

APPLICATION FOR DIRECTIONS HEARING OR ORDERS

Use this form if you have a VCAT case in progress and want:

- directions about how the case should be managed – for example, whether other parties can join the proceeding
- an injunction – an order that directs someone to do (or not do) something
- an interlocutory order - these are proceedings for dealing with a specific issue in a matter until a final hearing and decision
- an order for costs if final orders have been made.

For a planning and environment directions or practice day hearing, use the Practice Day Request form.

FEES

You must pay a fee with this application if you are:

- seeking an injunction in the Civil Division
- applying for costs after a final hearing in VCAT's Administrative, Civil or Planning and Environment Division.

For information about fees, visit www.vcat.vic.gov.au/fees

LODGING THIS FORM

You must send a copy to:

- all parties when you send this application to VCAT, so everyone can prepare if a hearing is scheduled at short notice
- any proposed parties, if this is an application to join a current case as a party.

File and serve copies of all documentation in support of the application:

- urgent applications - by noon one business day before the directions hearing
- routine applications - by noon four business days before the directions hearing. Answering material must be filed and served by noon two business days before the directions hearing.

You may have to pay costs if a hearing is adjourned (delayed) because you did not file and serve documents as required.

Complete all fields on this form. Incomplete forms can delay processing and the application may be rejected.

MORE INFORMATION

Read Practice Note – PNVCAT5 Directions Hearings and Urgent Hearings.

You can contact us if you need help to complete this form. Please visit our website vcat.vic.gov.au for contact details.

APPLICATION FOR DIRECTIONS HEARING OR ORDERS

VCAT reference number

Case details

Applicant/s

Respondent/s

Other/s - for example, represented person, joined party, objector

Details of person making this request

Are you the:

☐

Respondent

☐

Applicant

☐

Other (specify)

Name/company

Contact number

Contact email

Are you represented?

☐

Yes

☐

No

If yes, by whom?

Orders sought

I am applying for:

☐

Directions

☐

Injunction (fees apply)

☐

Interlocutory order

☐

Costs application after the final hearing (fees may apply)

☐

Other orders (specify)

Tell us what you want and why:

Attach a separate page if required

Is this application urgent?

☐

Yes

☐

No

If yes, why?

Orders sought (continued)

Have you told the other parties that you are making this application?

☐ Yes ☐ No

If no, why not?

If you can, estimate hearing time required:

Date of next hearing:

dd / mm / yyyy

Signed:

James Kerr

Date:

dd / mm / yyyy

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Ref: P79/2023

IN THE MATTER OF:

APPLICANT: Merri-bek City Council

RESPONDENT: Bobsled Properties Pty Ltd (ACN 623 493 256)

AFFIDAVIT

Date of Document: 9 March 2023
Filed on behalf of: the Respondent
Prepared by: Kerr & Kerr Partners Pty Ltd
Level 2, 90 William Street
Melbourne VIC 3000

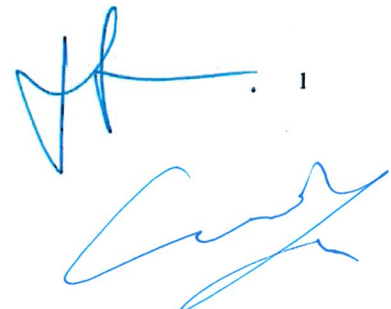
Solicitors Code: 107900
Telephone: 9600-2234
Ref: 1517/18

I, **James Douglas Kerr**, of Level 2, 90 William Street, Melbourne, solicitor, affirm and say as follows:

1. I am an Australian lawyer and Partner of Kerr and Kerr Partners Pty Ltd (**Kerr and Kerr**), we are the legal representatives of the Respondent in this matter. I am authorised by the Respondent to make this affidavit on their behalf. I make this affidavit from my own knowledge, information and belief save where otherwise indicated.
2. The Respondent seeks to join Owners Corporation Plan No 1 706696X ("OC") to these Proceedings.
3. I refer to the Respondent's Statement of Grounds dated 9 March 2023 ("Statement of Grounds").

Now produced and shown to me and marked with the letters "JDK-1" is a true copy of the Statement of Grounds.

4. It is alleged by the Respondent in the Statement of Grounds that the OC is responsible for the common property and common services in the development.
5. I am instructed and believe that the alleged noise issues, the subject of these Proceedings, arise from non-conforming building work located in the common property areas of the development that are the sole responsibility of the OC.
6. In order to satisfactorily resolve the matters in dispute, in my view, it is important that the OC is joined to this Proceeding.
7. The Respondent has issued proceedings in the Owners Corporation list of VCAT in proceedings OC122/2023 ("OC Proceeding"). The OC Proceeding relates to the same facts and circumstances arising in this Proceeding.

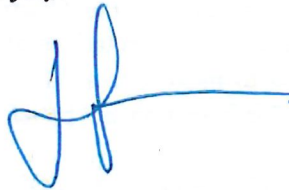


Now produced and shown to me and marked with the letters "JDK-2" is a true copy of the application filed in the OC Proceeding.

