

## Practice Note – PNPE1

### Planning and Environment List General Procedures

<b>Application</b>	Planning and Environment List
<b>Effective date</b>	15 March 2012
<b>Supersedes practice note</b>	PNPE1 issued on 11 July 2011
<b>Special note</b>	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
<b>Further information</b>	A complete set of current practice notes are available on the Tribunal website at <a href="http://www.vcat.vic.gov.au">www.vcat.vic.gov.au</a> .

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## Introduction

- 1 The Planning and Environment List deals with a wide variety of applications dealing with the use and development of land in Victoria, including applications to review a decision made by a municipal council (or other responsible authority) to grant or refuse a planning permit under the *Planning and Environment Act 1987* and applications to amend or enforce a planning permit.
- 2 This practice note sets out procedures and timeframes that apply specifically in the Planning and Environment List. This practice note does not cover all of the Tribunal's practices and procedures. This practice note should be read in conjunction with the practices and procedures set out in the Act and Rules, the *Planning and Environment Act 1987*, other practice notes that set out common procedures that apply across all lists at the Tribunal, and other practice notes that apply to specific types of applications in the Planning and Environment List.
- 3 In any proceeding, the Tribunal may at its discretion vary the operation of a practice note by direction or order.
- 4 This practice note has been issued by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.

## Definitions

Word	Definition
<b>Act</b>	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
<b>Rules</b>	Victorian Civil and Administrative Tribunal Rules 2008

- 5 A word or term used in this practice note:
  - (a) has the same meaning if defined in the Act or in the *Interpretation of Legislation Act 1984*; and
  - (b) has the same meaning as defined or used in the *Planning and Environment Act 1987*.

## How do I seek a directions hearing?

**Note:** A directions hearing is not required in all cases in the Planning and Environment List, but may be scheduled if it is desirable to resolve preliminary or procedural issues prior to a final hearing, or to make procedural orders or set out a procedural timetable to facilitate the fair and efficient conduct of the proceeding. The Tribunal may issue directions on its own initiative without a directions hearing.

- 6 An application for a directions hearing should be made in accordance with PNVCAT 5 Directions Hearings and Urgent Hearings.

- 7 In the Planning and Environment List, a request for a directions hearing should be made using the [Practice Day Request form](#) for this List. Further information on practice days in the Planning and Environment List is contained in PNPE 6 Practice Day.

### How do I seek further particulars of another party's case?

**Note:** A party's statement of the grounds upon which that party intends to rely at the hearing must be sufficiently specific to enable the other parties to understand the case they must meet. This includes the grounds upon which a responsible authority refused an application for permit.

- 8 A party may serve a request on any other party for further particulars of that other party's grounds. The request must specify the particulars sought, and the timeframe within which the particulars must be supplied. The timeframe must be reasonable, having regard to the nature of the proceeding and the particulars requested. Unless the matter is urgent, a reasonable timeframe for the supply of particulars will normally be 14 days.
- 9 The party to whom a request is made must, within the required timeframe, serve those particulars on the requesting party and all other parties, and file a copy with the Tribunal.
- 10 A party may apply to the Tribunal for a directions hearing if further particulars requested by that party have not been supplied within the requested time, or are considered to be insufficient to comply with the request.

### What can I do if I consider insufficient time is allocated for the hearing?

- 11 If a party becomes aware prior to receipt of a hearing notice that information given to the Tribunal in relation to the complexity and likely duration of the hearing is likely to lead to an underestimate of the time to be allowed for the hearing, or after receipt of a hearing notice that it may take more than the time allowed, that party must immediately give written notice to all other parties and the Tribunal of that party's new estimate of the duration of the hearing.

### If there are more than 10 parties, do I still have to serve expert reports and other documents on all parties?

- 12 If a proceeding in the Planning and Environment List involves 10 or more parties, a party may seek an order of the Tribunal at a directions hearing (sometimes called a representative order) that allows for service of an expert witness report or other documents only on certain nominated parties, provided other parties are given an

opportunity to access the report or documents by alternative means (e.g. if the report or document is available for inspection and/or downloading on a website).

- 13 An application for a representative order should be made not less than two weeks before the date when the expert report or document is due to be filed and served.

### What happens if a question of law arises?

- 14 If before the day fixed for the hearing of an application, a party becomes aware that a question of law needs to be determined, that party must immediately serve written notice on all other parties and the Tribunal of the question. This should preferably occur no later than 10 business days prior to the hearing date.
- 15 If the question is one which could determine the outcome of the application without a consideration of its merits a party may apply to the Tribunal for a preliminary hearing of that question. That party must specify in the request their estimate of the likely duration of the preliminary hearing.
- 16 If a party becomes aware in the course of the hearing that a question of law needs to be determined, and notice of that question has not been given, that party must raise that question at the first convenient opportunity as a specific issue. The Tribunal will determine the time and manner in which that issue must be dealt with.
- 17 If the Tribunal is constituted without a legal practitioner, a party who does not agree to the question being determined by the presiding Member must advise the presiding Member of that disagreement at the time the question of law is raised. (See cl 66 of Schedule 1 of the Act).

### What are the requirements for providing draft permit conditions?

- 18 In a review proceeding under the *Planning and Environment Act 1987* where a responsible authority has not issued a notice of decision to grant a permit, and the application might result in the Tribunal directing that a permit issue, the responsible authority must no later than one week before the hearing:
  - (a) send the Tribunal via email a written draft of all the conditions which the responsible authority considers a permit should contain if it were to be granted; and
  - (b) send a copy of the written draft conditions to all other parties by any usual method of service.
- 19 In a review proceeding under the *Planning and Environment Act 1987* where the responsible authority has issued a notice of decision or a permit, the responsible

authority must no later than one week before the hearing provide a copy of the notice of decision or permit (as the case may be) to the Tribunal via email.

### **What is the usual order of presentation at the hearing ?**

- 20 In a review proceeding under the *Planning and Environment Act 1987*, the usual order of presentation at a hearing, subject to a direction to the contrary by the Tribunal, is –
  - (a) the responsible authority;
  - (b) any relevant referral or statutory authority;
  - (c) any objectors and third parties;
  - (d) any persons (not being a party) having a right to be heard (e.g. an unincorporated association given leave to make a submission);
  - (e) the permit applicant;
  - (f) a right of reply to parties other than the permit applicant.
- 21 Each party is to be provided with a reasonable opportunity to respond to the case put by the other parties. A right of reply is not to be used as an opportunity to simply repeat submissions, which a party has already made; rather it should be confined to matters arising from the submissions of the other party(s), which have not already been addressed by the replying party.

### **How do I withdraw a proceeding or seek an adjournment?**

- 22 The procedures for seeking to withdraw a proceeding, or seeking an adjournment of a hearing, are set out in PNVCAT1 Common Procedures.
- 23 In the Planning and Environment List, the consent of other parties to an adjournment will usually be required. The Tribunal may however refuse an adjournment, even if all parties consent, and the parties must work on the basis that the hearing is proceeding unless or until they are notified that the Tribunal has granted the adjournment.
- 24 If the Tribunal considers that a directions hearing is necessary to consider a request for an adjournment, it will advise the parties of a hearing date.

**- END OF PRACTICE NOTE -**