

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P796/2017, P790/2017,
P794/2017, P795/201, P798/2017, P805/2017 &
P877/2017

APPLICANT

P796/2017 Landfill Operations Pty Ltd

RESPONDENTS

P796/2017 Melton City Council
Mount Atkinson Holdings Pty Ltd
Middle Hopkins Investments Pty Ltd
Eyal Cohen
Brimbank City Council
Stop The Tip Inc

APPLICANT

P790/2017 Melton City Council
P794/2017 Mount Atkinson Holdings Pty Ltd
P795/2017 Middle Hopkins Investments Pty Ltd
P798/2017 Eyal Cohen
P805/2017 Brimbank City Council
P877/2017 Stop The Tip Inc

RELEVANT AUTHORITY

Environment Protection Authority

RESPONDENT

P790/2017, P794/2017, Landfill Operations Pty Ltd
P795/201, P798/2017,
P805/2017 & P877/2017

SUBJECT LAND

1154-1198 Christies Road
RAVENHALL and
408-506 Hopkins Road
TRUGANINA VIC 3029

WHERE HELD

55 King Street, Melbourne

BEFORE

Helen Gibson, Deputy President
Ian Potts, Senior Member

HEARING TYPE

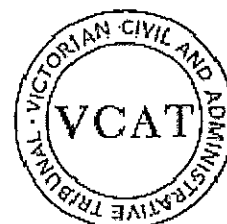
Practice Day Hearing

DATE OF HEARING

26 May 2017

DATE OF ORDER

2 June 2017



ORDERS

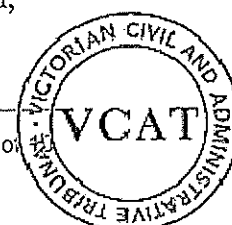
Amend VCAT applications

- 1 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, all applications are amended to substitute the following as the address of the subject land:
408-506 Hopkins Road, Truganina and
1154-1198 Christies Road, Ravenhall
- 2 In application P798/2017, pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, the application is amended by substituting the amended statement of grounds dated 22 May 2017.

Hearing details

Item	Hearings	Date/Detail
A	Hearing dates	2-26 October 2017 but not including 6, 13 and 20 October 2017 13-30 November 2017 but not including 17 and 24 November 2017
	Commencement time	10:00am
	Duration	28 days
	Location	55 King St, Melbourne
B	Compulsory conference date	11 August 2017
	Commencement time	10:00am
	Duration	1 Day
	Location	55 King St, Melbourne
C	Practice day hearing date	21 July 2017
	Commencement time	10:00am
	Location	55 King Street, Melbourne

- 3 This proceeding is listed for a practice day hearing, hearing and compulsory conference in accordance with the details set out in **items A, B & C** above. Any changes to the hearing details will be notified by further order of the Tribunal.
- 4 With respect to the practice day hearing, VCAT will publish a detailed schedule of hearing times and room numbers on its website at www.vcat.vic.gov.au at about 5pm the day before the hearing. As this hearing may be listed to a later time on the day, possibly in the afternoon, parties should consult the detailed schedule.



- 5 The purpose of the practice day hearing will be to consider:
- (1) The joinder of any parties who file statements of grounds in respect of any application as a party to that proceeding.
 - (2) The future conduct of the proceeding.
 - (3) Circulation of any amended plans.
 - (4) The need for and dates of future practice day hearings or administrative mentions.

Notification of applications

- 6 By no later than Friday **9 June 2017**, each applicant must give notice of its application by:
- (1) providing an electronic copy of the Application Documents to the EPA;
 - (2) serving a copy of the Application Documents on each of the applicants in each other proceeding; and
 - (3) serving a copy of the Application Documents on all referral authorities.

“Application Documents” means, in relation to each application:

- (1) the application, including all attachments and other material filed with VCAT;
- (2) a copy of this order;
- (3) a copy of the Tribunal’s initiating order in relation to the application;
- (4) a blank copy of the statement of grounds form (Form A) with the date by which a statement of grounds must be lodged with VCAT, as set out in this order, inserted in the form;
- (5) a cover letter, which must:
 - (a) explain that an application has been lodged and VCAT has directed service of the documents;
 - (b) specify the closing date by which a statement of grounds must be received by VCAT and served on the relevant authority and applicant; and
 - (c) specify the date and other details scheduled for the practice day hearing, as set out in this order.

