

APPLICATION FOR ENFORCEMENT ORDER (PLANNING)

VCAT reference number (Office use only):

ABOUT THIS FORM

Use this form if you are applying for an **enforcement order** under the *Planning and Environment Act 1987* (the **Act**). For assistance completing this form, refer to the 'Enforcement Orders' Fact Sheet available on the VCAT website.

If you are not asking VCAT to make an enforcement order, refer to the VCAT website to find the appropriate list and application form.

If your application is incomplete and you do not include all the material and information required, or you do not pay the application fee, **your application may be rejected or struck out.**

WHAT TYPE OF ORDER ARE YOU ASKING VCAT TO MAKE?

1. What Section/s of the Planning and Environment Act 1987 are you applying for an enforcement order or interim enforcement order under?

Interim enforcement orders: In urgent cases, section 120 of the Act also allows a person to apply to VCAT for an interim enforcement order against any of the people you are seeking the enforcement order against. An additional application fee applies.

If you are seeking interim enforcement orders you need to complete an additional part of this form – see Questions 30 - 34.

2. Has there been a previous application made to VCAT related to this land?

VCAT reference number and site address (if known)

WHO IS MAKING THIS APPLICATION?

3. Who is making this application?

4. What is the full name of the applicant?

The applicant is the person making this application. Provide the full name of the individual, body corporate, company or authority.

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

6. 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	90 Bell Street				
Suburb	COBURG	State	VIC	Postcode	3058
Phone number	(03) 9240 1111				
Email	info@merri-bek.vic.gov.au				

7. Is this a joint application?

No

Joint Applicants

IS SOMEONE REPRESENTING YOU?

If you nominate a representative, we will send all our correspondence to your representative's address instead of your address. It must be an address in Victoria.

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

Yes

9. Details of your representative:

Organisation name (if applicable)	Holding Redlich				
Full name of representative	Joseph Monaghan				
Street address	Level 8, 555 Bourke Street				
Suburb	Melbourne	State	VIC	Postcode	3000
Phone number	(03) 9321 9857				
Email	joseph.monaghan@holdingredlich.com				

WHO ARE YOU MAKING THIS APPLICATION AGAINST?

The person or organisation you are asking for the enforcement order to be made against is the respondent. If you are asking for the enforcement order to be made against a number of people, all of those people are respondents.

10. Full name of the individual, body corporate, company or authority:

Bobsled Properties Pty Ltd (ACN 623 493 256)
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11. What is the respondent's address?

Use the usual or last known address, or if a company use the registered company address recorded with the Australian Securities and Investment Commission (ASIC). You will be asked later in this form to attach a current company search for the company.

Street address

Suburb State Postcode

Phone number

Email

12. Is there another respondent you are making your application against?

OTHER AFFECTED PERSONS

There might be people who are not respondents but may wish to be heard concerning your application. These people might be:

- adversely affected by the enforcement order (e.g. a non-respondent owner of the subject land).
- adversely affected by the alleged contravention (e.g. adjoining landowners).

13. Are there other persons who may be affected by the enforcement order or the contravention and might wish to be heard by VCAT?

ON WHAT LAND HAS THE CONTRAVENTION OCCURRED OR IS OCCURRING OR MAY OCCUR?

14. What is the address of the land on which the contravention has occurred, is occurring or may occur?

Use the street address, if there is one. If the contravention is occurring at more than one address, include all addresses. If there is no street address, use other identifying information such as the volume and folio number, lot and plan number, crown description (allotment/section/parish).

15. Who is owner of the land?

You will need to attach a current certificate of title for the land.

Name	Email	Address	Phone number
BOBSLED PROPERTIES PTY LTD	elord@johnslyng.com.au	LEVEL 12 99 WILLIAM STREET MELBOURNE VIC 3000	0434 100 000

16. Who is the occupier of the land?

Name	Email	Address	Phone number
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BOBSLED PROPERTIES LTD	PTY	elord@johnslyng.com.au	LEVEL 12 99 WILLIAM STREET MELBOURNE VIC 3000	0434 100 000
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17. Who is the responsible authority of the municipality in which the land is located?

The responsible authority administers the planning scheme and is usually the local council.

