

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
PLANNING AND ENVIRONMENT DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P240/2020

**APPLICANT** Tubby Gourmet Pty Ltd  
**RESPONSIBLE AUTHORITY** Port Phillip City Council  
**SUBJECT LAND** 1 Fitzroy Street  
ST KILDA VIC 3182  
**WHERE HELD** Melbourne  
**BEFORE** Joel Templar, Member  
**HEARING TYPE** No hearing  
**DATE OF ORDER** 28 February 2020

**ORDER**

**Hearing details**

<b>Item</b>	<b>Hearings</b>	<b>Date/Detail</b>
<b>A</b>	Hearing date	24-July-2020
	Commencement time	10:00 AM
	Duration	1 Day
	Location	55 King St, Melbourne
	Major Cases List	Yes
	Short Cases List	No
<b>B</b>	Compulsory conference date	25-May-2020
	Commencement time	2:00 PM
	Duration	3 Hours
	Location	55 King St, Melbourne
<b>C</b>	Practice day hearing	17-April-2020
	Commencement time	From 10:00 AM (see point 22)
	Duration	30 Minutes
	Location	55 King St, Melbourne



- 1 This proceeding is listed for a hearing, a compulsory conference and a practice day hearing in accordance with the details set out in **items A, B & C** above. Any changes to the hearing or compulsory conference details will be notified by further order of the Tribunal.

### Other key dates

- 2 The following dates are the dates referred to in these orders.

<b>Item</b>	<b>Action</b>	<b>By no later than</b>	<b>Order number</b>
<b>D</b>	Applicant to serve application and specified documents on responsible authority	04-March-2020	3
<b>E</b>	Responsible authority to file with VCAT and serve on the applicant details of notice to be given	11-March-2020	8
<b>F</b>	Applicant to give notice and responsible authority to display application on its website	13-March-2020	4 & 10
<b>G</b>	Responsible authority to file PNPE2 material	18-March-2020	11
<b>H</b>	Applicant to file statement of notice with VCAT	01-April-2020	6
<b>I</b>	Closing date for objectors and referral authorities to lodge statement of grounds with VCAT and serve on applicant and responsible authority	02-April-2020	5 & 13

### ACTIONS REQUIRED – APPLICANTS

#### Service of application on responsible authority

- 3 By no later than the date set out in **item D of order 2**, the applicant must serve on the responsible authority in hard copy and in electronic PDF form:
- a copy of the application and all attachments;
  - other material filed with the Tribunal; and
  - a copy of this order.

#### Notice

- 4 The applicant must give notice of the application in accordance with the attached directions (as relevant) as follows:
- a By no later than the date set out in **item F of order 2**, serve the documents set out below on the following persons:
- the owner and occupier of the subject land;



- any persons who may have a material interest in the outcome of the application who are named in the application;
- any additional persons identified by the responsible authority in response to order 8;
- all relevant referral authorities.

The documents served must include:

- the application excluding attachments;
  - a copy of this order;
  - a description of the proposed changes to the permit, including details of the changes from the previous plans;
  - a cover letter, which must:
    - explain that an application to amend a permit has been lodged and VCAT has directed service of the documents
    - include the information required by order 5
    - advise that a complete copy of the application, including amended plans, can be inspected during business hours at the main office of the responsible authority and on the responsible authority's website;
    - advise that the person may obtain a copy of the amended plans or other attachments upon request to the applicant.
- b By no later than the date set out in **item F of order 2**, publish a notice of the application by erecting a sign(s) on the land and maintaining the sign(s) in good order and condition for not less than 14 days from the date of erection in accordance with any directions by the responsible authority in response to order 8.
- c Within 7 days from the date set out in **item F of order 2**, publish a notice of the application in a newspaper in accordance with any directions by the responsible authority in response to order 8.

5 All notices must:

- a Specify the closing date, which is the date set out in **item I of order 2**, by which a statement of grounds must be received by the Tribunal and served on the responsible authority and applicant.
- b Explain that a statement of grounds may be lodged with VCAT as described in Appendix A.
- c Specify the date and time scheduled for the hearing, compulsory conference and practice day hearing as set out in **items A, B & C of order 1**.



