



STATUTORY PLANNING CHECKLIST

Existing use rights

Use this information as a guide to complete your application for planning permit for existing use rights.

What is existing use?

Existing use refers to a situation where the planning controls for a piece of land have changed, and the existing use of that land (which may have originally been lawful) becomes prohibited due to the new controls.

An existing use permit means that the existing use of the property can continue to operate even though the current zoning has changed and may prohibit this type of use.

Why are 'existing use rights' required?

Existing use rights are required to ensure that potential negative impacts do not occur from 'old' uses where land is transitioning to 'new' uses.

How do I tell if my property has existing use rights?

According to Clause 63 of the Mitchell Planning, you may be able to apply for existing use rights if:

- The use was lawfully carried out before the date of the new planning provisions taking place.
- A permit for the use was granted before or on the same date the new planning provisions took place and the use commences before the permit expires.
- Proof of continuous use for 15 years is established (the use cannot have ceased for a period of two years during this time).
- You are applying on behalf of a utility service provider or other private service provider that continues a use previously carried out by a government agency.

How do I prove existing use rights?

For older uses and permits, the most common methodology required is to prove continuous use of the land for a specific purpose over a 15 year period (with no more than a two year cease period). Proof is to be provided via a [written determination request](#). The written determination request should include a detailed combination of data and historical information including (but not limited to):

- permits and endorsed plans that have been issued for the land
- utility, insurance or other records with clear dates
- copies of White or Yellow pages adverts, newspaper adverts
- photographs of events held on the site, or aerial imagery
- statutory declarations of statements from previous owners or staff detailing how the land has been used
- purchase receipts or invoices.



We recommend gathering evidence from online searches or reviews at the State Library or your local library/historical society. These organisations might have photographs, newspaper clippings or information related to your site. Providing evidence from a mix of sources is required to complete your application.

How to Apply

Complete a [request for written determination](#) via the Mitchell Shire Council website.

Contact Us

Send us an email mitchell@mitchellshire.vic.gov.au

Give us a call [\(03\) 5734 6200](tel:(03)57346200) (option 3)
Monday to Friday, 9.00am – 5pm

Visit a planner Planning and Building Services Office
Level 1, 61 High Street, Wallan
Monday to Friday, 9.00am – 5pm