Statutory Planning Unit on (03) 9262 6303.

Yours sincerely,

**Statutory Planning
Planning and Building Department**

NAMING CONVENTIONS FOR DOCUMENTS SAVED IN A MEDIA STORAGE DEVICE

All documents and plans saved in a media storage device are required to be named appropriately, in accordance with the format below:

"Property Address – Document Name"

e.g.: "2/1000-1004 Whitehorse Rd, Box Hill – Plans", should be used as the document name of:

A full set of neighbourhood and site description, design response plans, proposed site and elevation plans for a development at Unit 2, 1000-1004 Whitehorse Road, Box Hill VIC 3128

Document Name	Documents to be included, where possible
Application	<ul style="list-style-type: none">• Minimum standard checklist.• Application form.• A copy of title and plan of subdivision.• A copy of any restrictive covenant and agreement.• A copy of written submission explaining the proposal and how it complies with the relevant planning scheme provisions.
Plans	<ul style="list-style-type: none">• A full set of architectural drawings in 1 PDF document.• For files larger than 30MB, please separate and name accordingly. e.g. – neighbourhood and site description & design response plans; – basement, ground, 1st & 2nd level plans; – 3rd level, roof and elevation and concept landscape plans.
Arborist Report	<ul style="list-style-type: none">• A construction impact assessment undertaken by a qualified arborist.
Traffic Report	<ul style="list-style-type: none">• A traffic impact assessment prepared by a qualified transport engineer.
All other supporting documents, where required, including waste management plan, urban context report, ESD or SDA reports, should be separated and named accordingly when saved to a media storage device.	

NOTE: The maximum size for each document is 30MB. Any document exceeding this size must be separated or compressed.
The maximum number of characters of each document name must not exceed 200.

Planning and Building Department
379-397 Whitehorse Road
Nunawading VIC 3131

General Enquiries: (03) 9262 6303

Appendix A2

Correspondence from Brimbank City Council – email dated 27 June 2014, refer paragraph 2.

Fax 03 9370 9499

Level 1 262 Racecourse Road
PO Box 305
Flemington VIC 3031

From: [REDACTED]
Sent: Friday, 27 June 2014 11:06 AM
To: 'Ashley Thompson'
Subject: RE: 14 Argyll St, Sydenham






Hi Ashley,

Thanks for your email and expressing your thoughts in relation to the matter. I can confirm that at this stage Brimbank has no intention of asking for an arborist report or electronic files for planning applications prior to registration, however you may find that an arborist report is required as further information in certain situations depending on trees on the subject site and the adjoining properties.

I am aware of the 2005 decision of the Tribunal about what constitutes a planning application, however Brimbank does not choose to follow this decision. As you note, our expectations are not onerous but simply constitute the minimum amount of information that is reasonably expected to form a planning application. We will continue to apply this process, so please ensure that you submit all of this information in future to ensure the quickest possible processing of your application.

In relation to timeframes for determining applications, we certainly aim to get them processed in the quickest possible timeframe and I apologise if there have been examples of ones that have taken a long time. Unfortunately the reality for the next 6 months or so is that applications are going to take a while because of the huge influx that Councils across Melbourne have experienced due to the new residential zones. I have attempted to bring in additional resources to assist with this workload but it has been extremely difficult to find suitably qualified and experienced planners for this purpose. I know that other local Councils are also having this same problem. As a result, the existing staff are all dealing with very high workloads and are doing their best to process applications expeditiously, including working extra hours every week to get the work done. These are the challenges that we face and all we can do is try to weather the storm.

Regards,

[REDACTED]
Manager City Planning | City Planning
Kooro Municipal Offices - Old Calder Hwy Kooro Vic 3036
T +61 3 9249 4118 | F +61 9249 4351 | www.brimbank.vic.gov.au
    

 please consider the environment before printing this email

From: Ashley Thompson [<mailto:ashley@clause1.com.au>]
Sent: Wednesday, 25 June 2014 4:17 PM
To: [REDACTED]
Subject: RE: 14 Argyll St, Sydenham

[REDACTED]

Thanks for your email. I sincerely appreciate you taking the time to contact us this morning and not making this request via snail-mail. We have this morning, dropped to your office a version of plans for the above job at 1:100.

