

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
PLANNING AND ENVIRONMENT LIST

VCAT Application No. /2026

BETWEEN

NEPEAN CLOSE NORTH GEELONG PTY LTD (ACN 660 320 427)

Applicant

AND

GREATER GEELONG CITY COUNCIL

Responsible Authority

STATEMENT OF GROUNDS ON BEHALF OF THE APPLICANT  
APPLICATION TO AMEND PLANNING PERMIT PP-1454-2022 PURSUANT TO SECTION 87A  
OF THE PLANNING AND ENVIRONMENT ACT 1987

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Filed on behalf of: the Applicant  
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A. BACKGROUND

The Parties

1. The Applicant, Nepean Close North Geelong Pty Ltd (ACN 660 320 427) (**the Applicant**), is the owner and developer of the land at 27-28 Nepean Close, North Geelong (**the Subject Land**).
2. A copy of an ASIC search for the Applicant is contained in **Attachment 1**.
3. The Responsible Authority, Greater Geelong City Council (**the Council**), is the responsible authority for the Greater Geelong Planning Scheme (**the Planning Scheme**), by operation of section 13(2) of the *Planning and Environment Act 1987* (**the PE Act**).

The Subject Land

4. The Subject Land is:
  - 4.1 contained in Lot S4 of PS 300143F and Certificate of Title Volume 10068 Folio 821; and
  - 4.2 2.38 ha in area, with a generally square shape and a frontage to Nepean Close.
5. A copy of the Certificate of Title for the Subject Land is contained in **Attachment 2**.

### The Planning Scheme

6. The following zone and overlay provisions apply to the Subject Land under the Planning Scheme:
- 6.1 Clause 33.01 - Industrial 1 Zone (**IN1Z**)
- 6.2 Clause 43.02 - Design and Development Overlay (Schedule 20) (**DDO20**)
7. A copy of a Planning Property Report for the Subject Land is contained in **Attachment 3**.

### Planning Permit PP-1454-2022

8. On 23 January 2025, Planning Permit PP-1454-2022 (**the Permit**) was issued by Council at the direction of the Victorian Civil and Administrative Tribunal in Proceeding No. P1146/2024. The Permit allows:

| Planning Scheme Clause No. | Matter for which the permit has been granted         |
|----------------------------|------------------------------------------------------|
| 33.01-1                    | Use the land for warehouses                          |
| 33.01-4                    | Construct a building or construct or carry out works |
| 52.05-2                    | Construct or display a sign                          |
| 52.06-3                    | Reduce the number of car parking spaces              |

9. Condition 11 of the Permit requires a Preliminary Risk Screening Assessment (**PRSA**) to be prepared under section 204 of the *Environment Protection Act 2017* (**the EP Act**) for the Subject Land prior to the commencement of development (**Condition 11**), it states:

*Preliminary Risk Screening Assessment (PRSA)*

*11. Prior to the commencement of development, a Preliminary Risk Screening Assessment (PRSA) under the Environment Protection Act (2017) must be submitted to, and be to the satisfaction of, the Responsible Authority. The PRSA is to be conducted by an environmental auditor appointed by the Environmental Protection Authority. The owner must comply with the findings of the PRSA to the satisfaction of the Responsible Authority. The PRSA must:*

- a) Assess the likelihood of the presence of contamination on the land which may impact on the proposal, including contamination migrated from neighbouring land;*
- b) Determine if an environmental audit is required for the use hereby permitted;*
- c) Soil sampling and analysis of the subject site may be required where access to definitive information regarding neighbouring land is not obtainable or is inconclusive;*

- d) *Include a statement whether the proposed use is suitable for the site; and*
- e) *Include a recommendation of whether an environmental audit is required and the proposed scope for an environmental audit.*

*Before the development starts any recommendations of the PRSA must be satisfied.*

10. A copy of the Permit is contained in **Attachment 4**.

#### **The Preliminary Site Investigation Report**

11. The permit application for the Permit was supported by numerous technical reports, including a *Limited Scope Preliminary Site Investigation (PSI) Report (EV3042)* (April 2023) prepared by environment scientists of EnviroProtect (Vic) Pty Ltd (**the PSI Report**).
12. The PSI Report examined:
- 12.1 The history of land uses on the Subject Land
  - 12.2 The geology and hydrogeology of the Subject Land.
  - 12.3 Surrounding environmental audit sites.
  - 12.4 Development of a preliminary Conceptual Site Model
13. The PSI Report also assessed these findings against *Planning Practice Note 30: Potentially Contaminate Land (PPN30)* (**PPN30**) to determine the appropriate level of assessment going forward.
14. The PSI Report provided two recommendations for two different scenarios where the Subject Land was developed for non-sensitive uses and sensitive uses (emphasis added):