8. In my view, this Proceeding and the OC Proceeding should be heard concurrently, consistent with the Tribunal's obligations under *s98 Victorian Civil and Administrative Tribunal Act 1998*, namely that in hearing the matters concurrently, it would:
- (a) determine the proceedings with as little formality and technicality and with as much speed as the requirements of the *Planning and Environment Act 1987* and the *Owners Corporations Act 2006* require;
 - (b) ensure that the Tribunal has a proper consideration of the matters before it; and,
 - (c) limit the costs of the parties involved in proceedings that rely upon the same facts and circumstances.

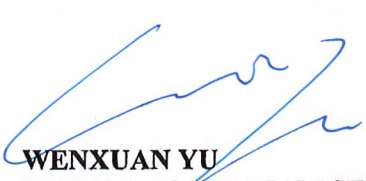
The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Affirmed by the said **JAMES DOUGLAS KERR**)
at Melbourne)
in the State of Victoria)
on 9 March 2023)



This affidavit was sworn by the deponent via an audio-visual link, and the authorised affidavit taker had used a scanned copy of the affidavit and not the original in accordance with the Oaths and Affirmations Act 2018

Before me:


WENXUAN YU
LEVEL 2, 90 WILLIAM STREET, MELBOURNE VIC 3000
AN Australian legal practitioner within the meaning the Legal Profession Uniform Law (Victoria)

Wenxuan Yu
Level 2, 90 William Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Ref: P79/2023

IN THE MATTER OF:

APPLICANT: Merri-bek City Council

RESPONDENT: Bobsled Properties Pty Ltd (ACN 623 493 256)

**AFFIDAVIT
CERTIFICATE IDENTIFYING EXHIBIT**

Date of Document: 9 March 2023
Filed on behalf of: the Respondent
Prepared by: Kerr & Kerr Partners Pty Ltd
Level 2, 90 William Street
Melbourne VIC 3000

Solicitors Code: 107900
Telephone: 9600-2234
Ref: 1517/18

This is the exhibit marked "JDK-1" now produced and shown to JAMES DOUGLAS KERR at the time of affirming this affidavit on 9 March 2023.


BEFORE ME.....


WENXUAN YU
LEVEL 2, 90 WILLIAM STREET, MELBOURNE VIC 3000
AN Australian legal practitioner within the meaning the Legal Profession Uniform Law
(Victoria)

Wenxuan Yu
Level 2, 90 William Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Statement of Grounds dated 9 March 2023

STATEMENT OF GROUNDS

Use this form to set out your reasons for contesting a planning other than an enforcement case at VCAT. These written reasons are called your Statement of Grounds.

CASE DETAILS

1. Date that Statement of Grounds must be received by VCAT This is on the notice you received or the sign at the site. If your Statement of Grounds is received by VCAT after this date, you will not be a formal party to the case.	9/03/2023
2. VCAT Reference Number and Site Address	P79/2023 1/294 Lygon Street

WHO IS MAKING THIS STATEMENT OF GROUNDS?

3. Who is making this Statement of Grounds?

4. Full name of the person, company, authority or other making this Statement of Grounds.

5. Are you?

NOTE: If you are a person who did not object to the original application to the Council but now wants to object, you are not a formal party to the VCAT case and you must attend the hearing to be considered to be added as a formal party. You also must submit your own Statement of Grounds, separate to a person who objected to the original application to the Council.

If you selected other, please specify below

6. Do you wish to be identified as a person of Aboriginal and/or Torres Strait Islander descent?

7. What is your address?

This will be the address VCAT uses to correspond with you. It must be an address in Victoria. If you have a representative, we will send all our notices to your representative's address instead.

Street address

Suburb/Town

State

Postcode

Phone number

Email

8. Is someone representing you? If No, skip to Question 10.

9. Details of your representative:

Organisation name (if applicable)	KERR & KERR PARTNERS		
Full name of representative	JAMES DOUGLAS KERR		
Street address	LEVEL 2, 90 WILLIAM STREET		
Suburb	MELBOURNE	State	VIC Postcode 3000
Phone number	03 9600 2234		
Email	james@kerrpartners.com.au		

IS THIS A JOINT STATEMENT OF GROUNDS?

10. Complete this section if you are a spokesperson for people lodging a joint Statement of Grounds. We will only communicate with the nominated representative for a joint Statement of Grounds.

Use the + *Add Joint Respondent* button to enter the details of each person you represent. Also, attach a list of their names and addresses demonstrating the consent of each person with their signature. You can do this at the bottom of this form.

I certify that I have consent to act as a spokesperson for the attached list of people where this is a joint Statement of Grounds

No

WHAT GROUNDS TO YOU RELY UPON?

11a. State your grounds

Victorian Civil & Administrative Tribunal
Planning and Environment Division
Planning and Environment List
VCAT Reference No: P79/2023

MERRI-BEK CITY COUNCIL
Applicant

BOBSLED PROPERTIES PTY LTD
Respondent

STATEMENT OF GROUNDS

The Respondent will rely upon the following statement of grounds:

1. The Respondent admits paragraphs 1 to 7 of Annexure A to the Applicant's application to the Tribunal dated 19 January 2023 (application).
2. The Respondent is the owner of lot G01 (Lot) in a development otherwise known as 294 Lygon St Brunswick East 3057 (development).
3. The Land is described in Certificate of Title Volume 11993 Folio 725 and more particularly as Lot G01 on Plan of Subdivision 706696X (plan of subdivision).