Appendix B

Correspondence from Whitehorse City Council – initial acknowledgement and late request for further information with lapse date



Whitehorse City Council
379-397 Whitehorse Road
Nunawading VIC 3131
Locked Bag 2 Nunawading DC VIC 3131
DX13209 MITCHAM

ABN: 39 549 568 822

Telephone: (03) 9262 6333

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TTY: (03) 9262 6325

TIS: 131 450

customer.service@whitehorse.vic.gov.au

www.whitehorse.vic.gov.au

Tuesday July 01 2014

Application Number: WH/2014/625

Enquiries:

Telephone:

Clause 1 Pty Ltd
PO Box 305
FLEMINGTON VIC 3031

Dear Sir/Madam

ADDRESS: 35 HAINES STREET, MITCHAM (LOT 10 LP 2180, LOT 9 LP 2180)

Thank you for your application. The application has been lodged and allocated to the above mentioned Planning Officer.

You will receive written correspondence if any additional information and/or if public notification of the application is required.

To help us reduce delays in the application process, it is preferred that all communication associated with this application is restricted to being with the applicant only. As the applicant it is your responsibility to advise all other parties involved in this permit application of this practice, and to keep them informed as appropriate.

If you have any queries regarding this application, please contact the planner on the above telephone number. However, if you wish to meet with the planner to discuss the application, please call to arrange a convenient meeting time, as planners are available by appointment only.

Yours faithfully

Administrative Officer
Planning and Building Department



Whitehorse City Council
379-397 Whitehorse Road
Nunawading VIC 3131
Locked Bag 2 Nunawading DC VIC 3131
CX13209 MITCHAM

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TIS 131 450

customer.services@whitehorse.vic.gov.au
www.whitehorse.vic.gov.au

Thursday 04 September 2014

Application Number: WH/2014/625

Enquiries

Telephone

Clause 1 Pty Ltd
PO Box 305
FLEMINGTON VIC 3031

Dear Sir/Madam

SATISFACTORY NEIGHBOURHOOD AND SITE DESCRIPTION

ADDRESS: 35 HAINES STREET, MITCHAM (LOT 10 LP 2180, LOT 9 LP 2180)

In accordance with Clause 55.01 of the Whitehorse Planning Scheme, I advise that the Neighbourhood and Site Description submitted for the above application satisfactorily provides the information requirements of the Planning Scheme. The approved Neighbourhood and Site Description consists of:

- Neighbourhood and Site Description plan (In relation to the site and surrounding area) Ref: Site Context TP-01-A Date: 18/6/2014 Author: Cornall Building Design
- Written response to the Neighbourhood and Site Description

Please note that Council does not certify the accuracy of the information submitted and shown on the plans. This is the responsibility of the author of the information.

You should also be aware that the endorsement of this information does not reflect any consideration of the merits of the proposal.

A preliminary assessment of the proposal has been undertaken and the following issues have been identified:

Issues not addressed in the previous Tribunal decision:

- The guest bedroom and associated ensuite of Dwelling 1 encroaches forward of the setbacks of Dwellings 2 and 3. This element of the design should be deleted.
- The upper level separation of Dwellings 2 and 3 has not been increased. We note the increased setting back of the upper floors, however there has been a negligible change to the spacings between the upper levels. Each of the dwellings contain two bedrooms, two ensuites as well as retreat areas on the upper floor.
- The deck areas in the rear yard remain excessive.
- No use has been made of the rear right of way for access.

Other Design Issues and Proposed Amendment C160 (adopted by Council):

- The upper level of Dwelling 1 is lacking in articulation.

100% recycled paper

- The use of verandahs on the south side of Dwellings 2 and 3 is questioned given the width of the structures and their orientation.
- Ability of the development to meet the Amendment C160 controls including proposed Schedule 4 to the Neighbourhood Residential Zone.
- The building setback and the lack of landscaping opportunity.

