

## Annexure A

### *Background*

1. Bobsled Properties Pty Ltd (ACN 623 493 256) (**Bobsled Properties**) are the owner and occupier of 1/294 Lygon Street, Brunswick East (**Land**).
2. The Land is subject to the Permit which was issued by Moreland City Council (now Merri-bek City Council) (**Council**) on 16 June 2020.
3. Bobsled Properties run the *Piano Bar* on the Land, a bar and music venue.

### *Planning permit*

4. The Land is contained within the Commercial 1 Zone of Moreland Planning Scheme. Use of land for a “bar” is a section 2 use and therefore requires a planning permit.
5. The Permit allows for use of the Land for the sale and consumption of liquor in association with a bar in accordance with the endorsed plans.
6. Condition 7 of the Permit provides:

*Within 2 months of the commencement of the use, acoustic testing is to be carried out to ascertain whether the use complies with the maximum noise levels prescribed by SEPP N-2. The testing is to be carried out by an independent acoustician approved by the Responsible Authority. If the testing reveals that the use does not meet the specified maximum noise levels the buildings and works must be modified to make the use compliant with those levels. After any modifications have been made further acoustic testing must be carried out to ascertain whether the use complies with the prescribed noise levels. All acoustic testing is to be carried out during a busy period. The results of testing are to be provided to the Responsible Authority and made available to the public.*

7. Condition 8 of the Permit provides:

*Noise levels associated with the use must at all times comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. Should the Responsible Authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the Responsible Authority to demonstrate compliance, or which outlines any measures considered necessary to achieve compliance. The recommendations of the Acoustic Report must be implemented to the satisfaction of the Responsible Authority. The endorsed plans must be amended to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.*

### *Summary of alleged contraventions*

1. Council alleges two ongoing contraventions of condition 7 and one ongoing contravention of condition 8 of the Permit as detailed below.
2. Bobsled Properties contravened condition 7 of the Permit by:
  - (a) not modifying buildings and works to make the use compliant with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (**SEPP N-2**) after testing revealed that noise levels exceeded maximum noise levels prescribed by SEPP N-2; and
  - (b) not undertaking further acoustic testing after modifications of the buildings and works.

3. Bobsled Properties contravened condition 8 of the Permit by exceeding the maximum volume noise limit permitted by SEPP N-2.

*First contravention of condition 7*

4. The acoustic report required by condition 7 of the Permit was submitted to Council on 17 February 2022. This acoustic report revealed that measured noise levels exceeded maximum noise levels permitted by SEPP-N2.
5. A second acoustic report was submitted to Council on 23 March 2022. This report revealed that noise levels continued to exceed the maximum noise levels permitted by SEPP-N2.
6. In these circumstances, condition 7 of the Permit required Bobsled Properties to undertake modifications to buildings and works to make the use compliant with SEPP-N2.
7. On 9 December 2022, Council, through its acoustic consultant, conducted acoustic testing of the apartments above the Land. This testing revealed that noise levels continued to exceed maximum noise levels permitted by SEPP-N2.
8. Accordingly, Bobsled Properties did not modify buildings and works to make the use compliant with SEPP-N2 in contravention of condition 7.

*Second contravention of condition 7*

9. Bobsled Properties did not undertake further acoustic testing after undertaking modifications of buildings and works in contravention of condition 7 of the Permit.
10. The following modifications were purported to have been made after the second and final acoustic testing was conducted on behalf of Bobsled Properties:
  - (a) On 23 March 2022, Anthony Thornton of Tract, informed Council that an appropriate speaker system and a sound limiter would be installed.
  - (b) On 1 July 2022, Chris Wright of Kerr Partners informed Council the Bobsled Properties “recently did a further \$18,000 worth of work to the rear airlock”.
  - (c) On 27 July 2022, Anthony Thornton informed Council that works associated with deficiencies in the roof construction would occur in August.

*Ongoing contraventions of conditions 8*

11. Council received a noise complaints from residents of the apartments above the Land regarding the volume of noise immediately after the Piano Bar began hosting private functions in January 2021. The Council continues to receive noise complaints.
12. Three acoustic reports, two commissioned by Bobsled Properties and one commissioned by Council revealed that noise levels exceeded those permitted by condition 8 of the Permit, being the limits prescribed by SEPP-N2.