

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P79/2023

<b>APPLICANT / RESPONSIBLE AUTHORITY</b>	Merri-bek City Council
<b>RESPONDENT</b>	Bobsled Properties Pty Ltd
<b>SUBJECT LAND</b>	1/294 Lygon Street BRUNSWICK EAST VIC 3057
<b>DATE OF ORDER</b>	6 February 2023

### ORDER

#### Hearings

- 1 This application is listed for a practice day hearing, compulsory conference and a hearing as detailed below.

The compulsory conference and hearings will be at 55 King Street, Melbourne.

If there is any change to these details, the Tribunal will notify you.

<b>Practice Day Hearing:</b>	
Date	17 March 2023
Start time	For details of the start time, please refer to the Tribunal's website ( <a href="http://www.vcat.vic.gov.au/todays-hearings">www.vcat.vic.gov.au/todays-hearings</a> ) after 5.00pm on the day before the hearing
Duration	30 Minutes
Conduct	Online Platform

<b>Compulsory Conference:</b>	
Date and time	24 July 2023 2:00 pm - 5:00 pm
Conduct	In Person

<b>Hearing:</b>	
Date and time	10 & 11 October 2023 10:00 am - 4:30 pm
Conduct	In Person



The details of the online platform will be provided to the parties before the hearing.

### What the applicant must do

- 2 By **16 February 2023** the applicant must give the following documents to the **responsible authority** (where not the applicant):
  - a copy of the application and all attachments; and
  - any other material given to the Tribunal; and
  - a copy of this order.
- 3 By **16 February 2023** the applicant must give the following documents to the persons who are named in the application as **respondents** and to **the owner** and **the occupier** of the land (if they are not the applicant or already named as respondents or affected persons):
  - a copy of the application and all attachments; and
  - any other material given to the Tribunal; and
  - a copy of this order; and
  - a letter which must:
    - explain that an application for enforcement order has been lodged and the Tribunal requires the documents to be given to any respondents, the owner, and the occupier of the land; and
    - explain that if those persons wish to object to the making of the enforcement order, they must lodge a statement of grounds detailing their objection with the Tribunal by **9 March 2023** and if no statement of grounds is received by the Tribunal by that date, the Tribunal may make an enforcement order that adversely affects their interests without hearing from those persons; and
    - include the link to the online ‘Statement of Grounds by a Respondent – Enforcement’ form on the Tribunal’s website (<https://www.vcat.vic.gov.au/documents/forms/statement-grounds-respondent-enforcement>); and
    - specify the dates and times of the practice day hearing, compulsory conference and hearing contained in Order 1.
- 4 By **16 February 2023** the applicant must give the following documents to the persons who are named in the application as **affected persons (if any)**:
  - a copy of the application and all attachments; and
  - any other material given to the Tribunal; and
  - a copy of this order; and
  - a letter which must:



- explain that an application for enforcement order has been lodged and the Tribunal requires the documents to be given to any person who may be affected by the alleged contravention or the making of an enforcement order,
- explain that if the affected person wishes to be heard or to make a written submission in respect of the application for enforcement order, they must lodge a statement of grounds detailing their submission with the Tribunal by **9 March 2023** and that the Tribunal will consider the nature of their involvement in the proceedings at the practice day hearing; and
- include the link to the online ‘Statement of Grounds by an Affected Person – Enforcement’ form on the Tribunal’s website (<https://www.vcat.vic.gov.au/documents/forms/statement-grounds-affected-person-enforcement>); and
- specify the dates and times of the practice day hearing, compulsory conference and hearing contained in Order 1.

5 By **23 February 2023** the applicant must give to the Tribunal:

- a completed statement of service; and
- a list of names and addresses of all persons and authorities to whom the documents were given; and
- a sample of the letter sent with the documents.

If a statement of service is not given to the Tribunal by **23 February 2023**, this application may be struck out without further notice. No reminder will be sent.

6 As the applicant in this proceeding, you may be required to pay a daily hearing fee before the hearing commences. For more information, see the VCAT website [www.vcat.vic.gov.au/fees](http://www.vcat.vic.gov.au/fees).

#### **What must the responsible authority do?**

7 By **9 March 2023** the responsible authority must give the information required by the Tribunal’s Practice Notice **PNPE2 – Information from Decision Makers (PNPE2)** to the Tribunal, unless this material has already been given in another related proceeding. The responsible authority must give a copy of the completed table of Practice Note PNPE2 to the applicant. The attachments do not need to be given to the applicant.