Merri-bek City Council

18. What is the name of the planning scheme that applies to the land?

19. What zone is the land in?

The planning scheme sets out the zoning of land within the municipality.

Commercial 1 Zone

20. Do any overlays apply to the land?

This is also set out in the planning scheme.

Development Contributions Plan Overlay (Schedule 1); Design and Development Overlay (Schedule 19); Heritage Overlay (Schedule (HO1)); Parking Overlay (Precinct 1 Schedule)

WHAT ARE THE REASONS FOR YOUR APPLICATION?

21. What is the contravention that has occurred, is occurring or will occur?

Contraventions of conditions 7 and 8 of Planning Permit MPS/2019/594

Act?

(Please specify the section of the Act.)

planning scheme?

(Please specify the clause of the planning scheme.)

conditions of a planning permit?

(Please specify the planning permit number and the conditions.)

Conditions 7 and 8 of Planning Permit MPS/2019/594

clause or clauses in an agreement made under section 173 of the Act?

(Please specify the agreement and clause or clauses.)

22. State your reasons for applying.

Enter a short statement providing the reasons you are making this application. This is called your statement of grounds. It should include the following information:

- why you say that a contravention has occurred, is occurring or will occur.
- when the contravention occurred or will occur.

- how the respondent/s are involved in the contravention or future contravention.
- what communication you have had with the respondent/s about the contravention or future contravention and whether there has been a response.
- what actions have been taken leading up to this application being made to prevent the contravention from occurring, or to remedy the contravention once it was identified.
- why you think VCAT should make an enforcement order.

You will be asked later in this application form to attach documents which support your reasons for bringing this application, including (where possible) affidavit/s or statutory declaration/s made by a person/s who can verify the facts that you rely upon in making your application.

See Annexure A

WHAT ORDERS ARE YOU SEEKING?

23. State the enforcement order/s you are seeking:

State precisely what enforcement orders you want VCAT to make including the actual wording you are seeking along with any dates by which actions should be done.

See Annexure B

PRESENTING YOUR CASE

We usually schedule a **practice day hearing** (a type of procedural hearing) to determine how your application might proceed before the final hearing.

To assist with managing your case, you need to tell us how much time you will need to present your entire case at the **final hearing**. This includes time for any experts or other witnesses you will rely on to give evidence and be cross-examined. Practice Note PNVCAT2 explains the role of expert witnesses, to obtain this refer to the VCAT website.

24. How much time will you need to present your entire case at the final hearing?

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

5.00

hours

0.00

minutes

25. How many witnesses will you call to give evidence about factual matters (lay witnesses)?

0

26. How many witnesses will you call to give expert evidence (if any) and what is their area of expertise?

1 (acoustic engineer)

27. State any procedural matters you wish to raise at a practice day hearing, if any:

N/A

28. Do you want a compulsory conference?

Yes

29. If you want VCAT to determine a specific question of law, state the precise question/s of law.

N/A

ARE YOU ALSO APPLYING FOR AN INTERIM ENFORCEMENT ORDER?

If in Question 1 you indicated that you are also asking VCAT to make an interim enforcement order, you must complete this section.

You must pay an extra fee if you are also seeking an interim enforcement order.

An interim enforcement order, is made in appropriate circumstances pending the hearing of an application for an enforcement order. A separate hearing will usually be scheduled to hear this application.

Before making an interim enforcement order, VCAT must consider:

- what the effect of not making the interim enforcement order would be.
- whether you are prepared to give an undertaking as to damages.
- whether VCAT should hear from any other person before the interim enforcement order is made.

30. What are the reasons for your application for an interim enforcement order?

31. Undertaking as to damages - Are you prepared to give the following undertaking as to damages?

“If the Tribunal ultimately decides that the application for an enforcement order should not be granted, and a court or the Tribunal decides that any person has suffered loss or damage as a result of the making of the interim enforcement order and further decides that I should compensate that person for the loss and damage suffered, I undertake that I will pay the amount assessed by the court or the Tribunal to that person.”