“Referral authorities” in relation to each application are:

- Department of Environment, Land, Water and Planning
- Department of Health and Human Services
- Department of Economic Development, Jobs, Transport and Resources – Earth Resources Regulation

- Melbourne Water
 - Metropolitan Waste and Resource Recovery Group
 - Sustainability Victoria
- 7 In application P796/2017, by no later than Tuesday **13 Jun 2017**, EPA must:
- (1) place a copy of all Application Documents provided to it in accordance with these orders on the EPA's "Ravenhall landfill" website (<http://www.epa.vic.gov.au/our-work/current-issues/landfills/ravenhall-landfill>)

Statement of grounds

- 8 Any applicant or referral authority that wishes to contest any of the applications to which this order relates must, by no later than Friday **14 July 2017**:
- Serve a copy of the statement of grounds on which the person intends to rely specifying the particular application to which the statement of grounds applies;
 - Serve a copy of the statement of grounds on the EPA;
 - Serve a copy of the statement of grounds on all other applicants in proceedings to which this order relates;
 - Lodge a copy of the statement of grounds with VCAT, indicating who else a copy was served on and the date(s) this was done.

Expert witnesses

- 9 By no later than **7 August 2017**, any party intending to call expert witnesses must file with the Tribunal and serve on all other parties details for each expert witness.

Witness material (simultaneous exchange)

- 10 By not later than **15 business days** before the date listed for the hearing, the parties must file with the Tribunal and serve on all other parties a copy of each document and statement of the evidence or report of each witness, whether that witness be an expert or a lay witness, on which the party intends to rely at the hearing not yet filed and served.

Conclaves

- 11 Expert witnesses in like topics must meet and agree on key issues in dispute and key assumptions, prior to the hearing.
- 12 The expert meetings should occur after the circulation of expert reports and prior to the date listed for the hearing.

- 13 The arrangement and conduct of the meeting is at the discretion of the experts.
- 14 The applicant in P796/2017 must coordinate arrangements and note taking unless otherwise agreed between the experts.
- 15 The meeting must only be attended by the experts being called to give evidence, and a non-participating independent note taker if necessary. Any government agency representatives with technical expertise in the areas must also be invited to attend the relevant meeting(s).
- 16 Advocates for parties or those instructing the experts must not attend the meeting.
- 17 The expert meeting must canvass at least the following issues:
 - (1) Understanding of methodology and assumptions in the assessments undertaken to date;
 - (2) Appropriateness of methodology for the task;
 - (3) The results obtained; and
 - (4) Interpretation of results.
- 18 A brief statement from the meeting must be prepared. The statement must:
 - (1) Record attendees, including attendances and absences for any significant discussion point if some attendees are only there for part of the meeting;
 - (2) Identify points of agreement and disagreement between the experts with reasons for disagreement;
 - (3) Be signed by all participants; and
 - (4) Be filed with the Tribunal and circulated to all parties prior to the date listed for the hearing or at least one clear business day prior to the first witness in the meeting being called to give evidence, whichever occurs earlier.
- 19 If any expert witness directed to meet with any other expert is instructed not to reach agreement in respect of points of difference, these instructions must be reported in writing to the Tribunal by the expert witness.

Tribunal Book

- 20 The applicant in P796/2017, in consultation with the applicants in the other proceedings, must prepare a common Tribunal Book containing:
 - (1) An index of its contents;
 - (2) Copies of all the applications and all interlocutory material;
 - (3) Copies of all relevant documents (i.e. those on which a party will seek to rely in submissions, evidence in chief or which they reasonably expect will be referred to in cross examination);

- (4) Copies of all relevant strategic planning documents, statutory provisions and authorities which will be referred to in submissions.
- 21 Documents in the Tribunal Book should be grouped where convenient, each grouping clearly divided and all pages indexed and numbered or tabbed sequentially.
- 22 By no later than **15 business days** before the date listed for the hearing, the applicant in P796/2017 must circulate to the applicants in the other proceedings a proposed index of the Tribunal Book.
- 23 By no later than **10 business days** before the date listed for the hearing, each applicant in proceedings other than P796/2017 must provide to the applicant in P796/2017 an electronic copy of any documents to be added to the Tribunal Book, and a mark-up of the proposed index of the Tribunal Book.
- 24 By no later than **5 business days** before the date listed for the hearing, the applicant in P796/2017 must:
- (1) File three hard copies of the Tribunal Book with the Tribunal; and
 - (2) Provide one hard copy of the Tribunal Book to each of the other parties; and
 - (3) Distribute to all parties an electronic copy of the Tribunal Book;
 - (4) File with the Tribunal one electronic copy on disc

Further and better particulars

- 25 Any request for further and better particulars of grounds in any application must be filed and served by no later than Friday **16 June 2017**.
- 26 Responses to any requests for further and better particulars of grounds must be filed and served by Friday **30 June 2017**.