8 Where the responsible authority is not the applicant, by **9 March 2023** the responsible authority must complete a Statement of Grounds online at <https://www.vcat.vic.gov.au/documents/forms/statement-grounds-respondent-enforcement> and give a copy to the applicant, any respondent and any affected person.



### What must a respondent, owner or occupier do?

- 9 If you are a **respondent, owner or occupier** and you want to object to or state your position on the making of the enforcement order sought by the applicant, you must complete a Statement of Grounds online at <https://www.vcat.vic.gov.au/documents/forms/statement-grounds-respondent-enforcement> and give a copy to the applicant and the responsible authority by **9 March 2023**.

### What must an affected person do?

- 10 If you are an **affected person** and you want the Tribunal to consider your position on the application for enforcement order:
- you must complete a Statement of Grounds online at <https://www.vcat.vic.gov.au/documents/forms/statement-grounds-affected-person-enforcement> and give a copy to the applicant and the responsible authority by **9 March 2023**.
  - if you also want to appear and present a submission at the hearing you must indicate this in your Statement of Grounds form and attend the next scheduled hearing so that the Tribunal can consider your role in the proceeding. (Note: you must also pay a fee. Information regarding fees is available at [www.vcat.vic.gov.au/fees](http://www.vcat.vic.gov.au/fees).)

### PRACTICE DAY HEARING

- 11 The purposes of the Practice Day Hearing are:
- to consider whether to grant the application for enforcement order, if no statement of grounds has been lodged with the Tribunal by **9 March 2023** objecting to the application; and
  - to give directions about the future conduct of the proceeding, if the application for enforcement order is not determined at the Practice Day Hearing.

### COMPULSORY CONFERENCE

- 12 All parties must attend the compulsory conference either in person or by a representative who has permission to settle the proceeding on their behalf. (Note: See more information in Appendix A of this order).
- 13 Any document to be relied on for the compulsory conference that is provided to the Tribunal must be clearly marked “**For Compulsory Conference**”.



## HEARING

### Witness statements and submissions

- 14 No later than **20 business days** before the hearing, the applicant must provide the Tribunal and all parties with:
- a list of all of the lay and expert witnesses that they intend to call or make available to give evidence at the hearing; and
  - a witness statement from each lay or expert witness that they intend to rely on at the hearing, not yet provided. All expert witness statements must be prepared in accordance with Practice Note – PNVCAT2 Expert Evidence.
- 15 No later than **15 business days** before the hearing, the respondent and any other party must provide the Tribunal and all parties with:
- a list of all of the lay and expert witnesses that they intend to call or make available to give evidence at the hearing; and
  - a witness statement from each lay or expert witness that they intend to rely on at the hearing, not yet provided. All expert witness statements must be prepared in accordance with Practice Note – PNVCAT2 Expert Evidence.
- 16 No later than **10 business days** before the hearing, the applicant must provide an electronic copy of their submissions and associated material (such as supporting documentation and case law) to the Tribunal and all parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)
- 17 No later than **5 business days** before the hearing, all other parties must provide an electronic copy of their submissions and associated material (such as supporting documentation and case law) to the Tribunal and all parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)

### Requests for procedural orders

- 18 Any request for procedural orders from the Tribunal must be made in writing and a copy must be given to all parties.

Judith Perlstein  
**Member**



## HELP AND SUPPORT

Information for all parties is available at the Tribunal's website  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

For information about what happens after you make your application, visit  
[www.vcat.vic.gov.au/afterapplyplanning](http://www.vcat.vic.gov.au/afterapplyplanning)

For information about responding to an application visit  
[www.vcat.vic.gov.au/respondplanning](http://www.vcat.vic.gov.au/respondplanning)

If you are not able to access the website, contact the Tribunal on 1300 01 8228  
Monday to Friday 9.00am to 4.30pm to request a paper copy.

To find out about the Tribunal's support services such as interpreters, disability  
support and security, visit [www.vcat.vic.gov.au/support](http://www.vcat.vic.gov.au/support)



## APPENDIX A

### COMPULSORY CONFERENCE INFORMATION SHEET

#### What is a compulsory conference?

A compulsory conference is a private meeting between the parties to the proceeding.

With the assistance of a Tribunal member the parties can explore options to reach an agreement on all or some of the matters in dispute. The parties should come with an open mind and flexibility in considering options that could resolve the case.