Should the application be amended, either voluntarily or in response to the issues above, the requirements of Section 50 of the Act apply. This includes a requirement that Council is advised that the landowner/s has been made aware of the amended application. This can be provided in the form of the owner's signature or a declaration from the applicant that the owner has been notified.

If amendments are made prior to public notice, then there is no additional fee to pay for those amendments. Where amendments are made after public notice, an additional fee of \$102 is required at the time of request. Additional fees may also be required depending on the scope of the amendments.

If you wish to amend the application we ask that the plans be received by Council no later than Friday 26 September. No extensions past this date will be granted.

The application will be proceeding to advertising preparation shortly. Please be aware these issues will be required to be addressed prior to a decision so further attention to these issues is recommended. Please contact me by if you wish to discuss the application in further detail or wish to arrange an appointment.

Please contact me on the above number if you wish to discuss this application in further detail or wish to arrange an appointment.

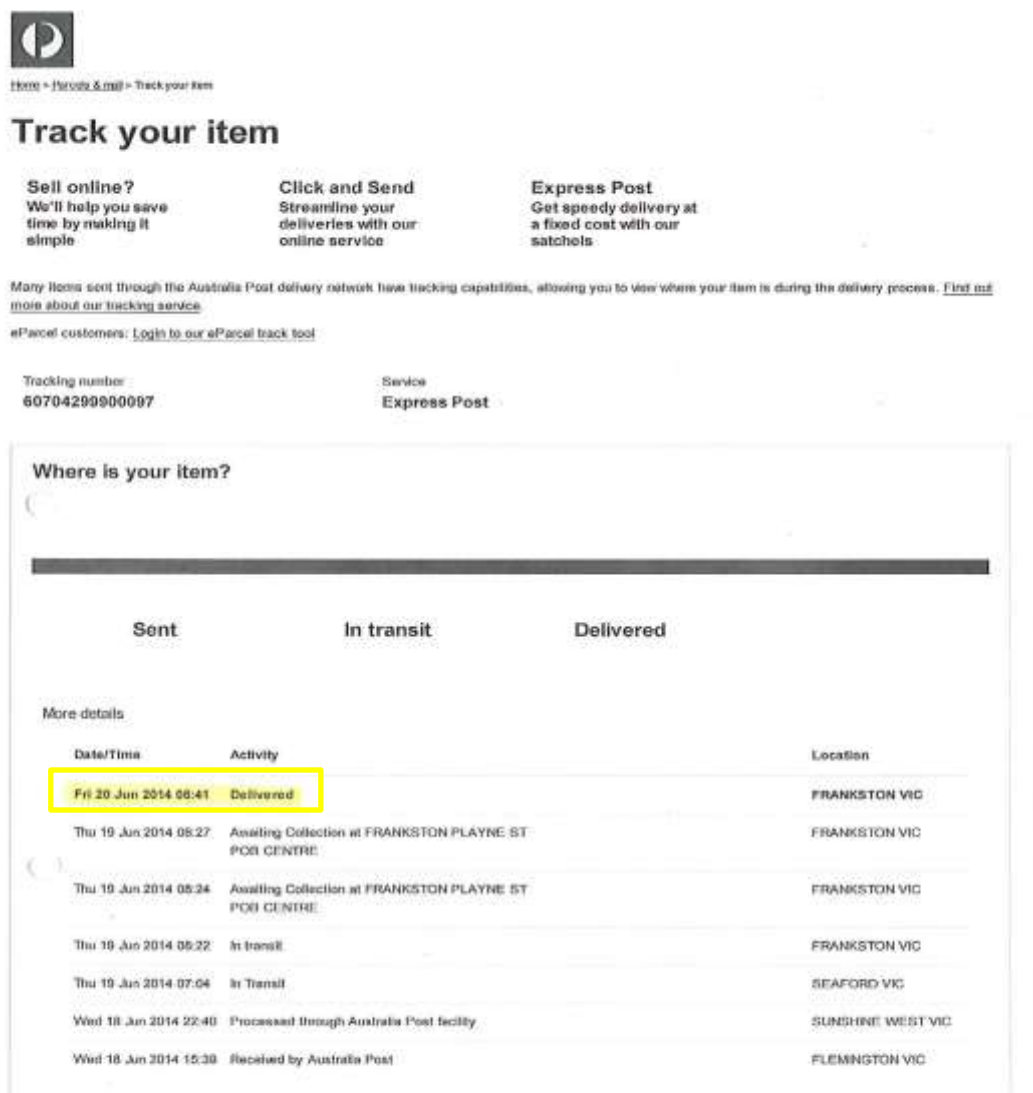
Yours faithfully



Contract Planner
Planning and Building Department

Appendix C

Correspondence from Frankston City Council - Australia Post tracking record and late receipt of application in Council's Planning Register



The image shows the Australia Post 'Track your item' page. At the top, there's a logo and a link 'Home > Parcel & mail > Track your item'. Below this is the heading 'Track your item'. There are three service options: 'Sell online?' (We'll help you save time by making it simple), 'Click and Send' (Streamline your deliveries with our online service), and 'Express Post' (Get speedy delivery at a fixed cost with our satchels). A note states: 'Many items sent through the Australia Post delivery network have tracking capabilities, allowing you to view where your item is during the delivery process. Find out more about our tracking service.' Below this, it says 'eParcel customers: Login to our eParcel track tool'. The tracking number '60704299000097' is entered, and the service is 'Express Post'. A progress bar shows the item's status: 'Sent', 'In transit', and 'Delivered'. Below the progress bar, a table titled 'More details' shows the tracking history. The first row is highlighted in yellow: 'Fri 20 Jun 2014 06:41 Delivered FRANKSTON VIC'. The subsequent rows show the item's journey from 'Received by Australia Post' to 'Delivered'.