4. The plan of subdivision describes the extent of the Lot as being defined by the structure of the development, specifically:
- (a) the interior face of all floors, ceilings and walls in the Lot;
 - (b) the upper face of the concrete floor slab in the Lot; and
 - (c) the underside of the suspended ceiling;
- (Lot boundaries).
5. The common property on the plan of subdivision includes:
- (a) all the land in the plan of subdivision except the Lot and other lots and includes the structure of all walls, floors and ceilings which define boundaries; and
 - (b) all internal columns, service ducts, pipe shafts, cable ducts and vents within the building (common property).
6. Within the Lot boundaries, there are four internal columns, service ducts, pipe shafts, cable ducts and vents (common services).
7. The Owners Corporation search report shows that:
- (a) there are 37 other lots on the land (other lots);
 - (b) the Lot, the other lots and the common property are all affected by one owners corporation, namely Owners Corporation 1 Plan No PS706696X (OC);
 - (c) the OC is an unlimited owners corporation; and
 - (d) owners corporation rules AR562304X dated 17 October 2018 (rules) apply to the operation of the OC.
8. On 16 December 2022, the Applicant obtained an expert acoustic report from Acoustic Dynamics (AD Report).
9. The AD Report identified:
- (a) alleged noise breaches in the rear bedroom of Apartment 108 on the first floor of the development and the bedroom of Apartment 306 on the third floor of the development (bedrooms);
 - (b) the transmission path for the music noise intrusion could be localised to the southern wall/floor junction of both bedrooms;
- (alleged noise breaches).
10. Further, the AD Report stated that:
- (a) no music noise could be identified as being transmitted via the façade windows;
 - (b) the expert had not inspected the Piano Bar, nor the construction separating the venue from the apartments above; and
 - (c) the expert could not fully investigate potential transmission paths and conclusively define how the music noise is being transmitted into the apartments.
11. There are service ducts located proximate to the southern wall/floor junctions of both bedrooms (service ducts). There are common services located in each of those service ducts.
12. The service ducts and common services within them are common property, having regard to the plan of subdivision. The service ducts and the common property services found within them are common property areas on the land. The OC is wholly responsible for them.
13. It was a building requirement that all common services in the service ducts and ceiling spaces be acoustically lagged.
14. The Respondent says that the common services:
- (a) found within the Lot, were not acoustically lagged when the Respondent took possession of the Lot;
 - (b) that penetrate the walls of the Lot from common property areas have not been acoustically sealed;
 - (c) located adjacent to the Lot above various storage cages in common property areas on the ground floor of the development are not acoustically lagged;
 - (d) given the above, the service ducts adjacent to the bedrooms are not likely to have been

acoustically lagged.

15. The Respondent says that the noise issue has arisen due to the common services within the development in common property areas not having been acoustically lagged or treated.

16. By reason of the above, the Respondent says that the party responsible for the breach alleged by the Applicant is the OC.

17. The Respondent has undertaken significant works to the Lot to ensure compliance with the relevant noise permit conditions, with further particulars to be provided.

18. For the reasons stated above, the Respondent denies that it has breached conditions 7 and 8 of the permit.

9 March 2023

T S Pikusa

11b. Is this an amendment to your existing statement of grounds (where you indicated you would attend the hearing) previously filed with VCAT?

No

YOUR PARTICIPATION IN HEARINGS

12. Are you intending to participate in the hearing? If No, skip to Question 16.

NOTE: If you select **YES**, you will be a party and a fee applies. VCAT will send you further correspondence and orders.

If you select **NO**, you will not be a party and no fee applies. VCAT will not send you further correspondence and orders.

Yes, I intend to appear and present a submission at the hearing

13. How much time will you need to present your entire case at a hearing?

Estimate the time you need to present, including time needed by any expert witnesses you will call.

10.00

hours

minutes

14. How many expert witnesses will you call?

2

15. List the areas of expertise for your expert witnesses.

ACOUSTIC & BUILDING

HEARING ASSISTANCE

We can arrange to have an interpreter for anyone who needs to attend the hearing or assist people with disability (e.g. hearing loops).

These special arrangements are free.

16. Do you need an interpreter?

No

If yes, tell us who needs an interpreter and in what language/dialect:

17. Does anyone attending the hearing require any other type of special assistance?

E.g. Hearing loop, wheelchair access, additional arrangements for personal safety.

No

If yes, tell us who needs any other type of special assistance and what they require:

CERTIFICATION

18. You must send a copy of your Statement of Grounds on both the applicant and the Council by the date that appears in the notice you received including on any sign at the site. If not, we may not be able to hear your views or consider your objection.

I certify that I will serve a copy of this Statement of Grounds

Date to be served on applicant:

9/03/2023

Date to be served on respondent:

9/03/2023

ACKNOWLEDGEMENT

By completing this Statement of Grounds, I understand and acknowledge that:

☒ To the best of my knowledge, all information provided in this application is true and correct.

☒ It is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

Full name of person completing this form: JAMES DOUGLAS KERR

Date of acknowledgement:

9/03/2023

ABOUT STATEMENT OF GROUNDS FEE

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 this form, you will not be a formal party and will not be entitled to

take part, even if you indicated that you wanted to participate. A new fee does not apply if you are filing amended statement of grounds.

