

## 9.5 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION

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**File No:** CL/04/004

**Attachments:** Nil

### SUMMARY

The following is a summary of planning activity before the Victorian Civil and Administrative Tribunal (VCAT) as well as a list of decisions on planning permit applications dealt with under delegated powers for the period detailed.

### RECOMMENDATION

**THAT** Council receive and note the report on the Victorian Civil and Administrative Tribunal Hearings and Activities carried out under delegation.

### Victorian Civil and Administrative Tribunal (VCAT) activity update.

#### Upcoming appeals

The following is an update of the upcoming VCAT appeals.

APPEAL DATE	REFERENCE NOS.	ADDRESS	PROPOSAL	APPEAL AGAINST
Hearing occurred from 28 May until 4 June 2018 – awaiting decision	VCAT – P2885/2017 Council – PLP027/16	2330 Epping-Kilmore Road, Wallan	Use and development of the land for an earth and energy resources industry (clay extraction) and alteration to a category 1 road	Appeal against Council's refusal to grant a planning permit
Hearing occurred on 13 July 2018 – awaiting decision	VCAT – P29/2018 Council – PLP228/17	6 Kooralinga Drive, Wandong	2 lot subdivision	Appeal against Council's refusal to grant a planning permit
26 October 2018	VCAT – P768/2018 Council – PLP199/17	530 Arkells Lane, Bylands	Use and development of the land for a transfer station	Appeal against Council's notice of decision to grant a planning permit
22 November 2018	VCAT – P1079/2018 Council – PLP298/17	440 Doctors Creek Road, Clonbinane	Use of the land for a place of assemble (recreation use) and accommodation	Appeal against Council's notice of decision to grant a planning permit

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

14 January 2019	VCAT – P1364/2018 Council – PLP328/17	9 Eden Place, Wallan	Construction of 6 dwellings on a lot	Appeal against Council's refusal to grant a planning permit
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**Decisions since last report**

On 30 July 2018 an order was received from VCAT relating to an appeal of Council's refusal to approve a planning permit for the Use and development of the land for a telecommunications facility at 104-106 High Street, Wallan (reference numbers VCAT – P127/2018, Council – PLP036/17). The order was as follows:

1. *In application P127/2018 the decision of the responsible authority is set aside.*
2. *In planning permit application PLP036/17 a permit is granted and directed to be issued for the land at 104-106 High Street, Wallan in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:*
  - *Use of land for a telecommunications facility in the Commercial 2 Zone,*
  - *Development of buildings and works for a telecommunications facility on land in the Commercial 2 Zone; and*
  - *Development of buildings and works for a Telecommunications facility under clause 52.19.*

The tribunal member summarised that the key issues for determination included the following:

- *Does the proposed facility have policy support; and*
- *Whether the proposed facility would have an unreasonable visual impact on the public realm including the residential properties located to the east of the review site?*

In overturning Council's refusal the member stated that *the proposal will not undermine the future development of the town centre as detailed in the planning scheme or in the Wallan Structure Plan*. Whilst the member acknowledged that the tower will be visible, it would not detract from the area and that *on balance over time, it will be viewed as part of the infrastructure in the landscape*.

The member also commented upon a number of the points of objection from local community relating to health impact of such facilities but concurred with previous VCAT rulings that *the Tribunal should accept standards that are set by relevant Government agencies responsible for controlling the matters addressed by the standards and should not look behind them*. Thus, the member concluded that *I do not consider issues of health standards are a reason to refuse the proposal*.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

At the hearing the applicant submitted revised plans which would slightly increase the height of the tower but provide a slimmer headframe thus reducing the visual impact of the proposal.

Therefore the member directed the issue of a permit having satisfied themselves that the proposal did have policy support and that it would not create unreasonable visual impact on surrounding areas.

### Activities Carried out Under Delegation

A list of planning permit applications dealt with under delegated powers for the month of July 2018 are included below.