Home > Parcel & mail > Track your item

Track your item

Sell online?
We'll help you save time by making it simple

Click and Send
Streamline your deliveries with our online service

Express Post
Get speedy delivery at a fixed cost with our satchels

Many items sent through the Australia Post delivery network have tracking capabilities, allowing you to view where your item is during the delivery process. [Find out more about our tracking service](#)

eParcel customers: [Login to our eParcel track tool](#)

Tracking number: **60704299000097** Service: **Express Post**

Where is your item?

Sent In transit Delivered

More details

Date/Time	Activity	Location
Fri 20 Jun 2014 06:41	Delivered	FRANKSTON VIC
Thu 19 Jun 2014 08:27	Awaiting Collection at FRANKSTON PLAYNE ST POB CENTRE	FRANKSTON VIC
Thu 19 Jun 2014 05:24	Awaiting Collection at FRANKSTON PLAYNE ST POB CENTRE	FRANKSTON VIC
Thu 19 Jun 2014 09:22	In transit	FRANKSTON VIC
Thu 19 Jun 2014 07:04	In Transit	SEAFORD VIC
Wed 18 Jun 2014 22:40	Processed through Australia Post facility	SUNSHINE WEST VIC
Wed 18 Jun 2014 15:39	Received by Australia Post	FLEMINGTON VIC

Detail from Frankston City Council Planning Register (search date 11 September 2014)

Enquiry Detail View

Property Details

Address

50 Aqueduct Road, Langwarrin 3910

Number 381/2014/P

Application Date 24/06/2014

Address 50 Aqueduct Road, Langwarrin 3910

Description To construct ten (10) single storey dwellings in addition to retention of existing dwelling.

Status FI Requested

Council Planning Information [Click here to access Council's Planning page](#)

Appendix D

Correspondence from Hume City Council – 1st and 2nd request for further information

Our File: P17506
Enquiries: [REDACTED]
Telephone: [REDACTED]



1079 PASCOE VALE ROAD
BROADMEADOWS
VICTORIA 3047

Postal Address:
PO BOX 119
DALLAS 3047

Telephone: 03 9205 2200
Facsimile: 03 9309 0109
www.hume.vic.gov.au

20 December 2013

[REDACTED]
C/- CLAUSE 1 PTY LTD
PO BOX 305
FLEMINGTON VIC 3031



Dear Sir/Madam,

RE: PROPOSED: BUILDINGS AND WORKS ASSOCIATED WITH
THE DEVELOPMENT OF 10 DWELLINGS AND
BASEMENT AS WELL AS CREATION OF VEHICLE
ACCESS TO A ROAD ZONE CATEGORY 1
LOCATED AT: 59-61 MACEDON ST SUNBURY VIC 3429
COUNCIL REF: P17506

I refer to your planning permit application received on 3/12/2013. I wish to advise that more information is required before Council will process this application.