*Based on the proposed future use of the site, EnviroProtect recommends the following considering the findings of this limited scope PSI and the guidance set out by the PPN30:*

- 1. *This limited scope PSI recommends that as a minimum, an intrusive investigation including a soil sampling program in accordance with AS4482.1 would need to establish the potential for contamination of the site should the site be continued to be used for non-sensitive settings (i.e., open space, agriculture, retail or office, industry or warehouse).*

*or*

- 2. *This limited scope PSI recommends that an EPA-appointed Environmental Auditor be engaged to conduct a PRSA or an Environmental Audit of the site should it be intended to develop the site for a sensitive use (i.e., Sensitive uses include residential use, childcare centre, kindergarten, preschool centre, primary school, even if ancillary to another use, children's playground, and/or secondary school).*

15. A copy of the PSI Report is contained in **Attachment 5**.

### Planning Practice Note 30: *Potentially Contaminated Land* (PPN30)

16. *Planning Practice Note 30: Potentially Contaminate Land (PPN30) (PPN30)* provides guidance for planners on the appropriate level of assessment of contamination in different circumstances.
17. Table 2 of PPN30 sets out uses that have the potential for 'high potential contamination' and 'medium potential contamination'.
18. Table 3 of PPN30 sets out a matrix of considerations which are used to determine the appropriate level of assessment based on the circumstances set out in the table. This table is set out below.

| Table 3: Recommended approach to assessing potentially contaminated land                                                                                                                                                                           |                                                                                                |                                                                                                   |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|--------|
| Planning Proposal                                                                                                                                                                                                                                  |                                                                                                | Potential for Contamination                                                                       |        |
|                                                                                                                                                                                                                                                    |                                                                                                | High                                                                                              | Medium |
| Uses defined in Ministerial Direction No. 1, the EAO, and clause 13.04-1S                                                                                                                                                                          |                                                                                                |                                                                                                   |        |
| <ul style="list-style-type: none"><li>• Sensitive uses: Residential use, childcare centre, kindergarten, pre-school centre, primary school, even if ancillary to another use.</li><li>• Children's playground</li><li>• Secondary school</li></ul> | New use, or buildings and works associated with a new use                                      | A                                                                                                 | B      |
|                                                                                                                                                                                                                                                    | Buildings and works associated with an existing use                                            | B                                                                                                 | B      |
| Other land use                                                                                                                                                                                                                                     |                                                                                                |                                                                                                   |        |
| Open space<br>Agriculture<br>Retail or office<br>Industry or warehouse                                                                                                                                                                             | New use, or buildings and works associated with a new or existing use                          | C                                                                                                 | D      |
| Planning Scheme Amendment                                                                                                                                                                                                                          |                                                                                                | Planning Permit Application                                                                       |        |
| A                                                                                                                                                                                                                                                  | PRSA or audit option applies<br>Proceeding directly to an audit is recommended.                | PRSA or audit option applies<br>Proceeding directly to an audit is recommended.                   |        |
| B                                                                                                                                                                                                                                                  | PRSA or audit option applies<br>PRSA to determine need for audit is recommended.               | PRSA or audit option applies<br>PRSA to determine need for audit is recommended.                  |        |
| C                                                                                                                                                                                                                                                  | PSI to inform need for audit is recommended                                                    | PSI to inform need for audit is recommended                                                       |        |
| D                                                                                                                                                                                                                                                  | Planning authority to document consideration of potential for contamination to impact proposal | Responsible authority to document consideration of potential for contamination to impact proposal |        |
| Note: Where land is used for more than one purpose, the most sensitive land use should be used to inform the approach to determining if an audit is required.                                                                                      |                                                                                                |                                                                                                   |        |

19. For proposals involving non-sensitive uses on land with a high potential for contamination, PPN30 identifies a Preliminary Site Investigation (PSI) as the appropriate assessment tool to inform whether any further action is required.