- d If applicable, include a statement setting out those matters within the application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.

### Statement of notice

- 6 By no later than the date set out in **item H of order 2**, the applicant must file with VCAT:
- a completed statement of notice;
  - a list of names and addresses of all persons and authorities served;
  - a sample of the cover letter sent with the documents served;
  - all other information required by the statement of notice.

If a statement of notice is not filed by the specified date, this application may be struck out without further notice. No reminder will be sent.

### Hearing fees

- 7 If you are the applicant in this proceeding, you may be required to pay a daily hearing fee before the hearing commences. For more information, see Appendix A and the VCAT website.

## ACTIONS REQUIRED – RESPONSIBLE AUTHORITY

### Extent of notice required

- 8 By no later than the date set out in **item E of order 2**, the responsible authority must file with VCAT and provide the applicant with:
- the names and addresses of all relevant referral authorities;
  - the names and addresses of all persons it considers may have a material interest in the outcome of this application to amend a permit who should be given notice of the application; and
  - details of any other form of notice required.
- 9 If the applicant disputes the extent of persons to whom notice should be given or other form of notice, which the responsible authority identifies pursuant to order 7, or the responsible authority fails to provide the information as directed, the applicant may request an urgent practice day hearing to resolve the dispute.

### Display application

- 10 By no later than the date set out in **item F of order 2**, the responsible authority must make available for inspection at its main office and display on its website a complete copy of the application and all other material served on it pursuant to order 3.



## Practice Note 2 material

- 11 By no later than the date set out in **item G of order 2**, the responsible authority must file with VCAT information about the application as specified in the current version of **VCAT Practice Note PNPE2 – Information from Decision Makers**, unless this material has already been filed in another related proceeding.
- 12 The responsible authority must comply with **VCAT Practice Note PNPE2 – Information from Decision Makers** and serve a copy of the completed table (excluding attachments) on the applicant.

## ACTIONS REQUIRED – OBJECTORS & REFERRAL AUTHORITIES

### Statement of grounds

- 13 If you wish to contest this application, you must, within the time specified in **item I of order 2** (and also set out in the applicant’s notice):
  - lodge a copy of your statement of grounds with VCAT, indicating that a copy was served on the applicant and the responsible authority and the date(s) this was done. You must ensure your statement of grounds is received by VCAT by the specified date;
  - serve a copy of your statement of grounds on the person making this application (the applicant);
  - serve a copy of your statement of grounds on the responsible authority.

## ACTIONS REQUIRED – ALL PARTIES

### Communicating with VCAT

- 14 All communications to VCAT about this proceeding must quote the VCAT reference number included in this order (see page 1, top right corner).
- 15 A party who communicates in writing with VCAT must serve a copy of that communication on all other parties at the same time and notify VCAT this has been done. The communication must state that a copy was sent to the other parties and list the parties it was sent to. This applies to communications sent by letter, fax or email.

## COMPULSORY CONFERENCE

### Referral to compulsory conference

- 16 This application is referred to a compulsory conference in accordance with the details set out in **item B of order 1**. Pursuant to section 84 of the *Victorian Civil and Administrative Tribunal Act 1998* the following directions are given for the compulsory conference:



- a A natural person who is a party to the proceeding must attend the compulsory conference either in person or by a representative who has authority to settle the proceeding on behalf of that party;
  - a Each body corporate which is a party (including a responsible authority, referral authority or statutory authority) must attend the compulsory conference by a representative who has authority to settle the proceeding on behalf of that party;
  - b If the application or permit application subject to the proceeding was made in the name of a person as agent or consultant for a principal, the principal must either attend the compulsory conference in person or by a representative who has authority to settle the proceeding on behalf of the principal;
  - c Each party should commence the compulsory conference with a short written statement briefly describing the most important issues in dispute from their perspective and what potential solutions they would consider.
- 17 Each party must complete an Opening Statement prior to the date of the compulsory conference and give it to the member on the day. A blank Opening Statement is included in Appendix B.
- 18 The responsible authority must bring to the compulsory conference a copy of the permit conditions or a without prejudice set of draft permit conditions in electronic Word format. If other parties have not previously been supplied with a copy of the conditions, the responsible authority must serve a copy of them on all other parties not less than 5 business days before the compulsory conference.

