VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL



administrative DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1102/2019 |

|  |  |
| --- | --- |
| APPLICANT | Preveza Enterprises Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 170-174 Highbury Road  MOUNT WAVERLEY VIC 3149 |
| WHERE HELD | Melbourne |
| BEFORE | John A. Bennett, Senior Member |
| HEARING TYPE | No hearing |
| DATE OF ORDER | 11 June 2019 |

# Order

### Hearing details

|  |  |  |
| --- | --- | --- |
| **Item** | **Hearings** | **Date/Detail** |
| **A** | Hearing date | 27 November 2019 |
| Commencement time | 10:00 AM |
| Duration | 1 Day |
| Location | 55 King St, Melbourne |
| Major Cases List | No |
| Short Cases List | No |

1. This proceeding is listed for a hearing in accordance with the details set out in **item A** above. Any changes to the hearing details will be notified by further order of the Tribunal.

### Other key dates

1. The following dates are the dates referred to in these orders.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Action** | **By no later than** | **Order number** |
| **B** | Applicant to serve application and specified documents on responsible authority | 28-June-2019 | 3 |
| **C** | Responsible authority to file with VCAT and serve on the applicant details of notice to be given | 05-July-2019 | 8 |
| **D** | Applicant to give notice and responsible authority to display application on its website | 12-July-2019 | 4 & 10 |
| **E** | Responsible authority to file PNPE2 material | 12-July-2019 | 11 |
| **F** | Applicant to file statement of notice with VCAT | 02-August-2019 | 6 |
| **G** | Closing date for objectors and referral authorities to lodge statement of grounds with VCAT and serve on applicant and responsible authority | 02-August-2019 | 5 & 13 |

## actions required – applicants

### Service of application on responsible authority

1. By no later than the date set out in **item B of order 2**, the applicant must serve on the responsible authority in hard copy and in electronic PDF form:

* a copy of the application and all attachments;
* other material filed with the Tribunal; and
* a copy of this order.

### Notice

1. The applicant must give notice of the application in accordance with the attached directions (as relevant) as follows:
2. By no later than the date set out in **item D of order 2**, serve the documents set out below on the following persons:
   * the owner and occupier of the subject land;
   * any persons who may have a material interest in the outcome of the application who are named in the application;
   * any additional persons identified by the responsible authority in response to order 8;
   * all relevant referral authorities.

The documents served must include:

* + the application excluding attachments;
  + a copy of this order;
  + a description of the proposed changes to the permit, including details of the changes from the previous plans;
  + a cover letter, which must:
* explain that an application to amend a permit has been lodged and VCAT has directed service of the documents
* include the information required by order 5
* advise that a complete copy of the application, including amended plans, can be inspected during business hours at the main office of the responsible authority and on the responsible authority’s website;
* advise that the person may obtain a copy of the amended plans or other attachments upon request to the applicant.

1. By no later than the date set out in **item D of order 2,** publish a notice of the application by erecting a sign(s) on the land and maintaining the sign(s) in good order and condition for not less than 14 days from the date of erection in accordance with any directions by the responsible authority in response to order 8.
2. Within 7 days from the date set out in **item D of order 2**, publish a notice of the application in a newspaper in accordance with any directions by the responsible authority in response to order 8.
3. All notices must:
4. Specify the closing date, which is the date set out in **item G of order 2**, by which a statement of grounds must be received by the Tribunal and served on the responsible authority and applicant.
5. Explain that a statement of grounds may be lodged with VCAT as described in Appendix A.
6. Specify the date and time scheduled for the hearing as set out in **item A of order 1**.
7. If applicable, include a statement setting out those matters within the application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.

### Statement of notice

1. By no later than the date set out in **item F of order 2**, the applicant must file with VCAT:

* a completed statement of notice;
* a list of names and addresses of all persons and authorities served;
* a sample of the cover letter sent with the documents served;
* all other information required by the statement of notice.

If a statement of notice is not filed by the specified date, this application may be struck out without further notice. No reminder will be sent.

### Hearing fees

1. If you are the applicant in this proceeding, you may be required to pay a daily hearing fee before the hearing commences. For more information, see Appendix A and the VCAT website.

## actions required – responsible authority

### Extent of notice required

1. By no later than the date set out in **item C of order 2**, the responsible authority must file with VCAT and provide the applicant with:

* the names and addresses of all relevant referral authorities;
* the names and addresses of all persons it considers may have a material interest in the outcome of this application to amend a permit who should be given notice of the application; and
* details of any other form of notice required.

1. If the applicant disputes the extent of persons to whom notice should be given or other form of notice, which the responsible authority identifies pursuant to order 7, or the responsible authority fails to provide the information as directed, the applicant may request an urgent practice day hearing to resolve the dispute.