- 1) The required information is as follows:
 - (a) Existing contours of the site and of the adjoining site.
 - (b) Proposed cut and fill on the subject site.
 - (c) The location of habitable room windows on adjoining properties to be provided on the site context plan.
 - (d) An arborist report from a suitably qualified arborist in relation to the species, height and health of trees to be removed and retained.
 - (e) The site context plan to accurately show the location of existing crossovers, street trees and power poles on the subject site and adjoining properties.
 - (f) A landscape plan prepared by a suitably qualified landscape architect to demonstrate that the garden settings have been maintained and strengthened.
 - (g) A written response on how the proposed development responds to the Residential Neighbourhood Character – Sunbury Local Policy.

An assessment of the application will be undertaken once the above information is received.

The application has been referred to the relevant internal and external authorities and you will be notified of any additional requirements and/or concerns.

If the information requested is not received by **7 February 2014** the application will be considered lapsed and a new application and associated fees will be required to be submitted and paid.

Y:\arcos\PropertyRating_CIP\Planning_Sent\Wps\arcos\13\17506\13120606.docx

If you have difficulty providing the information by the date specified by Council, you can request to extend the date in writing provided it is submitted before the expiry date. Whilst an application may be made to extend the time in which further information is submitted, it does not necessarily mean that Council will approve the request.

If Council refuses to extend the time for providing the required information you may have the right of review to VCAT provided that the application to VCAT is made before the lapse date.

Please contact the writer on the above phone number if you have any further enquiries.

Yours faithfully

A black rectangular box redacting the signature of the Senior Town Planner.

SENIOR TOWN PLANNER

Our File: P17508
Enquiries: [REDACTED]
Telephone: [REDACTED]



1079 PASCOE VALE ROAD
BROADMEADOWS
VICTORIA 3047

Postal Address:
PO BOX 119
DALLAS 3047

Telephone: 03 9205 2200
Facsimile: 03 9309 0109
www.hume.vic.gov.au

19 February 2014



VERSCAL INDUSTRIES PTY LTD
C/- CLAUSE 1 PTY LTD
PO BOX 305
FLEMINGTON VIC 3031

Dear Sir/Madam,

**RE: PROPOSED: BUILDINGS AND WORKS ASSOCIATED WITH
THE DEVELOPMENT OF 10 DWELLINGS AND
BASEMENT AS WELL AS CREATION OF VEHICLE
ACCESS TO A ROAD ZONE CATEGORY 1
LOCATED AT: 59-61 MACEDON ST SUNBURY VIC 3429
COUNCIL REF: P17506**

I refer to your planning permit application received on 3/12/2013, Council's request for further information dated 20 December 2013 and 5 February 2014. I wish to advise that responses have been received from various internal and external referral authorities. I wish to advise that more information is required before Council will process this application.

The required information is as follows:

1. An updated report from a suitably qualified Traffic Consultant to reflect the revised proposal.
2. How is garbage collection proposed? Council's Hume Waste Services department requires the bins to be placed out onto the nature strip for collection. Council vehicles will not enter the site to service any bins. All bins will need to be stored on site and placed out for collection. However, clarification is still being sought on whether the bins are to be placed on (Vaughan or Macedon Street).
3. The location of the bins within the basement and the distance required to take the bins onto the nature strip does not appear to be practicable.
4. Levels of the access must be shown at the entry/exit and at changes in grade along the access. Levels of the balconies are also required to be shown on this plan.
5. Ramp grade transitions are required along the proposed ramps as per AS2890.1:2004 Cl 2.5.3 (d).
6. The location of the proposed acoustic boundary fence is to be shown on the elevation plans including details of the fence. In addition, the location of the 2 metre high fence is to be shown on the east elevation.
7. What type and height of fencing is to be placed on the west title boundary?