**Circulation of plans prior to compulsory conference (without formal substitution)**

- 19 The permit applicant must file with the Tribunal and circulate to the parties so they are received by not later than 5 business days before the date listed for the compulsory conference, any proposed amended plans that it may wish to discuss or rely upon at the compulsory conference, without formally substituting those plans in the proceeding. Any formal substitution of plans must still be undertaken in accordance with VCAT’s Practice – Note PNPE9 Amendment of Plans and Applications.

**Substituted plans after compulsory conference**

- 20 If the applicant/permit applicant has circulated plans for discussion purposes prior to the compulsory conference without formal substitution under VCAT’s Practice Note – PNPE9 Amendment of Plans and Applications, it shall be sufficient compliance with clause 12 of PNPE9 if the applicant/permit applicant by no later than 5 business days after the compulsory conference gives notice of its application to amend the permit application otherwise in accordance with clause 12 of PNPE9.



## PRACTICE DAY HEARING

- 21 This proceeding is listed for a practice day hearing in accordance with the details set out in **item C of order 1** above.
- 22 VCAT will publish a detailed schedule of hearing times and room numbers on its website at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) from 4:30pm the day before the hearing. Parties must consult the detailed schedule on the website to determine their hearing time.
- 23 The purpose of the practice day hearing is:
- To give directions about the future conduct of the proceeding.
- 24 Parties should attend the practice day hearing with the following:
- Advice as to any related applications.
  - All evidence and documentation relating to the specific purpose of the practice day hearing (where relevant).
  - If any party is seeking directions, a copy of the orders or directions sought.
  - A draft of terms of settlement, if the matter is likely to be settled by consent on the day.

Joel Templar  
**Member**



## APPENDIX A

### IMPORTANT INFORMATION FOR ALL PARTIES

#### **Non-compliance with orders and directions**

Please read the orders and following information carefully. Non-compliance with these orders may result in an application being struck out, or other sanctions under the *Victorian Civil and Administrative Tribunal 1998*, including an award of costs.

#### **Major Cases List**

If this proceeding has been included in the Major Cases List, **VCAT Practice Note PNPE 8 – Major Cases List (Planning)** governs the procedures for matters in this list.

#### **Short Cases List**

If this proceeding has been included in the Short Cases List, **VCAT Practice Note PNPE7 – Short Cases List** governs the procedures for matters in this list.

#### **Statement of grounds**

If you wish to contest this application or you are a referral authority, you are entitled to become a party to this proceeding if you file and serve a statement of grounds in accordance with this order, unless third party review rights are excluded by the planning scheme or you indicate that you do not intend to participate in the hearing of the proceeding.

If you file a statement of grounds and indicate that you do not intend to participate in the hearing of the proceeding, you will not be a party to the proceeding but your statement of grounds will be considered at any contested hearing of the proceeding.

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 your statement of grounds, you will not be a party and will not be entitled to take part at the hearing or any compulsory conference, even if you indicated that you wanted to participate. For information about fees and fee relief, visit [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

Your statement of grounds should provide sufficient information so that the issues you intend to raise can be clearly identified. Normally VCAT does not have copies of previous objections made to the responsible authority so do not assume that VCAT is aware of any statement you may have already made.

#### **Lodge your statement of grounds online with VCAT**

You may lodge your statement of grounds online with VCAT. Go to [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, you may access a blank statement of grounds form on the VCAT website.

#### **Withdrawals**

If you are an objector and wish to withdraw your objection at any time after you lodge your statement of grounds, you must inform VCAT, the applicant and the responsible authority in writing. You will then be withdrawn from VCAT's record and receive no further correspondence.

If you are the applicant, any application for withdrawal of the application must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures**.

#### **Adjournments**

Applications for adjournment of a hearing are not encouraged and you should not expect that an adjournment will be granted even if all parties consent.