You do not have to pay a fee if you are

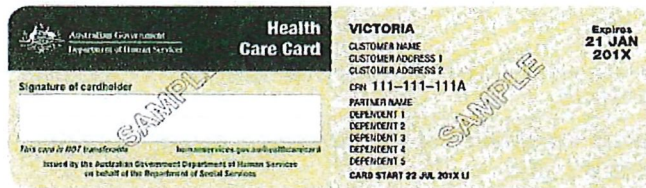
- a permit applicant or holder,
- the determining or recommending referral authority,

To find out if you need to pay a Statement of Grounds fee and how much it costs, visit the fees page at www.vcat.vic.gov.au/fees.

FEE CATEGORIES

VCAT fees are charged according to three levels:

- **corporate fees** for businesses and companies with a turnover of more than \$200,000 in the previous financial year, corporate entities and government agencies.
- **standard fees** for individuals, not-for-profit organisations, and small businesses and companies with a turnover of less than \$200,000 in the previous financial year. Small businesses and companies must provide a current statutory declaration to support this claim.
- **concession fees** for people who hold the Australian Government Health Care Card. You must provide a copy of your card (front and back) with your Statement of Grounds. If more than one person is named on the Statement of Grounds, this card needs to be provided for each person. We do not accept Pensioner Concession Cards or Department of Veteran Affairs health cards.



FEE PAYMENT

Are you any of the following:

- a party that has opted not to attend hearing
- a responsible authority in a proceeding for a review of a decision of the authority to refuse to grant a permit (Sch 1 Cl 56(2)(a) VCAT Act)
- a responsible authority in a proceeding to extend time within which any development is to be commenced or completed (Sch 1 Cl 56(2)(b) VCAT Act)
- a permit applicant or holder
- the determining or recommending referral authority
- a person responding to an enforcement order application
- an applicant for a works authority or licence
- a party filing an amended statement of grounds

If Yes, a fee will **NOT** be collected.

If No, fee payment is required.

Yes

FEE RELIEF

We can reduce or not charge (waive) a VCAT fee for individuals experiencing financial hardship. Any application to reduce or waive the fee should be made as soon as possible to avoid delays. For more information about fee relief, go to <https://www.vcat.vic.gov.au/feerelief>

If you are applying for fee relief, complete the [Fee Relief form](#) and attach it at the bottom of this form.

Are you applying for fee relief?

No

WHAT HAPPENS NEXT

If you have provided your email address, you will shortly receive an email from us with instructions about next steps including how to make payment (if applicable). If you have not provided an email address and payment is required, VCAT will contact you by telephone about making payment.

VCAT will process your Statement of Grounds and/or fee payment.

If you have

- not submitted an original objection with the Council or
- your Statement of Grounds was submitted after the closing date or
- your fee payment was received after the closing date.

VCAT will provide you with details on how you can become a formal party to the VCAT case. You can then decide if you wish to become a formal party to the VCAT case.

SUPPORTING DOCUMENTS

Attachments to this application:

Title	File Name
Statement of Grounds (WORD FORMAT)	Bobsled Properties Pty Ltd - Statement of Grounds KKP 09032023.docx

Large files

For any file larger than 128MB a sharing link is required.

Please list (by line) the name of each file that is bigger than 128MB followed by the hyperlink.

--

NEED HELP WITH YOUR STATEMENT OF GROUNDS

If you have any questions about completing this form, contact our Customer Service team:

- email admin@vcat.vic.gov.au
- call 1300 01 8228 (1300 01 VCAT) between 9 am and 4:30 pm Monday to Friday
- go to the Victorian Civil and Administrative Tribunal, Ground Floor, 55 King Street, Melbourne VIC 3000. We are open Monday to Friday from 8:30 am to 4:30 pm

PRIVACY INFORMATION

For a copy of VCAT's privacy statement, go to www.vcat.vic.gov.au/privacy.

MERRI-BEK CITY COUNCIL

Applicant

BOBSLED PROPERTIES

Respondent

STATEMENT OF GROUNDS

The Respondent will rely upon the following statement of grounds:

1. The Respondent admits paragraphs 1 to 7 of Annexure A to the Applicant's application to the Tribunal dated 19 January 2023 (**application**).
2. The Respondent is the owner of lot G01 (**Lot**) in a development otherwise known as 294 Lygon St Brunswick East 3057 (**development**).
3. The Land is described in Certificate of Title Volume 11993 Folio 725 and more particularly as Lot G01 on Plan of Subdivision 706696X (**plan of subdivision**).
4. The plan of subdivision describes the extent of the Lot as being defined by the structure of the development, specifically:
 - (a) the interior face of all floors, ceilings and walls in the Lot;
 - (b) the upper face of the concrete floor slab in the Lot; and
 - (c) the underside of the suspended ceiling;(**Lot boundaries**).
5. The common property on the plan of subdivision includes:
 - (a) all the land in the plan of subdivision except the Lot and other lots and includes the structure of all walls, floors and ceilings which define boundaries; and

