

**Priority Projects Standing Advisory Committee Report
Wyndham Planning Scheme
Referral 30: 383 Black Forest Road, Werribee**

Planning and Environment Act 1987

1 August 2023

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

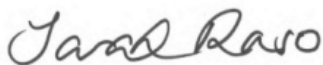
Priority Projects Standing Advisory Committee Report pursuant to section 151 of the PE Act

Wyndham Planning Scheme

Referral 30: 383 Black Forest Road, Werribee

1 August 2023

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Sarah Raso, Chair



Elissa Bell, Member

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Glossary and abbreviations

Application for Review	Application for Review pursuant to section 77 of the <i>Planning and Environment Act 1987</i>
Council	Wyndham City Council
DEECA	Department of Energy, Environment and Climate Action
DELWP	Department of Environment, Land, Water and Planning
DJPR	Department of Jobs, Precincts and Regions
Holcim	Holcim Australia Pty Ltd
Minister	Minister for Planning
PE Act	<i>Planning and Environment Act 1987</i>

PPV	Planning Panels Victoria
Permit	Planning Permit WYP8911/15
VCAT Proceeding	Victorian Civil and Administrative Tribunal Proceeding P595/2021
VCAT	Victorian Civil and Administrative Tribunal
VCAT Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
VCAT Proceeding	Victorian Civil and Administrative Tribunal Proceeding P595/2021

Overview

Referral summary	
Date of referral	4 July 2023
Referral	30
Members	Sarah Raso (Chair), Elissa Bell
Assisted by	Chris Brennan and Gabrielle Trowse of the Office of Planning Panels Victoria
Brief description	Ministerial call-in of VCAT Proceeding P595/2021 relating to the proposed removal of a condition from Planning Permit WYP8911/15 to allow for the residential subdivision of land within a quarry buffer area
VCAT Proceeding	P595/2021
Planning Permit	WYP8911/15
Subject land	383 Black Forest Road, Werribee
The Applicant	Peet Funds Management Limited
Planning Authority	Wyndham City Council
Referral Authority	Department of Energy, Environment and Climate Action
Date of this report	1 August 2023

1 Introduction

1.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning (the Minister) on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

This is Referral 30. It relates to the Ministerial call-in of Victorian Civil and Administrative Tribunal (VCAT) Proceeding P595/2021 (VCAT Proceeding). The VCAT Proceeding relates to the proposed removal of a condition from Planning Permit WYP8911/15 (Permit) to allow for the residential subdivision of land within a quarry buffer zone associated with Work Authority WA420.

The Committee was provided with a letter of referral from the Minister dated 4 July 2023 (Appendix B) confirming the Minister:

decided to call in the proceeding from VCAT under Clause 58(2)(a) of Schedule 1 to the *Victoria Civil and Administrative Tribunal Act 1998* as I consider that the proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives. I have also decided to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether an amended planning permit should be issued.

The letter of referral requests the Committee provide specific advice and recommendations on whether an amended planning permit should be issued.

1.2 Call-in and determination powers

Once a matter is called in by the Minister, Clause 58(4) states the proceeding must be referred to the Governor in Council for determination.

Clause 61 of Schedule 1 gives the Governor in Council the power to determine the proceeding and make any orders that could have been made by VCAT. An order made by the Governor in Council is deemed to be an order of VCAT.

1.3 Committee

The members of the Committee dealing with Referral 30 were:

- Sarah Raso (Chair)
- Elissa Bell, Member

The Committee was assisted by Chris Brennan, Senior Project Officer and Gabrielle Trowse, Project Officer, of the Office of Planning Panels Victoria.

1.4 Background to the application

On 21 November 2016, Wyndham City Council (Council) issued the Permit which permitted the staged residential subdivision of 383 Black Forest Road, Werribee (Subject Land). Condition 2 of the Permit required amended plans to be prepared to show the removal of all residential lots

shown within a 480-metre quarry buffer zone associated with Work Authority WA420. The separation distance sought to provide protection from quarrying activity associated with the Work Authority.

A subdivision layout plan was endorsed on 14 December 2017 in accordance with Condition 2 of the Permit. Since then, the Permit and endorsed plans have been amended several times but with no change to Condition 2 or the arrangement in the quarry buffer zone.

On 14 September 2019, the Applicant sought to amend the Permit pursuant to section 72 of the *Planning and Environment Act 1987* (PE Act) to allow for the residential subdivision of stages 23 and 24 which are both located (partly or entirely) within the quarry buffer zone (see Figure 1).