### Display application

1. By no later than the date set out in **item D of order 2**, the responsible authority must make available for inspection at its main office and display on its website a complete copy of the application and all other material served on it pursuant to order 3.

### Practice Note 2 material

1. By no later than the date set out in **item E of order 2**, the responsible authority must file with VCAT information about the application as specified in the current version of **VCAT Practice Note PNPE2 – Information from Decision Makers**, unless this material has already been filed in another related proceeding.
2. The responsible authority must comply with **VCAT Practice Note PNPE2 – Information from Decision Makers** and serve a copy of the completed table (excluding attachments) on the applicant.

## actions required – objectors & referral authorities

### Statement of grounds

1. If you wish to contest this application, you must, within the time specified in **item G of order 2** (and also set out in the applicant’s notice):

* lodge a copy of your statement of grounds with VCAT, indicating that a copy was served on the applicant and the responsible authority and the date(s) this was done. You must ensure your statement of grounds is received by VCAT by the specified date;
* serve a copy of your statement of grounds on the person making this application (the applicant);
* serve a copy of your statement of grounds on the responsible authority.

## actions required – all parties

### Communicating with VCAT

1. All communications to VCAT about this proceeding must quote the VCAT reference number included in this order (see page 1, top right corner).
2. A party who communicates in writing with VCAT must serve a copy of that communication on all other parties at the same time and notify VCAT this has been done. The communication must state that a copy was sent to the other parties and list the parties it was sent to. This applies to communications sent by letter, fax or email.

|  |  |  |
| --- | --- | --- |
| John A. Bennett  **Senior** **Member** |  |  |



# appendix a

# important information for all parties

**Non-compliance with orders and directions**

Please read the orders and following information carefully. Non-compliance with these orders may result in an application being struck out, or other sanctions under the *Victorian Civil and Administrative Tribunal 1998*, including an award of costs.

**Major Cases List**

If this proceeding has been included in the Major Cases List, **VCAT Practice Note PNPE 8 – Major Cases List** **(Planning)** governs the procedures for matters in this list.

**Short Cases List**

If this proceeding has been included in the Short Cases List, **VCAT Practice Note PNPE7 – Short Cases List** governs the procedures for matters in this list.

**Statement of grounds**

If you wish to contest this application or you are a referral authority, you are entitled to become a party to this proceeding if you file and serve a statement of grounds in accordance with this order, unless third party review rights are excluded by the planning scheme or you indicate that you do not intend to participate in the hearing of the proceeding.

If you file a statement of grounds and indicate that you do not intend to participate in the hearing of the proceeding, you will not be a party to the proceeding but your statement of grounds will be considered at any contested hearing of the proceeding.

Fees apply if you intend to appear or present a submission at the hearing. If you do not pay the fee at the time of lodging your statement of grounds, you will not be a party and will not be entitled to take part at the hearing or any compulsory conference, even if you indicated that you wanted to participate. For information about fees and fee relief, visit [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

Your statement of grounds should provide sufficient information so that the issues you intend to raise can be clearly identified. Normally VCAT does not have copies of previous objections made to the responsible authority so do not assume that VCAT is aware of any statement you may have already made.

**Lodge your statement of grounds online with VCAT**

You may lodge your statement of grounds online with VCAT. Go to [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

Alternatively, you may access a blank statement of grounds form on the VCAT website.

**Withdrawals**

If you are an objector and wish to withdraw your objection at any time after you lodge your statement of grounds, you must inform VCAT, the applicant and the responsible authority in writing. You will then be withdrawn from VCAT’s record and receive no further correspondence.

If you are the applicant, any application for withdrawal of the application must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures**.

**Adjournments**

Applications for adjournment of a hearing are not encouraged and you should not expect that an adjournment will be granted even if all parties consent.

VCAT may refuse an adjournment if it considers that the adjournment is:

* not in the public interest
* prejudicial to the interests of one or more parties or the expeditious determination of the proceeding
* contrary to efficient case management, or
* otherwise not justified.

If you wish to apply for an adjournment, choose the **Application for Consent to adjournment** form on the VCAT website or call us for a hard copy. Any application for adjournment must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures.** Refer to the VCAT website for more detail.

**Providing your email address**

VCAT will send copies of all orders, including the final decision, to a party’s email address. VCAT will not send a hard copy in addition.

A party’s email address will be available on VCAT’s records for other parties to access. If you do not want other parties to have access to your email address, do not provide your email address. If VCAT does not have your email address, you will be sent a hard copy of any order, but you may receive it after other parties have received the order by email and after the order has been published.