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(common property).
- 6. Within the Lot boundaries, there are four internal columns, service ducts, pipe shafts, cable ducts and vents (common services).
- 7. The Owners Corporation search report shows that:
 - (a) there are 37 other lots on the land (other lots);
 - (b) the Lot, the other lots and the common property are all affected by one owners corporation, namely Owners Corporation 1 Plan No PS706696X (OC);
 - (c) the OC is an unlimited owners corporation; and
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- 8. On 16 December 2022, the Applicant obtained an expert acoustic report from Acoustic Dynamics (AD Report).
- 9. The AD Report identified:
 - (a) alleged noise breaches in the rear bedroom of Apartment 108 on the first floor of the development and the bedroom of Apartment 306 on the third floor of the development (bedrooms);
 - (b) the transmission path for the music noise intrusion could be localised to the southern wall/floor junction of both bedrooms;
(alleged noise breaches).
- 10. Further, the AD Report stated that:¹
 - (a) no music noise could be identified as being transmitted via the façade windows;
 - (b) the expert had not inspected the Piano Bar, nor the construction separating the venue from the apartments above; and

¹ At paragraphs 34 and 35.

- (c) the expert could not fully investigate potential transmission paths and conclusively define how the music noise is being transmitted into the apartments.
- 11. There are service ducts located proximate to the southern wall/floor junctions of both bedrooms (service ducts). There are common services located in each of those service ducts.
- 12. The service ducts and common services within them are common property, having regard to the plan of subdivision. The service ducts and the common property services found within them are common property areas on the land. The OC is wholly responsible for them.
- 13. It was a building requirement that all common services in the service ducts and ceiling spaces be acoustically lagged.
- 14. The Respondent says that the common services:
 - (a) found within the Lot, were not acoustically lagged when the Respondent took possession of the Lot;
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- 15. The Respondent says that the noise issue has arisen due to the common services within the development in common property areas not having been acoustically lagged or treated.
- 16. By reason of the above, the Respondent says that the party responsible for the breach alleged by the Applicant is the OC.
- 17. The Respondent has undertaken significant works to the Lot to ensure compliance with the relevant noise permit conditions, with further particulars to be provided.

18. For the reasons stated above, the Respondent denies that it has breached conditions 7 and 8 of the permit.

9 March 2023

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IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Ref: P79/2023

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APPLICANT: Merri-bek City Council

RESPONDENT: Bobsled Properties Pty Ltd (ACN 623 493 256)


**AFFIDAVIT
CERTIFICATE IDENTIFYING EXHIBIT**

Date of Document: 9 March 2023	Solicitors Code: 107900
Filed on behalf of: the Respondent	Telephone: 9600-2234
Prepared by: Kerr & Kerr Partners Pty Ltd	Ref: 1517/18
Level 2, 90 William Street	
Melbourne VIC 3000	

This is the exhibit marked "JDK-2" now produced and shown to JAMES DOUGLAS KERR at the time of affirming this affidavit on 9 March 2023.



BEFORE ME.....



Wenxuan Yu
Level 2, 90 William Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria,

WENXUAN YU
LEVEL 2, 90 WILLIAM STREET, MELBOURNE VIC 3000
AN Australian legal practitioner within the meaning the Legal Profession Uniform Law
(Victoria)

Owners Corporation List Application dated 6 February 2023

APPLICATION TO THE OWNERS CORPORATIONS LIST

PRIVACY STATEMENT

VCAT's privacy policy is available at vcat.vic.gov.au/privacy

GETTING STARTED

Who can make this application?

Owners corporations, lot owners or former lot owners, occupiers or former occupiers, managers or former managers, service companies, company title corporations, shareholders or former shareholders of service companies and mortgagees can make applications about disputes between neighbours affected by the same owners corporation, service company or company title corporation; about behaviour such as noise, car parking, rubbish, use of common property; damage to a lot or common property; creating a hazard; about owners corporation fees and levies; about repairs and maintenance to common property; about how meetings are conducted; about disputes between the owners corporation and its manager, managers' fees and/or performance or clauses in the management contract.

For help completing this application, read the guide at vcat.vic.gov.au/ocguide.

Fields marked with an asterisk (*) must be completed.

WHICH ACT/S ARE YOU MAKING THIS APPLICATION UNDER?

1. Please select at least one Act*:

- ☒ Owners Corporations Act 2006 Part 6 or Part 11 ☐ Company Titles (Home Units) Act 2013
☐ Australian Consumer Law and Fair Trading Act 2012 ☐ Subdivision Act 1988 Part 5
☐ Other, please specify:

2. Are you making this application in response to another VCAT application that has been served on you?

(This could be in response to an application in other Lists such as the Building & Property, Residential Tenancies and/or Civil Claims Lists.)

- ☐ Yes ☒ No

If yes, please enter VCAT reference number*

3. Are there any related disputes about a residential tenancies agreement, domestic building contract, planning application or another civil claim?

- ☐ Yes ☒ No

If yes, please enter VCAT reference number*

4. Are you seeking an injunction (an urgent order that directs someone to do or not to do something)?

There is an additional fee if you are applying for an injunction.

- ☐ Yes ☒ No

CLAIM AND PAYMENT DETAILS

5. If you are seeking payment of money, how much is your claim?

Enter the amount you are claiming in the field below (or if not claiming an amount enter the approximate value of your claim).

