

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P464/2023
PERMIT APPLICATION NO. TP480/2022(1)

APPLICANT Fabcot Pty Ltd
RESPONSIBLE AUTHORITY Maribyrnong City Council
SUBJECT LAND 495 – 507 Barkly Street
FOOTSCRAY VIC 3011
DATE OF ORDER 9 June 2023

ORDER

Hearings

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

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

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

Compulsory Conference:	
Date and time	5 September 2023 10:00 am – 4:30 pm
Conduct	In person

Major Case Hearing:	
Date and time	20, 21, 22, 23 & 24 November 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 **30 June 2023** the applicant must give the following documents to the responsible authority:
 - a copy of the application and all attachments; and
 - any other material given to the Tribunal; and
 - a copy of this order.
- 3 By **21 July 2023** the applicant must give the following documents to any referral authority and every person who lodged a written objection to the grant of the permit (objectors):



- the application for review, including the applicant’s statement of grounds (the attachments do not need to be included); and
- a blank Statement of Grounds form (available at www.vcat.vic.gov.au/respondplanning); and
- a copy of this order; and
- a letter which must:
 - explain that an application for review has been lodged and the Tribunal requires the documents to be given to any objectors and any referral authorities; and
 - explain that a statement of grounds may be lodged with the Tribunal and specify **11 August 2023** as the closing date by which a statement of grounds must be given to the Tribunal, the responsible authority and the applicant; and
 - specify the dates and times of the compulsory conference and hearing contained in Order 1; and
 - if applicable, include a statement setting out those matters within the permit application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.

If the relevant planning scheme fully exempts the permit application from review rights under section 82 of the *Planning and Environment Act 1987*, the documents in order 3 must only be given to referral authorities. This is the case even if objections were lodged with the responsible authority.

4 By **28 July 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 28 July 2023, this application may be struck out without further notice. No reminder will be sent.

What the responsible authority must do

- 5 By **14 July 2023** the responsible authority must give the Tribunal and the applicant a list of any referral authorities and the names and addresses of all persons who were entitled to, and who did lodge, a written objection to the grant of the permit.
- 6 By **14 July 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 PNPE2 to the applicant. The attachments do not need to be given to the applicant.

- 7 No later than **5 business days** before the hearing the responsible authority must give the Tribunal and all parties a draft of the conditions to which the permit should be subject if it is granted.

The draft conditions must be provided to the Tribunal in electronic Word format and must be sent to planningconditions.vcat@courts.vic.gov.au

(Note: this does not apply in applications under section 80 of the *Planning and Environment Act 1987* for a review of conditions in a permit.)

What objectors and referral authorities must do

- 8 If you are entitled to become a party to this proceeding and want to take part, you must give a completed Statement of Grounds form (available at www.vcat.vic.gov.au/respondplanning) to the Tribunal, the responsible authority and the applicant by **11 August 2023**.

(Note: you must also pay a fee. Information regarding fees is available at www.vcat.vic.gov.au/fees. A fee does not apply to referral authorities.)

What all parties must do

- 9 No later than **5 business days** before the hearing, the parties must provide an electronic copy of their submissions and associated material (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to admin@vcat.vic.gov.au
- 10 All expert evidence must be filed and served in accordance with the Tribunal's Practice Note PNVCAT2 Expert Evidence.

Compulsory conference

- 11 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).
- 12 No later than **10 business days** before the compulsory conference the applicant must give all parties a copy of any amended plans it wants to discuss or rely upon at the compulsory conference.
- 13 No later than **5 business days** before the compulsory conference the responsible authority must give the Tribunal and all parties a copy of draft permit conditions that may be discussed at the compulsory conference. A copy of the conditions must be brought to the compulsory conference in electronic Word format.
- 14 Any document to be relied on for the compulsory conference that is provided to the Tribunal must be clearly marked "**For Compulsory Conference**".

Requests for procedural orders

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

Tribunal Book

- 16 No later than **5 business days** before the hearing, the applicant must provide a Tribunal Book to the Tribunal and all parties. One electronic copy and one colour, paper copy of the Tribunal Book must be provided to the Tribunal. The electronic copy for the Tribunal must be sent to admin@vcat.vic.gov.au

Information on the content and format requirements of the Tribunal Book is available at www.vcat.vic.gov.au

Amend permit application

- 17 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended to read:

The use and development of the land for a Supermarket, Retail Premises, Child Care Centre, Office including Medical Centre and Leisure and Recreation Centre, as well as the Sale of Liquor.

Jeanette G Rickards
Senior Member

APPEARANCES

For applicant	Mr R Forrester, Barrister instructed by Corrs Chambers Westgarth
For responsible authority	Mr A McBride, Town Planner



HELP AND SUPPORT

Information for all parties is available at the Tribunal's website
www.vcat.vic.gov.au

For information about what happens after you make your application, visit
www.vcat.vic.gov.au/afterapplyplanning

For information about responding to an application visit
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



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 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.

A person is a 'party' to the proceeding if the person:

- lodged an objection to the planning application
- has given a completed Statement of Grounds form to the Tribunal by the due date and paid the fee
- has indicated in their Statement of Grounds form that they intend to participate in the hearing

The following persons are NOT a party to a proceeding:

- a person who did not lodge an objection to the permit application
- a person who did not give their Statement of Grounds form by the due date and/or did not pay the fee
- a person who has indicated on their Statement of Grounds that they do not intend to participate in the hearing

If you are not a party to the proceeding but wish to be heard, you can attend at the start of the compulsory conference and ask the Tribunal to join you as a party to the proceeding. You will need to explain why you should be joined as a party to the proceeding. Other parties will also



be given the opportunity to tell the Tribunal whether they agree or disagree about you being joined as a party. The Tribunal will then make a decision to join you as a party or not.

If you are not joined as party, you cannot take any further 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**

VCAT reference number	
Applicant	
Responsible authority	
Your name	

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

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



PLANNING AND ENVIRONMENT LIST

STATEMENT OF SERVICE

To be completed by or for the Applicant

Subject Land	«SiteAddress»	VCAT Ref: «CaseCode»
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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:

1. 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.

2. 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 (excluding attachments) and any other relevant documents required to be served by VCAT's initiating order;
- a copy of the VCAT initiating order;

Persons served: (tick as appropriate)

- any referral authorities
- any person who lodged a written objection to the application for permit set out in the attached list, which I obtained from the relevant responsible authority
- any person directed by the Tribunal
- any other person or authority

3. 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

ALTERNATIVELY

4. There are no objectors or referral authorities to serve because:

- No objections were lodged with the responsible authority to the permit application
- The permit application is exempt from third party notice and review rights

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.....