No

32. Is there anyone else that VCAT should hear from before deciding whether to make an interim enforcement order?

No

33. What interim enforcement orders are you asking VCAT to make?

An interim enforcement order may require the respondent:

- to stop the use or development immediately or within a specified period of time.
- not to start the use or development.
- to do specified things to ensure compliance with the Act, the planning scheme, a permit condition or an agreement under section 173 of the Act.

State precisely what interim enforcement orders you want VCAT to make including the actual wording you are seeking along with any dates by which actions should be done.

34. Are you seeking an urgent interim enforcement order before notice is given to the respondent/s?

No

If yes, explain why you think VCAT should consider your application before requiring you to give a copy of your application to the respondent/s.

HEARING ASSISTANCE

If you are concerned about being in the same room as someone who will attend the hearing, we can make special arrangements to ensure your safety.

We can also 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.

35. Does anyone attending the hearing need an interpreter?

Don't know

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

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

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

Don't know

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

37. Tell us if there is anything else you want us to consider when we arrange a hearing.

For example, provide details of any related VCAT cases or ask for the hearing to take place at a specific VCAT venue.

SUPPORTING DOCUMENTS

You must attach the following supporting documents with your application:

- Title search of the land on which the contravention has occurred or may occur (the search must not be more than 14 days old)
- ASIC company search for any respondent or affected person who is a company (the search must not be more than 14 days old)
- If the contravention is of a planning permit, a copy of the planning permit and plans endorsed under that permit.
- If the contravention is of an agreement under section 173 of the Act, a copy of that agreement.
- Where possible, a statement, affidavit or statutory declaration made by a person who can give evidence about the facts you rely upon in making your application.
- A copy of any other relevant correspondence, photographs, plans or other documentation together with an explanation of how they relate to your application.
- Copy of the VicPlan Planning Property Report that details the planning controls that apply to the land (such as zoning and overlays) and whether the land is in an area of Aboriginal Cultural Heritage Sensitivity or is identified as being bushfire prone

In addition to the above, please attach any other documents in support of your application.

Keep a copy of these documents for your records.

Attachments to this application:

Title	File Name
VicPlan Planning Property Report	VicPlan Planning Property Report.pdf
Certificate of title (10 January 2023)	CoT 10.01.23.pdf
Planning Permit MPS/2019/594	Planning permit MPS.2019.594.pdf
	Certificate of title 11993 725.pdf
ASIC company search 10.01.23	ASIC company search 10.01.23.pdf
Acoustic Dynamics report 16.12.2022 (Council's acoustic testing)	Acoustic Dynamics report 16.12.2022.pdf
Waveform Acoustics acoustic report dated 17 February 2022	Waveform Acoustics acoustic report dated 17 February 2022.pdf
Waveform Acoustics acoustic report dated 9 March 2022	Waveform Acoustics acoustic report dated 9 March 2022.pdf
Noise assessment - 10 January 2020	Noise assessment - 10 January 2020.pdf
Email from Anthony Thornton dated 23 March 2022	Email from Anthony Thornton dated 23 March 2022.pdf
Email from Chris Wright dated 1 July 2022	Email from Chris Wright dated 1 July 2022.pdf
Email from Anthony Thornton dated 27 July 2022	Email from Anthony Thornton dated 27 July 2022.pdf

Endorsed plans	Endorsed plans.pdf
Annexure A	Annexure A.docx
Annexure B	Annexure B.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.

ACKNOWLEDGEMENT

By completing this application, 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:

Date of acknowledgement:

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 (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.



To find out if you need to pay an application fee and how much it costs, go to www.vcat.vic.gov.au/fees.

Which fee category are you applying for?

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. For more information about fee relief, go to www.vcat.vic.gov.au/feerelief.

If you are applying for fee relief, complete the Fee Relief Form and attach it to this application. You can do so at the bottom of the 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.

After we receive your application and open a VCAT case, we will send you and all other parties an order setting out what happens next, including dates to come to VCAT. The order will tell you the venue, time and date you must go to VCAT.

The order will also have your VCAT reference number. The number starts with 'P' and ends with the year the application was lodged (eg. P1/2020). Quote the reference number in all correspondences and documents about your case.

Contact us if you do not hear from us within two weeks of submitting your application.

NEED HELP WITH YOUR APPLICATION?

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.

PRIVACY INFORMATION

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