Claim amount

The amount you claim will determine the application fee payable. To check the current fee, go to the VCAT website at vcat.vic.gov.au/fees.

PREMISES DETAILS

6a. Provide details of the premises, lot(s) or unit(s) that are the subject of this dispute.

<input type="checkbox"/> Owners Corporation, enter Registered Number*	<input type="text" value="OC NO1 PS706696X"/>
<input type="checkbox"/> Service Company, enter ACN*	<input type="text"/>
<input type="checkbox"/> Company Title Corporation, enter ACN*	<input type="text"/>
Address of premises* <input type="text" value="294 Lygon St"/>	
Suburb* <input type="text" value="East Brunswick"/>	State* <input type="text" value="VIC"/> Postcode* <input type="text" value="3057"/>

6b. Does the person making this application reside at these premises?

☐ Yes ☒ No

6c. Does the person you are making this application against reside at the premises?

☐ Yes ☒ No

APPLICANT DETAILS

7. Are you applying as:

☒ a lot owner or former lot owner of an owners corporation

First name*

☐ a shareholder or former shareholder of a service company or company title corporation

☐ an owners corporation, provide details below

Name* Registered No.*

☐ an occupier or former occupier of a lot or unit, provide details below

First name* Last name*

☐ a service company ☐ a company title corporation ☐ other company (eg Pty Ltd), provide details below

Company name* ACN or ABN*

☐ a manager or former manager of an owners corporation, provide details below

☐ the mortgagee of a lot or unit, provide details below

First name* Last name*

Company name* ACN or ABN*

☐ other, please specify

8. Do you identify as a person of Aboriginal and/or Torres Strait Islander descent?

Our Koori Engagement Manager can give you cultural support throughout your case.

☐ Yes ☒ No

9. What is your address?

Street address* Level 12, 99 William St
Suburb* Melbourne State* VIC Postcode* 3000

10. How can VCAT contact you?

Name of contact person* James Kerr
Contact number* 03 9670 8533 Fax
Email james@kerrpartners.com.au

By providing us with your email, you consent to VCAT updating you about your application by email.

11. Are you represented by a lawyer, manager or other person?

☒ Yes ☐ No, skip to Question 13

12. Provide your representative's details

Name of firm or representative Kerr and Kerr Partners Pty Ltd
DX address Reference No. 1517/18
Street address Level 2, 90 William St
Suburb Melbourne State VIC Postcode 3000
Name of contact person James Kerr
Contact number 03 9670 8533 Fax
Email james@kerrpartners.com.au

SECOND APPLICANT'S DETAILS

If there are more than two applicants copy this section, complete and attach.

13. Are you applying as:

- ☐ a lot owner or former lot owner of an owners corporation
First name* Last name*
☐ a shareholder or former shareholder of a service company or company title corporation
☐ an owners corporation, provide details below
Name of owners corporation*
Registered number*
☒ an occupier or former occupier of a lot or unit, provide details below
First name* EBH Leasehold Pty Ltd Last name* ACN 624 108 225
☐ a service company ☐ a company title corporation ☐ other company (eg Pty Ltd), provide details below
Company name* ACN or ABN*
☐ a manager or former manager of an owners corporation, provide details below
☐ the mortgagee of a lot or unit, provide details below
First name* Last name*
Company name* ACN or ABN*
☐ other - please specify

14. What is your address?

Street address*	Level 12, 99 William St		
Suburb*	Melbourne	State*	VIC
		Postcode*	3000

15. How can VCAT contact you?

Name of contact person*	James Kerr		
Contact number*	03 9670 8533	Fax	
Email	james@kerrpartners.com.au		

By providing us with your email, you consent to VCAT updating you about your application by email.

16. Are you represented by a lawyer, manager or other person?

☒ Yes, complete the fields below ☐ No, skip to Question 18 ☐ Not yet, skip to Question 18

17. Provide your representatives details

Name of firm or representative	Kerr and Kerr Partners Pty Ltd		
DX address		Reference No.	1517/18
Street address	Level 2, 90 William St		
Suburb	Melbourne	State	VIC
		Postcode	3000
Contact person	James Kerr		
Contact number	03 9670 8533	Fax	
Email	james@kerrpartners.com.au		

WHO ARE YOU MAKING THIS APPLICATION AGAINST?

The respondent is the person or entity you are making this application against. In most applications, the owners corporation is the respondent, not the management company nor the individual manager.

18. Is the respondent:

☐ a lot owner or former lot owner of an owners corporation

First name* Last name*

☐ a shareholder or former shareholder of a service company or company title corporation

☒ an owners corporation, provide details below

Owners corporation name* Owners Corporation 1

Registered number* PS706696X

☐ an occupier or former occupier of a lot or unit, provide details below

First name* Last name*

☐ a service company ☐ a company title corporation ☐ other company (eg Pty Ltd), provide details below

Company name* ACN or ABN*

☐ a manager or former manager of an owners corporation, provide details below

☐ the mortgagee of a lot or unit, provide details below

First name* Last name*

Company name* ACN or ABN*

☐ Other - please specify

19. What is the respondent's address and contact details?

- If the respondent is an individual - provide a street address (PO Box is not sufficient)
- If a company - provide the address of the Registered Office on the ASIC Company Extract (see page 8)
- If an owners corporation - provide the address of its manager or contact person
- If trading under a business name - provide the address for service of document on the ASIC Business Name Extract (see page 8)