VCAT may refuse an adjournment if it considers that the adjournment is:

- not in the public interest
- prejudicial to the interests of one or more parties or the expeditious determination of the proceeding
- contrary to efficient case management, or
- otherwise not justified.





If you wish to apply for an adjournment, choose the **Application for Consent to adjournment** form on the VCAT website or call us for a hard copy. Any application for adjournment must follow the procedures set out in **VCAT Practice Note PNVCAT1 – Common Procedures**. Refer to the VCAT website for more detail.

### **Providing your email address**

VCAT will send copies of all orders, including the final decision, to a party's email address. VCAT will not send a hard copy in addition.

A party's email address will be available on VCAT's records for other parties to access. If you do not want other parties to have access to your email address, do not provide your email address. If VCAT does not have your email address, you will be sent a hard copy of any order, but you may receive it after other parties have received the order by email and after the order has been published.

VCAT does not accept any responsibility for emails not received due to changes in address, firewall or other security measures that may be attached to your email account.

### **Inspecting VCAT's file**

Any party to the proceeding may inspect the VCAT file relating to the proceeding without a fee. Anyone else can inspect the file, but they must pay a fee. There is a charge for photocopying. To arrange an inspection time, complete the **File and Document Access Request Form** available on the VCAT website.

### **Hearing fees and waiver or reduction of hearing fees**

If you are the applicant in this proceeding, you are required to pay a daily hearing fee for each day or part day of hearing. This includes accompanied site visits.

The amount of fee will depend on whether your case is deemed to be a complex case. You will be advised if your application is considered a complex case by the Registrar in advance and prior to the hearing. If your application is deemed a complex case you will be required to pay higher hearing fees. See VCAT's website for information on hearing fees for complex cases.

You are required to pay your fee online or at Counter Services on the ground floor at 55 King Street the day before the hearing. If you do not pay the fee, your hearing may be adjourned or struck out.

There are some exceptions to this requirement to pay hearing fees. **VCAT Practice Note – PNVCAT 6 Hearing Fees** sets out the procedures that apply to the charging of daily hearing fees in proceedings before the Tribunal, including who is liable to pay the daily hearing fee. This Practice Note and other information is available on VCAT's website.

For example, Day 1 hearing fees do not apply to a VicSmart application or a change in conditions application unless an objector application is also lodged, in which case the permit applicant must pay the Day 1 hearing fee. If an objector application is transferred into the Major Cases List, the permit applicant must pay any hearing fee.

The Principal Registrar has the power to waive or reduce a daily hearing fee in certain circumstances. An **Application for Fee Relief** form is available on VCAT's website. Any application to waive or reduce the daily hearing fee should be made as soon as possible in order to avoid any delay in the hearing.



### **Attendance at the practice day hearing**

If you do not appear or are not represented at the practice day hearing, the Tribunal may make orders, including final orders, which may affect your interests. In particular, the Tribunal may make any of the following orders under the *Victorian Civil and Administrative Act 1998*:

- If you are the applicant to VCAT, your application may be dismissed or stuck out.
- If you are not the applicant, you may be struck out as a party to the proceeding. This means that you can take no further part in any compulsory conference or hearing.
- You may be ordered to pay costs in certain circumstances.

If you wish your interests to be taken into account or wish to make submissions:

- You must file with the Tribunal and serve on all other parties a submission in writing by close of business on the Wednesday prior to the date of the practice day hearing; and/or
- Appear at the practice day hearing. An applicant should normally attend or be represented at the hearing.



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**Victorian Civil and Administrative Tribunal**  
55 King Street Melbourne VIC 3000  
GPO Box 5408 Melbourne VIC 3001  
Ausdoc DX 210576 Melbourne

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Email [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)

Telephone 1300 01 9228  
(1300 01 VCAT)



## APPENDIX B

### COMPULSORY CONFERENCE INFORMATION SHEET

#### What is a compulsory conference?

A compulsory conference is a confidential meeting at which parties, with the assistance of a Tribunal member, can explore options to reach an agreed settlement on all or some of the matters at issue in a proceeding. If it is to be successful, parties must approach the compulsory conference with an open mind and be flexible in considering options that could resolve the case. More information about compulsory conferences is available on VCAT'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 authority to settle the proceeding on your behalf.