Permit No.	Address	Description of Permit	Decision	Date Approved
<b>South Ward</b>				
PLP303/17	100 Minton Street BEVERIDGE	Staged multi lot subdivision	Planning Permit	02/07/18 (Delegate Committee)
PLP015/18	170 Wallan Whittlesea Road WALLAN	Staged multi lot subdivision (balance of Phase 1)	Planning Permit	04/07/18 (Delegate Committee)
PLP025/18	105-109 High Street WALLAN	Use of the land as a restricted recreation facility (24 hour gym)	Planning Permit	04/07/18
PLP169/18	2-32 Station Street WALLAN	Buildings and works for the installation of fencing	Planning Permit	10/07/18
P307101/12.01	160 Broadford Wandong Road WANDONG	Use and development of a dwelling and shed	Amended Planning Permit	17/07/18
PLP193/15.02	Station Street WALLAN	Use and development of a primary school and place of worship and a reduction in car parking requirements	Amended Planning Permit	12/07/18
PLP181/18	3 Tower Court and 13 Rialto Close WALLAN	Buildings and works for the construction of two dwellings (affected by LSIO)	Planning Permit	19/07/18
PLP323/17	3237 Epping Kilmore Road WANDONG	5 lot subdivision and creation of access to a road zone category 1 and removal of native vegetation	NOD	26/07/18
PLP190/18	59 High Street WALLAN	Installation and display of temporary promotional signage	Planning Permit	30/07/18

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PLP075/18	2707 Epping Kilmore Road WALLAN	4 lot subdivision (re- subdivision)	Planning Permit	30/07/18
<b>Central Ward</b>				
PLP134/18	305 Dry Creek Road KILMORE EAST	Use and development of land for a telecommunications tower	Planning Permit	06/07/18
PLP096/18	495 Broadford Kilmore Road BROADFORD	Use and development of land for a dwelling	Planning Permit	06/07/18
PLP081/18	7 Glanville Drive KILMORE	Buildings and works for the construction of 6 warehouses and reduction of car parking requirements	Planning Permit	05/07/18
PLP174/18	37 Sutherland Street KILMORE	Use of the land for a childcare centre (After School Care)	Planning Permit	16/07/18
PLP095/18	740 Dry Creek Road SUNDAY CREEK	Use and development of the land for a telecommunications facility	Planning Permit	11/07/18
PLP109/18	38 White Street BROADFORD	2 lot subdivision SPEAR S120957H	Notice of Decision	23/07/18
PLP225/17	Hamilton Street KILMORE	Buildings and works for the construction of 28 dwellings, and reduction of visitor car parking requirements	Notice of Decision	30/07/18
PLP097/18	90 High Park Road FORBES	Use and development for the construction of a dwelling	Planning Permit	30/07/18
PLP094/18	47 Hamilton Street BROADFORD	Removal of native vegetation	Planning Permit	30/07/18
PLP068/18	47 Hamilton Street BROADFORD	Removal of native vegetation	Planning Permit	26/07/18
<b>North Ward</b>				
PLP013/18	Northern Highway TOOBORAC	Staged 9 lot subdivision (re- subdivision)	NOD	03/07/18
PLP293/17	140 Split Staff Gully Road WILLOWMAVIN	Subdivision of the land (re-subdivision) SPEAR S112706E	Planning Permit	17/07/18
PLP020/18	40 Manse Hill Road SEYMOUR	Use and development of the land for a dwelling	Planning Permit	18/07/18
PLP021/18	3175 Northern Highway HIGH CAMP	Development of the land for a dwelling (replacement)	Planning Permit	30/07/18

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**CHARTER OF HUMAN RIGHTS IMPLICATIONS**

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report. Failure to comply with the Child Safe Standards and associated legal responsibilities would be a breach of human rights.

**OFFICER DECLARATION OF CONFLICT OF INTEREST**

No officers involved in the preparation of this report have any direct or indirect interest in this matter.