Street address*	161 Park Street				
Suburb*	South Melbourne	State*	VIC	Postcode*	3205
Contact number	(if known) 03 9690 3488		Fax	(if known) 03 9699 4581	
Email	(if known) pernillec@dixonkestles.com.au				

20. Is the respondent represented by a lawyer, manager or other person?

- ☒ Yes ☐ No, skip to Question 22 ☐ Don't know, skip to Question 22

21. Provide their representative's details

Name of firm or representative	LFS Legal				
DX address		Reference no.	220425		
Street address	Suite 3, 242 Toorak Road				
Suburb	South Yarra	State	VIC	Postcode	3141
Contact person	David Free				
Contact number	03 9826 6400		Fax	03 9826 6606	
Email	david.free@lfslegal.com.au				

22. Is there another respondent you are claiming against?

- ☐ Yes ☒ No, skip to Question 27

SECOND RESPONDENT'S DETAILS

If there are more than two respondents copy this section, complete and attach to your application.

23. Is the second respondent:

- ☐ a lot owner or former lot owner of an owners corporation

First name* Last name*

- ☐ a shareholder or former shareholder of a service company or company title corporation

- ☐ an owners corporation, provide details below

Owners corporation name*

Registered number*

- ☐ an occupier or former occupier of a lot or unit, provide details below

First name* Last name*

- ☐ a service company ☐ a company title corporation ☐ other company (eg Pty Ltd), provide details below

Company name ACN or ABN

For other types of respondents, see the next page.

☐ a manager or former manager of an owners corporation, provide details below

☐ the mortgagee of a lot or unit, provide details below

First name* Last name*

Company name* ACN or ABN*

☐ other - please specify

24. What is the second respondent's address and contact details?

If the second respondent is an individual - provide a street address (PO Box is not sufficient)

If a company - provide the address of the Registered Office on the ASIC Company Extract (see page 8)

If an owners corporation - provide the address of its manager or contact person

If trading under a business name - provide the address for service of document on the ASIC Business Name Extract (see page 8)

Street address*

Suburb* State* Postcode*

Contact number* Fax

Email

25. Is the second respondent represented by a lawyer, manager or other person?

☐ Yes, complete the fields below, if different from first respondent ☐ No, skip to Question 27

☐ Don't know, skip to Question 27

26. Provide their representative's details

Name of firm or representative

DX address Reference no.

Street address

Suburb State Postcode

Contact person

Contact number Fax

Email

APPLICATION DETAILS

27. If the applicant is an owners corporation, is there a special resolution in support of this application?

☒ No ☐ Yes

28. Is this application for the recovery of fees?

☒ No, skip to Question 30 ☐ Yes

29. Have you followed the procedure in s31 and s32 of the Owners Corporations Act 2006?

☐ No - Your application will be rejected on the grounds that you failed to follow the procedure in section 31 and section 32

☐ Yes - Complete both dates below

Date of fee notice:
(dd/mm/yyyy)

	/		/	
--	---	--	---	--

Date of final notice:
(dd/mm/yyyy)

	/		/	
--	---	--	---	--

30. Is the application about a breach of the Owners Corporations Act, regulations or rules?

☐ No ☒ Yes

31. Has the owners corporation given any notices under Part 10 of the Owners Corporations Act?

☐ No ☒ Yes

DISPUTE DETAILS

32. Briefly describe the problem.

Be clear and include enough information to enable the respondent to understand the claim.

If claiming payment of money, you must include details of each amount claimed.

If you do not provide enough information the hearing may be adjourned to allow the respondent to prepare a defence. If the hearing is adjourned you may need to pay a hearing fee for any adjourned hearing.

- There have been significant acoustic issues concerning the mixed use building at 280 – 294 Lygon Street, Brunswick East ("Complex").

- The Applicants have spent more than \$300,000.00 in undertaking rectification works on their lots in an attempt to address the acoustic issues that have been the subject of numerous complaints from the Respondent, members of the Respondents owners corporation committee and other lot owners in the Complex.

- The Applicants instructed Quintas Building & Maintenance Pty Ltd ("Quintas") to inspect a portion of the Complex in a further attempt to identify any other matters that may be contributing to the acoustic issues at the Complex.

- The Respondent via their manager was put on notice of new matters concerning unlagged pipes on common property and provided with a copy of the Quintas report dated 18 October 2022 on 8 November 2022 (attached). To date the Respondent has taken no action other than to instruct lawyers who sought time to provide an informed response only to subsequently advise the Applicants lawyer that they held instructions to accept service of proceedings.

- The Applicants state that if the first floors underslung sewer and stormwater pipes were acoustically lagged in accordance with the plan (attached) and in accordance with the Building Code of Australia and AS3500 Plumbing and Drainage Water Services standards, this would significantly reduce noise transmission and therefore address the acoustic issues at the Complex.

- In light of the above the Applicants seek reimbursement from the Respondent in the amount of \$300,000.00 rectification works to address the acoustic issues as they were to no effect due to the unlagged pipes on common property at the Complex.