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8. A schedule of building materials and colours is required to be provided.
9. Areas of all balconies is required to be provided.

A preliminary assessment of the above application has been undertaken and the following concerns raised:

1. The determination by VCAT (*Gomez v Hume CC & Ors* [2013]) states that *'In this case, it is the preferred character (rather than the existing character) to which this proposal should respond as well as the features of the site and the surrounding area. The key message that arise from my reading of the neighbourhood character policy is that the spaciousness of the area should be retained and enhanced... This particularly so in respect of the backyard realm, which although not assessed by Mr Kelly, is a legitimate element for consideration that informs neighbourhood character... In neighbourhood character terms, I give greater weight to development on the north side of Macedon Street including the Vaughan Street properties which because of their closer proximity to the review site, exert a greater influence than the development opposite at 64 Macedon Street – some 60m away.*

In Council's view, the built form of the development is not consistent with the neighbourhood character as it does not provide for spaciousness of the area and is not inkeeping with the backyard realm. The design response is not appropriate to the neighbourhood and site and does not respond to the features of the site and is therefore not consistent with Standard B1 of ResCode. As discussed at the meeting held at the Council Office on 19 February 2014 a townhouse style development may be more inkeeping with the neighbourhood character.

2. In terms of volume and mass, VCAT stated *'I also consider that oblique views of the building approach from the west in Macedon Street would have a volume and mass that is incongruous with surrounding development, particularly the roof form.'*

Standard B31 refers to design of buildings including façade articulation and detailing should respect the existing or preferred neighbourhood character. In Council's view, the development still provides excessive bulk and mass. The upper levels should have more separation, be set in from the ground level and the west elevation has not been articulated well enough to break up the bulk and mass of the development.

3. The visitor car spaces are located within the basement. What is the security arrangement with the spaces? How will the visitor car spaces be accessed by visitors in the basement?

The visitor car spaces within the basement do not appear to be convenient for visitors. In Council's view the visitor car spaces should

be located external to the basement car park so that they are visible and easily accessible.

4. A clearance of 0.5 metres is to be provided between the end of the car space and the rear storage cage.
5. Signage/ line marking is required to be provided at the exit of the car park indicating vehicles must depart onto Macedon Street. No Entry signage is to also be provided at the access onto Macedon Street to prevent vehicles entering the site from Macedon Street.
6. The access way must have an internal radius of 4.2 metres at its change in direction in order to allow a vehicle to adequately maneuver along the access way.
7. The 3 metre wide accessway into the site is contained within high walls and has no landscaping on either side to allow for vehicle overhang.
8. The surface of the carriageway easement should be upgraded as it caters for increased traffic.
9. The 1.5 metre high fence along Macedon Street does not provide for surveillance of the street.
10. Entries to the dwellings have not been provided on Macedon Street and therefore do not comply with Standard B26 of ResCode.
11. The planter box on the northern elevation of the development blocks out northern light to the windows.
12. The balconies on the west elevation should be removed as they add to the bulk and mass of the development. The elevation plan does not show the balconies on the west elevation.
13. The courtyard provided on the site/ground floor plan appears to be too deep to allow adequate daylight for bedroom 1 of apartment 2.
14. The secluded private open space provided in the form small balconies do not appear useable. In addition, apartments 1-3 and 6 - 8 have poor solar access onto the courtyard – the courtyard is required to be increased in depth to comply with Standard B29.
15. The maximum building height appears to exceed the requirement of Standard B7 when measured with a scale ruler.
16. In addition, the development appears to not comply with Standard B17 in relation to side and rear setbacks objective. In particular, the east elevation setbacks from the side boundary do not appear to comply with this Standard. ?

- 17: The courtyards for apartments 4 and 5 have a 1.5 metre high fence and therefore overlooking is possible into the courtyards.