Unless all parties agree, evidence of anything said or done in the course of a compulsory conference (including any document provided to the Tribunal for the purpose of the compulsory conference) is not admissible in any hearing before the Tribunal in the proceeding.

More information about compulsory conferences is available on the Tribunal's website at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) and in **VCAT Practice Note PNVCAT4 – Alternative Dispute Resolution (ADR)**.

#### Requirement to attend compulsory conference

If you are a party, you **must** attend the compulsory conference in person or by a representative who has written permission to settle the proceeding on your behalf. If you do not attend, the matter may be resolved in your absence and you may be struck out as a party. If all the parties present at the compulsory conference agree, the Tribunal may make a final order or make other orders that may affect you in an adverse way.

The Tribunal may make any of the following orders under the *Victorian Civil and Administrative Tribunal Act 1998*:

- If you are the applicant, your application may be dismissed or struck out.
- If you are not the applicant, you may be struck out as a party. This means that you can take no further part in the proceeding, including the hearing.
- The matter may also be settled, approving the proposal with or without changes.
- You may be ordered to pay the costs of the other parties in certain circumstances.

#### Who may attend a compulsory conference?

Only parties to the proceeding may attend a compulsory conference.

If you are not joined as party, you cannot take any part in the compulsory conference and the Tribunal may make a final order or make other orders that may affect you in an adverse way.

A party who is struck out because they do not attend a compulsory conference cannot participate in any further compulsory conference or hearing.

#### What happens if agreement is reached at the compulsory conference?

If the parties present at a compulsory conference reach agreement, the Tribunal may make a final order to give effect to the agreement without a hearing being required. This can include allowing the proposal with or without changes.

#### What happens if agreement is not reached at the compulsory conference?

If parties present at the compulsory conference do not reach an agreement, a hearing date/s will be confirmed. An order will be issued by the Tribunal.

#### What happens if a partial agreement is reached at the compulsory conference?

If the parties reach agreement about some issues but not others, the hearing will proceed. If the parties present agree, the Tribunal may make an order that limits the issues to be considered at the hearing or specifies issues that will not be able to be considered. The Tribunal may also make further orders that restrict the ability of parties to raise any matters that were resolved at the compulsory conference.



**What should you bring to the compulsory conference?**

Parties should be come to the compulsory conference with a summary of their issues and solutions. This could include possible changes that could be made to the proposal in order to address your concerns or the concerns of other parties. The attached 'Summary of Issues and Solutions for a Compulsory Conference' may be used. The applicant for the permit should bring an extra copy of any relevant plans including elevations.



## PLANNING AND ENVIRONMENT LIST SUMMARY OF ISSUES AND SOLUTIONS FOR A COMPULSORY CONFERENCE

<b>VCAT reference number</b>	P79/2023
<b>Responsible authority</b>	Merri-bek City Council
<b>Your name</b>	

It is suggested that each party identify key issues and potential solutions before the compulsory conference. This will help to clarify the key issues that the parties consider most important to them and possible solutions.

***Most important issues in dispute from your perspective (including any legal matters)*** Use additional pages if required

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***What potential solutions would you consider?*** Use additional pages if required

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**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**PLANNING AND ENVIRONMENT LIST**

**STATEMENT OF SERVICE**

To be completed by or for the Applicant

<b>Subject Land</b>	1/294 Lygon Street BRUNSWICK EAST VIC 3057	<b>VCAT Ref:</b> P79/2023
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I, .....(Print full name)  
of .....(Print name of firm, if relevant)  
.....(Print address)  
.....

**STATE** to the Victorian Civil and Administrative Tribunal (VCAT) that:

- On ..... (**date of service**) I served a copy of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order on the responsible authority (where not the applicant).
- On ..... (**date of service**) I served the following documents on each of the persons specified below by post\*/by email\*/in person\*. (**\*delete whichever does not apply**)

**Documents served:**

- a cover letter;
- a copy of the application and all attachments and other material filed with the Tribunal;
- a copy of the VCAT initiating order;
- a blank statement of grounds form, cover letter and all other information required to be provided by VCAT's initiating order.

**Persons served: (tick as appropriate)**

- respondents named in the application for enforcement order  
 person who may be affected by the application named in the application

- I attach copies of the following documents.

**Documents attached: (tick as appropriate)**

- list of names and addresses of all persons or authorities served  
 copy of sample cover letter sent with documents served

I understand that knowingly giving false or misleading information to VCAT may result in imprisonment or fine (section 136 of the *Victorian Civil and Administrative Tribunal Act 1998*).

Signature .....Date.....