- Further, the Applicant seeks an order that the Respondent urgently attends to lagging of the pipes at the Complex, that were identified in the Quintas report.

- The Applicants bring the above claim pursuant to sections 5, 46 and 47 Owners Corporation Act 2006.

33. Please tick the order(s) you want VCAT to make.

☒ An order for the payment of money

☒ An order that a party to do or not do something

☒ An order that a party to comply with the Owners Corporations Act 2006, regulations or rules

☐ An order to vary a contract or agreement

☐ A declaration about whether a contract or agreement is or is not void

☐ A declaration about the meaning of a rule or delegation

☐ An order appointing or revoking the appointment of a manager of an owners corporation

☐ An order about damaged or destroyed buildings or improvements

☐ Order an insurance payment

☐ An order about recording the Tribunal's order in the Register kept under the Transfer of Land Act 1958 or require amendment of that Register

☐ An order directing a party to comply with the Company Titles (Home Units) Act 2013, a rule of a company title corporation or service company or a term of a service agreement

☐ An order appointing an administrator (Division 4)

☐ Other - please specify

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HEARING ARRANGEMENTS

34. Do you or any other person appearing at the hearing need special assistance?

☐ Yes, specify what special assistance is needed below ☒ No, skip to question 35

☐ Hearing loop ☐ Security

☐ Interpreter - who needs an interpreter?

First name

Last name

Language/dialect

☐ Other, please specify

SUPPORTING DOCUMENTS

35. You must attach the following to this application:

☐ **If the respondent is an individual trading under a business name**

An extract of the respondent's business name showing the address for service of documents.
Obtain a Business Name Extract at www.asic.gov.au.

☐ **If the respondent is a company**

An ASIC Company Extract showing the address of the Registered Office of the company.
Obtain a Company Extract at www.asic.gov.au.

APPLICATION CHECKLIST

36. Please ensure you have completed the following:

☐ You have attached a recent ASIC Company or Business Name Extract (if the respondent is a company or trading under a business name).

☒ You have paid and attached the relevant application fee or you have applied for a fee waiver.

☒ You have made a copy of this application for your own records.

ACKNOWLEDGEMENT

☒ By ticking this box, I understand and acknowledge that:

- to the best of your knowledge, all information provided in this form is true and correct
- it is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

Date of acknowledgement (dd/mm/yyyy):

06 / 02 / 2023

ABOUT VCAT FEES

VCAT fees are charged according to three levels:

- **corporate fees** for businesses and companies with a turnover of more than \$200,000 in the previous financial year, corporate entities and government agencies
- **standard fees** for individuals, not-for-profit organisations, and small businesses and companies with a turnover of less than \$200,000 in the previous financial year. Companies must provide a statutory declaration to support this claim
- **concession fees** for people who hold the Australian Government Health Care Card. You must provide a copy of your card with your application.

To find out more, including how much this application costs, visit www.vcat.vic.gov.au/fees

FEE RELIEF

We can reduce or not charge (waive) a VCAT fee in certain circumstances.

Some people are automatically entitled to a full fee waiver. You can also apply for fee relief if paying the fee would cause you financial hardship.

Visit www.vcat.vic.gov.au/feerelief for more information about fee relief.

Are you applying for fee relief?

☐

No

☐

Yes - complete **Fee relief form** and attach it to this application form

FEE PAYMENT

Complete this section if you are:

- applying for an injunction in the Civil Division and not applying for fee relief
- applying for costs after a final hearing in VCAT's Administrative, Civil or Planning and Environment Division and not applying for fee relief.

Otherwise there is no fee and you do not have to complete this section.

Choose the fee level:

☐

Standard

☐

Corporate

☐

Concession

Fee amount charged: \$ _____

CARD DETAILS

Cards Accepted:

☐

VISA

☐

MasterCard

Cardholder Name:

Card Number:

Card Expiry:

 /

Signed:

Date:

 / /

REMOVE THIS PAGE WHEN SENDING A COPY OF THIS APPLICATION TO OTHER PARTIES

WHERE TO LODGE THIS APPLICATION

If you have supplied your credit card details, send your completed form to us by post.

If you have not provided your credit card details on this form, you can send your completed form to us by post or email.

To protect yourself, do not send credit card details over email.

By email

Email your completed form to the area in VCAT that is dealing with your case.

Residential Tenancies Division

For cases about:

- Renting a Home

Email: renting@vcat.vic.gov.au

Human Rights Division

For cases about:

- Disability Act
- Equal Opportunity
- Guardianship and Administration
- Health and Privacy
- Mental Health
- Powers of Attorney

Email: humanrights@vcat.vic.gov.au

Planning and Environment Division

For cases about:

- Land Valuation
- Planning and Environment

Email: admin@vcat.vic.gov.au

Civil Division

For cases about:

- Building and Construction
- Co-owned Land and Goods
- Goods and Services
- Owners Corporations
- Retail and Commercial Leases
- Unreasonable Flow of Water Between Properties

Email: civil@vcat.vic.gov.au

Administrative Division

For cases about:

- Legal Practice
- Review and Regulation

Email: admin@vcat.vic.gov.au

By post

VCAT
GPO Box 5408
Melbourne VIC 3001

In person

55 King Street
Melbourne VIC 3000