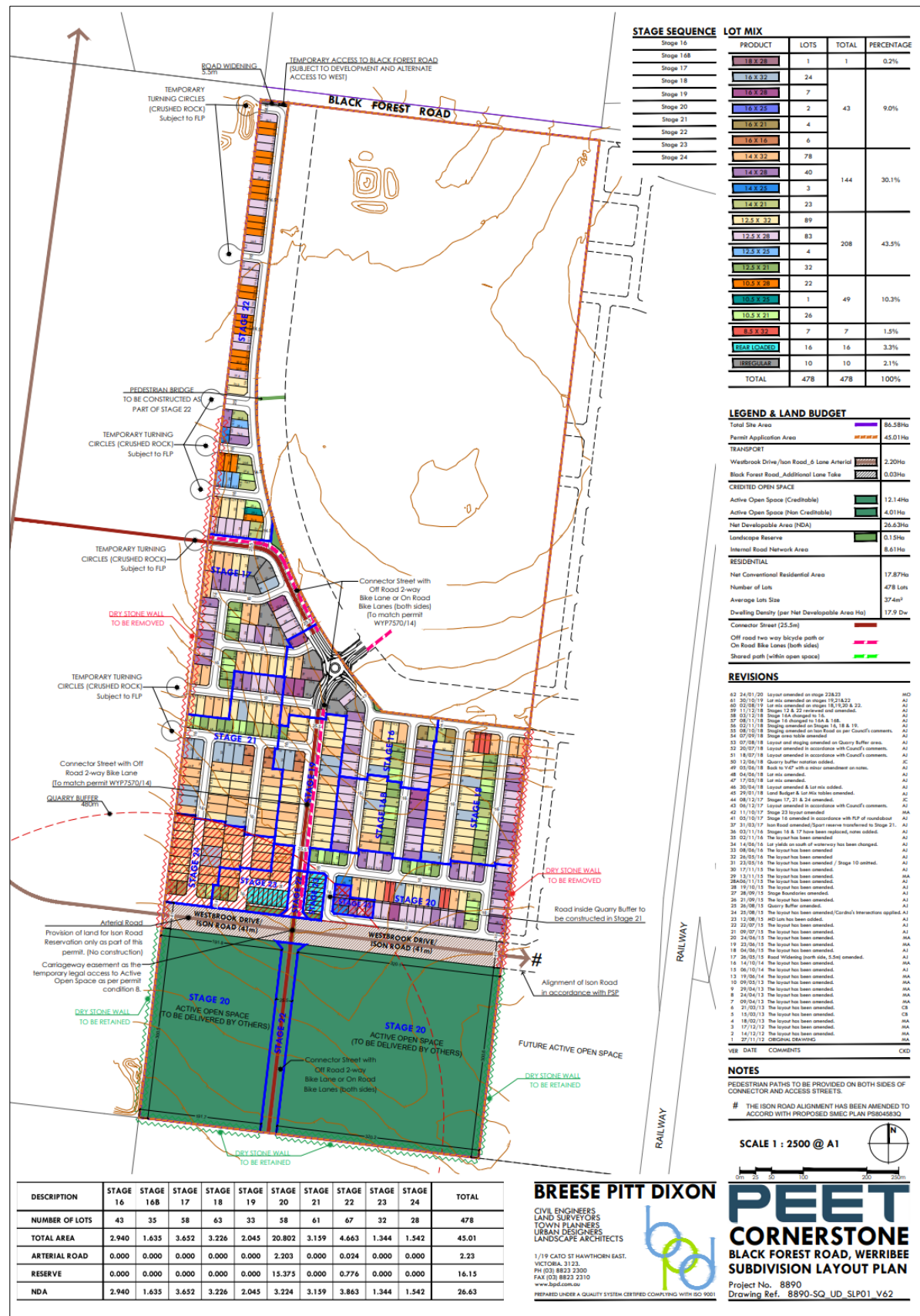
On 20 January 2021, Council issued a Notice of Refusal to Grant an Amendment to the Permit. The application to amend the Permit was refused on the grounds of the then Department of Jobs, Precincts and Regions' (now Department of Energy, Environment and Climate Action) objection to the Amendment under section 55 of the PE Act as a determining referral authority. The then Department of Jobs, Precincts and Regions objected on the following grounds:

