

## 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

<b>1. Date that Statement of Grounds must be received by VCAT</b> 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 <b>not be a formal party</b> to the case.	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?

## 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

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**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](http://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](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).