Overall, given the above concerns raised, the proposal is unlikely to be supported in its current format. The proposed development appears to be an over-development of the site, is not inkeeping with the neighbourhood character and provides excessive bulk and mass. The development is out of context with the bulk and scale of the neighbourhood and does not provide for spaciousness of the area and the backyard realm. A townhouse style development may be more appropriate for this site.

The above information and concerns is to be addressed in conjunction with Council's request for further information dated 20 December 2013.

If the information requested is not received by **7 April 2014** the application will be considered lapsed and a new application and associated fees will be required to be submitted and paid.

If you have difficulty providing the information by the date specified by Council, you can request to extend the date in writing provided it is submitted before the expiry date. Whilst an application may be made to extend the time in which further information is submitted, it does not necessarily mean that Council will approve the request.

If Council refuses to extend the time for providing the required information you may have the right of review to VCAT provided that the application to VCAT is made before the lapse date.

Please contact the writer on the above phone number if you have any further enquiries.

Yours faithfully



SENIOR TOWN PLANNER

Appendix E

Correspondence from Whitehorse City Council – preliminary advice that no extensions to the request for further information will be given (page 2)



Whitehorse City Council
379-397 Whitehorse Road
Nunawading VIC 3131
Locked Bag 2 Nunawading DC VIC 3131
DX13209 MITCHAM

ABN 39 549 568 822

Telephone (03) 9262 6333
Fax (03) 9262 6490
TTY (03) 9262 6325
TIS 131 450

customer.service@whitehorse.vic.gov.au
www.whitehorse.vic.gov.au

Thursday 04 September 2014

Application Number: WH/2014/625

Enquiries:

Telephone:

Clause 1 Pty Ltd
PO Box 305
FLEMINGTON VIC 3031

Dear Sir/Madam

SATISFACTORY NEIGHBOURHOOD AND SITE DESCRIPTION

ADDRESS: 35 HAINES STREET, MITCHAM (LOT 10 LP 2180, LOT 9 LP 2180)

In accordance with Clause 55.01 of the Whitehorse Planning Scheme, I advise that the Neighbourhood and Site Description submitted for the above application satisfactorily provides the information requirements of the Planning Scheme. The approved Neighbourhood and Site Description consists of:

- Neighbourhood and Site Description plan (In relation to the site and surrounding area) Ref: Site Context TP-01-A Date: 18/6/2014 Author: Cornell Building Design
- Written response to the Neighbourhood and Site Description

Please note that Council does not certify the accuracy of the information submitted and shown on the plans. This is the responsibility of the author of the information.

You should also be aware that the endorsement of this information does not reflect any consideration of the merits of the proposal.

A preliminary assessment of the proposal has been undertaken and the following issues have been identified:

Issues not addressed in the previous Tribunal decision:

- The guest bedroom and associated ensuite of Dwelling 1 encroaches forward of the setbacks of Dwellings 2 and 3. This element of the design should be deleted.
- The upper level separation of Dwellings 2 and 3 has not been increased. We note the increased setting back of the upper floors, however there has been a negligible change to the spacings between the upper levels. Each of the dwellings contain two bedrooms, two ensuites as well as retreat areas on the upper floor.
- The deck areas in the rear yard remain excessive.
- No use has been made of the rear right of way for access.

Other Design Issues and Proposed Amendment C160 (adopted by Council):

- The upper level of Dwelling 1 is lacking in articulation.

- The use of verandahs on the south side of Dwellings 2 and 3 is questioned given the width of the structures and their orientation.
- Ability of the development to meet the Amendment C160 controls including proposed Schedule 4 to the Neighbourhood Residential Zone.
- The building setback and the lack of landscaping opportunity.

Should the application be amended, either voluntarily or in response to the issues above, the requirements of Section 50 of the Act apply. This includes a requirement that Council is advised that the landowner/s has been made aware of the amended application. This can be provided in the form of the owner's signature or a declaration from the applicant that the owner has been notified.

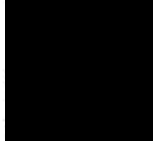
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Please contact me on the above number if you wish to discuss this application in further detail or wish to arrange an appointment.

Yours faithfully



Contract Planner
Planning and Building Department