- The separation distance seeks to provide protection from quarrying activity associated with Work Authority WA420. The resource contained within WA420 is considered to be a State Significant Resource and contains in excess of 40 years of high-quality basalt resource.
- The department (DJPR & DELWP) is currently undertaking and developing a strategic assessment of Resources within Wyndham City Council. (This coincides with the Joint Ministerial Statement released by the Minister of Resources and Minister of Planning in 2018). As the land to which the existing Work Authority (WA420) is within the area currently being reviewed, approval of residential and open space is considered to be contrary to and detrimental to the importance of the resource in this location.
- The Earth Resources Regulation Branch has a responsibility under the *Mineral Resources (Sustainable Development) Act 1990* to ensure that work done under an extractive industry work authority does not pose a risk to the environment, to members of the public or to land, property or infrastructure by work being done under a license or extractive industry work authority. In the absence of any information in relation to how the area of active open space is proposed to be developed, The Earth Resources Regulation Branch objects to the further development of this plan. Please note, the department previously met with council in 2017 and at that point highlighted its concerns to council in the absence of any suitable regarding how the area of active open space would be developed.

On 18 March 2021, the Applicant filed an application for review with VCAT pursuant to section 77 of the PE Act (Application for Review).

The VCAT Proceeding had been before VCAT for more than two years and had been the subject of three compulsory conferences and at least four substantive directions hearings before it was called in by the Minister and referred to the Committee.

Figure 1 Proposed Amended Subdivision Plan



Source: Applicant's Application to Amend Permit

1.5 The Committee process

A brief chronology of the Committee process is provided in Table 1.

Table 1 Chronology of Committee process

Date	Event
4 July 2023	Letter of Referral signed
6 July 2023	Letter of Referral received by Planning Panels Victoria (PPV)
10 July 2023	<p>Committee established</p> <p>Committee issued correspondence to parties to VCAT Proceeding confirming:</p> <ul style="list-style-type: none"> - Directions Hearing on Thursday 13 July 2023 - Hearing to commence on 25 July 2023 - various procedural orders <p>Parties to VCAT Proceeding included:</p> <ul style="list-style-type: none"> - Applicant - Department of Energy, Environment and Climate Action (DEECA) - Council
11 July 2023	Holcim Australia Pty Ltd (Holcim) contact PPV and sought to be added to the Committee's Distribution List and indicated it may wish to be joined as a party to the Committee proceeding
12 July 2023	<p>Applicant sought an adjournment of Directions Hearing to 25 July 2023 and sought new dates for Hearing</p> <p>Committee confirmed Directions Hearing on Thursday 13 July 2023 would proceed</p> <p>DEECA consented to adjournment of Directions Hearing to 25 July 2023 and new dates for Hearing</p>
13 July 2023	Committee adjourned Directions Hearing to 26 July 2023
14 July 2023	Committee issued procedural Directions, including Directions in relation to the joiner of Holcim
20 July 2023	<p>Holcim confirmed it would not seek to be joined but sought to remain on the Distribution List</p> <p>Applicant advised it wished to withdraw its Application for Review</p> <p>DEECA confirmed its consent to the Applicant's withdrawal</p>
21 July 2023	<p>Council confirmed its consent to the Applicant's withdrawal</p> <p>Committee vacated Directions Hearing scheduled for 26 July 2023 and advised it would prepare a short report for the Minister with no further action (or compliance with outstanding directions) required by parties</p>

2 Findings and recommendation

2.1 The Applicant’s withdrawal

On 20 July 2023, the Applicant advised the Committee that it no longer wished to pursue its Application for Review. It advised the Committee that the VCAT Proceeding called in by the Minister could *“be disposed of by an order to the effect that the VCAT Application is dismissed, and the decision of Council is affirmed”*.¹

The Committee is not able to issue *“an order”* to this effect, however Section 74 of the VCAT Act sets out VCAT’s powers (and therefore the Governor in Council’s powers) where an applicant seeks to withdraw a VCAT application or referral. It states:

74 Withdrawal of proceedings

- (1) If the Tribunal gives leave, an applicant may withdraw an application or referral before it is determined by the Tribunal.
- (2) If an applicant withdraws an application or referral—
 - (a) the applicant must notify all other parties in writing of the withdrawal; and
 - (b) the Tribunal may make an order that the applicant pay all, or any part of, the costs of the other parties to the proceeding; and
 - (c) the principal registrar may refund any application fee paid by the applicant; and
 - (d) the applicant cannot make a further application or request or require a further referral in relation to the same facts and circumstances without the leave of the Tribunal.
- (3) Subsection (2)(a) does not apply if the principal registrar notifies the other parties in writing on behalf of the applicant.