VCAT does not accept any responsibility for emails not received due to changes in address, firewall or other security measures that may be attached to your email account.

**Inspecting VCAT’s file**

Any party to the proceeding may inspect the VCAT file relating to the proceeding without a fee. Anyone else can inspect the file, but they must pay a fee. There is a charge for photocopying. To arrange an inspection time, complete the **File and Document Access Request Form** available on the VCAT website.

**Hearing fees and waiver or reduction of hearing fees**

If you are the applicant in this proceeding, you are required to pay a daily hearing fee for each day or part day of hearing. This includes accompanied site visits.

The amount of fee will depend on whether your case is deemed to be a complex case. You will be advised if your application is considered a complex case by the Registrar in advance and prior to the hearing. If your application is deemed a complex case you will be required to pay higher hearing fees. See VCAT’s website for information on hearing fees for complex cases.

You are required to pay your fee online or at Counter Services on the ground floor at 55 King Street the day before the hearing. If you do not pay the fee, your hearing may be adjourned or struck out.

There are some exceptions to this requirement to pay hearing fees. **VCAT Practice Note – PNVCAT 6 Hearing Fees** sets out the procedures that apply to the charging of daily hearing fees in proceedings before the Tribunal, including who is liable to pay the daily hearing fee. This Practice Note and other information is available on VCAT’s website.

For example, Day 1 hearing fees do not apply to a VicSmart application or a change in conditions application unless an objector application is also lodged, in which case the permit applicant must pay the Day 1 hearing fee. If an objector application is transferred into the Major Cases List, the permit applicant must pay any hearing fee.

The Principal Registrar has the power to waive or reduce a daily hearing fee in certain circumstances. An **Application for Fee Relief** form is available on VCAT’s website. Any application to waive or reduce the daily hearing fee should be made as soon as possible in order to avoid any delay in the hearing.



**PLANNING AND ENVIRONMENT LIST**

# STATEMENT OF NOTICE

To be completed by or for the Applicant

|  |  |  |
| --- | --- | --- |
| **Subject Land** | 170-174 Highbury Road  MOUNT WAVERLEY VIC 3149 | **VCAT Ref:** P1102/2019 |

I, ………………………………………………………….……………..(Print full name)

of ………………………………………………………………………..(Print name of firm, if relevant)

…………………………………………………………………………..(Print address)

…………………………………………………………………………..

**STATE** to the Victorian Civil and Administrative Tribunal (VCAT) that:

1. On …………………………… ***(date of service)*** I served on the responsible authority a hard copy and a copy in electronic PDF form of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order.
2. ***(Only complete if applicable)*** I caused Notice of the Application to VCAT to be given by publishing the notice in the following newspapers.

|  |  |
| --- | --- |
| Name of Newspaper | Date of Publication |
|  |  |
|  |  |

I attach clippings of the notices published.

1. ***(Only complete if applicable)*** On …………………………… ***(date of erection)*** I caused Notice of the Application to VCAT to be given by erecting a sign on the subject land.

Such notice was maintained in good condition on the land for not less than 14 days until it was removed on …………………………… ***(date of removal)***

I erected the following number of signs in the following locations:

|  |  |
| --- | --- |
| Number of signs erected (total) |  |
| Location of signs erected:  Specify each street frontage or other location |  |

I attach the following document ***(tick as applicable)***

|  |  |
| --- | --- |
|  | Original sign erected on the land |
|  | True copy of the completed sign erected on the land |

1. On …………………………… ***(date of service)*** I served the following documents on each of the persons specified below by post\*/by email\*/in person\*. ***(\*delete whichever does not apply)***

**Documents served:**

* + a copy of the application (excluding attachments) and any other relevant documents required to be served by VCAT’s initiating order;
  + a copy of the VCAT initiating order;

**Persons served: *(tick as appropriate)***

|  |  |
| --- | --- |
|  | any referral authorities |
|  | those persons set out in the attached list I obtained from the relevant municipal council or other responsible authority |
|  |
|  | any person directed by the Tribunal |
|  | any other person or authority |

I attach copies of the following documents.

**Documents attached: *(tick as appropriate)***

|  |  |
| --- | --- |
|  | list of names and addresses of all persons or authorities served |
|  | copy of sample cover letter sent with documents served |

**ALTERNATIVELY**

1. There are no objectors or referral authorities to serve because:

|  |  |
| --- | --- |
|  | The responsible authority did not require notice to be given to anyone |
|  | The application is exempt from third party notice and review rights |

I understand that knowingly giving false or misleading information to VCAT may result in imprisonment or fine (section 136 of the *Victorian Civil and Administrative Tribunal Act* *1998*).

Signature ………………………………………………………………..Date…………………………..