#### What happens if you do not appear?

If you do not appear or are not represented at the compulsory conference, 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 affecting your interests. In particular, the Tribunal may make any of the following orders under the *Victorian Civil and Administrative Act 1998*:

- If you are the applicant to VCAT, your application may be dismissed or struck out.
- If you are not the applicant, you may be struck out as a party to the proceeding. This means that you can take no further part in the compulsory conference or hearing.
- You may be ordered to pay costs in certain circumstances.

#### Who may attend a compulsory conference?

Only parties to the proceeding may attend a compulsory conference. This means, for example, that people who were late in lodging their statement of grounds or who have indicated that they do not intend to participate in the hearing of the proceeding, and who are not therefore parties to the proceeding, cannot participate in the compulsory conference. It also means that a person who is struck out as a party because they do not attend the compulsory conference, is not entitled to participate in any further compulsory conference and their consent is not required to any orders made to settle the proceeding in whole or in part.

#### What happens if the compulsory conference is successful?

If the compulsory conference is successful and results in an agreement by the parties present at the compulsory conference, the Tribunal may make a final order to give effect to the agreement without a hearing being required.

#### What happens if the compulsory conference is not successful?

If the compulsory conference does not succeed and the parties present fail to reach agreement, the Tribunal will make an order listing the matter for hearing. The hearing will proceed on the date specified in the Tribunal's initiating order or other dates or details as to time or duration may be specified.

#### What happens if the compulsory conference is partially successful?

If the parties present 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 excludes certain issues from consideration. The Tribunal may make further orders that restrict the ability of parties to contest at the hearing any matters resolved at the compulsory conference.

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

Please complete the Opening Statement at Compulsory Conference form, which is enclosed, and bring it with you to the compulsory conference. Do not file it with the Tribunal prior to the compulsory conference, as it is confidential. The applicant for the permit should bring an extra copy of any relevant plans including elevations.



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**PLANNING AND ENVIRONMENT LIST  
OPENING STATEMENT AT A COMPULSORY CONFERENCE**

<b>VCAT reference number</b>	
<b>Applicant</b>	
<b>Responsible authority</b>	
<b>Other parties</b>	

Each party must complete this opening statement prior to the date of the compulsory conference and give it to the member on the day. The statement must not be filed with VCAT prior to the compulsory conference because it is confidential. Its purpose is to clarify the respective positions of each of the parties to the application by identifying the issues that the parties consider most important to them and possible solutions.

<b>Name of party signing form</b>	
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***Most important issues in dispute from your perspective (including any legal matters)*** Attach additional pages if required

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

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



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## PLANNING AND ENVIRONMENT LIST

### STATEMENT OF NOTICE

To be completed by or for the Applicant

<b>Subject Land</b>	1 Fitzroy Street ST KILDA VIC 3182	<b>VCAT Ref:</b> P240/2020
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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 on the responsible authority a hard copy and a copy in electronic PDF form of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order.
2. (**Only complete if applicable**) I caused Notice of the Application to VCAT to be given by publishing the notice in the following newspapers.

Name of Newspaper	Date of Publication

I attach clippings of the notices published.

3. (**Only complete if applicable**) On ..... (**date of erection**) I caused Notice of the Application to VCAT to be given by erecting a sign on the subject land.

Such notice was maintained in good condition on the land for not less than 14 days until it was removed on ..... (**date of removal**)

I erected the following number of signs in the following locations:

Number of signs erected (total)	
Location of signs erected: Specify each street frontage or other location	

I attach the following document (**tick as applicable**)

- Original sign erected on the land  
 True copy of the completed sign erected on the land



4. 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 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  
 those persons set out in the attached list I obtained from the relevant municipal council or other responsible authority  
 any person directed by the Tribunal  
 any other person or authority

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**

5. There are no objectors or referral authorities to serve because:
- The responsible authority did not require notice to be given to anyone  
 The 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.....

