

# STATEMENT OF GROUNDS BY A RESPONDENT

## ENFORCEMENT

Use this form to set out your position if you are a respondent to an application for enforcement order at VCAT and you are objecting to the making of the enforcement order. Do not use this form if you are an affected person who wants to be heard in an application for enforcement order.

### CASE DETAILS

<b>1. Date that Statement of Grounds must be received by VCAT</b> This is on the notice you received.	9/03/2023
<b>2. VCAT Reference Number and Site Address</b>	P79/2023 1/294 Lygon Street

### WHO IS MAKING THIS STATEMENT OF GROUNDS?

#### 3. Who is making this Statement of Grounds?

A body corporate

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

BOBSLED PROPERTIES PTY LTD

#### 5. Are you?

A person against whom the enforcement order is sought

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

No

#### 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 1 WILLIAMSONS ROAD

Suburb/Town DONCASTER

State VIC

Postcode 3108

Phone number 03 9272 0123

Email elord@johnslyng.com.au

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

Yes

#### 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				

## WHAT GROUNDS DO YOU RELY UPON?

### 10a. State your position on the application for enforcement order – if more than one respondent is completing this form please clearly state the position of each respondent

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

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
  - (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

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**10b. Is this an amendment to your existing statement of grounds (where you indicated you would attend the hearing) previously filed with VCAT?**

Yes

## YOUR PARTICIPATION IN HEARINGS

**11. 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 

0.00

 minutes

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

2

**13. How many witnesses will you call to give expert evidence and what is their area of expertise?**

ACOUSTIC & BUILDING

## HEARING ASSISTANCE

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

These special arrangements are free.

**14. Does anyone attending the hearing need an interpreter?**

No

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

**15. 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

**16. You must send a copy of your Statement of Grounds to the applicant and to the responsible authority (Council) if they are not the applicant, by the date that appears in the order you received from VCAT.**

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 responsible authority:**

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:**

15/03/2023

## 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.

If your Statement of Grounds was submitted after the closing date, VCAT will provide you with details about the case.

## SUPPORTING DOCUMENTS

**Attachments to this application:**

Title	File Name
Statement of Grounds (WORD)	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](mailto: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](http://www.vcat.vic.gov.au/privacy).