## B. THE DISPUTE

### Request to amend Condition 11

20. The Applicant is seeking to finalise plans and preparations to commence the Permitted Development.

21. The Applicant wishes to avoid the significant costs associated with a PRSA given that it is not required under PPN30 nor having regard to the PSI Report.
22. In or around February 2025, representatives of the Permit Applicant approached Council officers to request that Condition 11 be amended to reflect the requirements of PPN30.
23. On 17 March 2026, the Applicant's solicitors wrote an email to Council requesting advice in relation to the amendment of Condition 11 and whether it should occur under section 72 of the Act.
24. On 10 April 2026, Council replied advising that it is unlikely it would be supportive of removing the requirement for a PRSA.
25. A copy of this email correspondence is contained in **Attachment 6**.

#### **C. APPLICATION TO AMEND PLANNING PERMIT PP-1454-2022 UNDER SECTION 87A OF THE PLANNING AND ENVIRONMENT ACT 1987**

26. The application under section 87A seeks to replace Condition 11 of the Permit with the following:

##### *Revised Preliminary Site Investigation*

11. *Prior to the commencement of development, a revised Preliminary Site Investigation (PSI) must be submitted to, and be to the satisfaction of, the Responsible Authority. The PSI is to be carried out by a suitably qualified environmental consultant. The owner must comply with the findings of the revised PSI to the satisfaction of the Responsible Authority. The revised PSI must be generally in accordance with the Limited Scope Preliminary Site Investigation (PSI) Report (EV3042) (April 2023) prepared by EnviroProtect (Vic) Pty Ltd but amended and updated to include:*

- (a) an intrusive investigation including a soil sampling program in accordance with AS4482.1 to establish the potential for contamination of the site; and*
- (b) updated findings and recommendations based on the results of the intrusive investigation.*

*Before the development starts any recommendations of the PSI must be satisfied.*

**(the Proposed Amendment)**

#### **D. GROUNDS TO BE RELIED UPON**

27. In support of the application to amend Condition 11 of the Permit, the Applicant relies on the following grounds.
  - 27.1 The permitted use of the Subject Land under the Permit is a warehouse use and not a sensitive use within the meaning of PPN30.
  - 27.2 The PSI submitted as part of the Permit application did not recommend the preparation of a PRSA for the proposed warehouse use. Rather, the PSI concluded that a PRSA or

environmental audit would only be necessary if the Subject Land were redeveloped for a sensitive use.

- 27.3 PPN30 does not prescribe a PRSA for industrial or warehouse uses on land with a high potential for contamination. The recommended assessment tool for such uses is a PSI to inform the need for any subsequent environmental audit.
- 27.4 Condition 11 requires the preparation of a PRSA. This requirement is inconsistent with the recommendations of the PSI and the framework established by PPN30 for the proposed warehouse use.
- 27.5 The Permit Application was supported by the PSI, but it was limited in scope and did not include intrusive investigations. A revised PSI, including intrusive investigations and updated findings and recommendations, can appropriately assess the environmental conditions and risks of the Subject Land for the permitted warehouse use in accordance with PPN30.

#### **E. ORDERS SOUGHT**

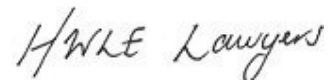
28. The Applicant seeks the following orders:

- 28.1 Pursuant to section 87A of the *Planning and Environment Act 1987*, Condition 11 of Planning Permit PP-1454-2022 is amended to read:

##### *Revised Preliminary Site Investigation*

- 11. *Prior to the commencement of development, a revised Preliminary Site Investigation (PSI) must be submitted to, and be to the satisfaction of, the Responsible Authority. The PSI is to be carried out by a suitably qualified environmental consultant. The owner must comply with the findings of the revised PSI to the satisfaction of the Responsible Authority. The revised PSI must be generally in accordance with the Limited Scope Preliminary Site Investigation (PSI) Report (EV3042) (April 2023) prepared by EnviroProtect (Vic) Pty Ltd but amended and updated to include:*
  - (a) *an intrusive investigation including a soil sampling program in accordance with AS4482.1 to establish the potential for contamination of the site; and*
  - (b) *updated findings and recommendations based on the results of the intrusive investigation.*

*Before the development starts any recommendations of the PSI must be satisfied.*



**HWLE Lawyers**  
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12 May 2026