The Committee can make a recommendation to the Minister that she advise the Governor in Council that the Applicant be given leave to withdraw its Application for Review pursuant to section 74 of the VCAT Act.

2.2 Findings

The Committee considers the Applicant should be granted leave to withdraw its Application for Review.

The Applicant notified all parties on 20 July 2023 that it no longer wished to pursue its Application for Review. The Committee considers this is akin to notifying all parties of the Applicant’s intention to withdraw the Application for Review and meets the requirements of section 74(2)(a) of the VCAT Act. DEECA and Council provided their consent to the Applicant’s withdrawal of its Application for Review.²

In relation to the other matters referred to in section 74(2):

- no party made an application for costs
- the Applicant did not seek a refund of the application fee for the VCAT appeal.

¹ Document 10.

² Document 11 and 12.

2.3 Recommendation

The Committee recommends:

1. **The Minister for Planning recommend to the Governor in Council that leave be granted to the Applicant to withdraw its Application for Review made pursuant to section 77 of the *Planning and Environment Act 1987* regarding the Notice of Refusal to Grant an Amendment to Planning Permit No. WYP8911/15.**

Appendix A Terms of Reference

Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.

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Terms of Reference | Priority Projects Standing Advisory Committee

10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.

Terms of Reference | Priority Projects Standing Advisory Committee

22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letter of Referral



The Hon Sonya Kilkeny MP

Minister for Planning
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3002 Australia

Ref: BMIN-1-23-2449

Ms Kathy Mitchell AM
Chair (Lead) Planning Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Dear Ms Mitchell

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL CALL IN – 383 BLACK FOREST ROAD, WERRIBEE (P595/2021)

I refer to the Victorian Civil and Administrative Tribunal (VCAT) proceeding P595/2021 which relates to the proposed removal of a condition from planning permit WYP8911/15 to allow for the residential subdivision of land within a quarry buffer area at 383 Black Forest Road, Werribee.

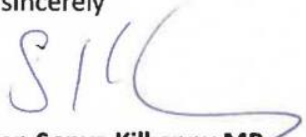
I advise that I have decided to call in the proceeding from VCAT under Clause 58(2)(a) of Schedule 1 to the *Victoria Civil and Administrative Tribunal Act 1998* as I consider that the proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives. I have also decided to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether an amended planning permit should be issued.

On 18 March 2021, the PEET Funds Management Limited (the proponent) applied to VCAT under section 77 of the *Planning and Environment Act 1987* for a review of Wyndham City Council's decision to issue a notice of decision to refuse to grant a permit for application WYP8911/15.13. The permit was refused on the grounds of the then Department of Jobs, Precincts and Regions (DJPR's) objection to the proposal under section 55 of the *Planning and Environment Act 1987* as a determining referral authority.



If you would like more information about this matter, please contact Stuart Menzies, Acting Executive Director, Statutory Planning Services, Department of Transport and Planning, on email stuart.menzies@delwp.vic.gov.au.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning

4/7/23

Appendix C Document list³

No.	Date	Description	Party
1	14 June 2020	Terms of Reference	Minister for Planning
2	4 July 2023	Letter of Referral	Minister for Planning
3	10 July 2023	Directions hearing notice letter	PPV
4	12 July 2023	Letter requesting Hearing adjournment	Peet Funds Management Limited (Applicant)
5	12 July 2023	Letter to Parties in response to request for adjournment	PPV
6	12 July 2023	Letter to Committee	Department of Energy, Environment and Climate Action (DEECA)
7	13 July 2023	Letter to Parties rescheduling Directions Hearing	PPV
8	14 July 2023	Letter to Parties enclosing Directions issued in advance of the Directions Hearing	PPV
9	20 July 2023	Email to Committee	Holcim Australia Pty Ltd
10	20 July 2023	Letter withdrawing from proceedings	Applicant
11	20 July 2023	Letter consenting to Applicant's withdrawal from proceedings	DEECA
12	21 July 2023	Letter consenting to Applicant's withdrawal from proceedings	Council
13	21 July 2023	Letter in response to Applicant's withdrawal from proceedings	PPV

³ The Committee was provided with the VCAT file for VCAT Proceeding on 10 July 2023. The Document List does not include the documents which made up the VCAT file and only reflects those documents issued as part of the Referral 30 proceeding.