Service

- 27 Except as otherwise specified, the filing and service of documents required by these orders may be effected by electronic communication.

Conduct of hearing

- 28 Subject to further direction by the Tribunal, the following will be the order of procedure at the hearing:
- (1) Opening submissions
 - EPA
 - Landfill Operations Pty Ltd
 - Other applicants
 - (2) Presentation of evidence.
 - Expert witnesses on like topics will be heard consecutively.

- (3) Submissions in detail
 - EPA
 - Landfill Operations Pty Ltd
 - Other applicants
- (4) Right of reply
 - EPA
 - Landfill Operations Pty Ltd

29 In making their submissions in detail, parties must, in writing:

- (1) Summarise their respective witnesses' positions and any implications to be drawn from cross-examination of those witnesses.
- (2) in addition, summarise any implications to be drawn from their cross-examination of other parties' witnesses.
- (3) Address any issues that have arisen or been discussed during the course of the hearing either by parties, witnesses or the Tribunal.

Communicating with VCAT

- 30 All communications to VCAT about this proceeding must quote the VCAT reference number included in this order (see page 1, top right corner).
- 31 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

- 32 If details are set out in **item B of order 3**, this application is referred to a compulsory conference in accordance with the details set out in **item B of order 3**. 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;
 - b 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;
 - c 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;

- d 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.
- 33 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.

Helen Gibson
Deputy President

Ian Potts
Member

APPEARANCES:

For Landfill Operations Pty Ltd	Mr C Canavan QC with Ms E Porter of counsel, instructed by Norton Rose Fulbright Australia
For Environment Protection Authority	Ms J Lardner of counsel, by direct brief
For Brimbank City Council	Mr Stefan Fiedler, solicitor, of Russell Kennedy
For Melton City Council	Mr Greg Tobin, solicitor, of Harwood Andrews
For Middle Hopkins Investments Pty Ltd & Mount Atkinson Holdings Pty Ltd	Mr Jeremy Gobbo QC, instructed by Rigby Cooke Lawyers
For Eyal Cohen	Ms L Hicks of counsel, by direct brief
For Stop The Tip Inc	Mr Paul Chiappi of counsel, instructed by Merrylees Legal

REASONS

- 1 A draft form of procedural orders were discussed at the practice day hearing. There was broad agreement with the substance of the orders, although some dispute about dates. We have prepared these orders based on what was discussed, but have adjusted the dates where we consider more time is required for certain steps.
- 2 We have omitted any reference to the need for the applications by objectors to the works approval under section 33B of the *Environment Protection Act 1970* to be published on the EPA's website. We have confined our order to the application for review under section 33 by the works approval applicant, which is what we consider most objectors who have not lodged their own application for review under section 33B will be interested in.
- 3 We have not made any directions for the EPA to give any notice of this application to the many thousands of people who lodged an objection to the works approval with the EPA. There is no statutory requirement for this to occur. Notice of the EPA's decision to issue a works approval will have been given to objectors already and any objectors wishing to lodge an application for review against this decision have had an opportunity to do so. In fact, this has resulted in 6 separate applications for review under section 33B. we do not wish to create the impression that other objectors may lodge a statement of grounds or apply to be joined as a party to any of the applications in this proceeding.
- 4 Reference in our orders to the opportunity to lodge a statement of grounds and make application to be joined as a party is confined to the opportunity for any parties in these proceedings to be joined as parties to any of the other proceedings, and for any referral authorities to be joined as parties to any of the proceedings. We will deal with any such applications at the practice day hearing on 21 July 2017.
- 5 At the practice day hearing we may also make orders ensuring that any of the objector applicants for review have an opportunity to make submissions in respect of any matters arising in the application for review by the works approval applicant if they are not joined as parties in that particular matter.

Helen Gibson
Deputy President

Ian Potts
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

This proceeding has been included in the Major Cases List. The Major Cases List is a sub-list of the Planning and Environment List. **VCAT Practice Note PNPE 8 – Major Cases List (Planning)** governs the procedures for matters in this list.

Statement of grounds

If you are a respondent, a person with an interest named in the application, or the owner or occupier of the subject land, you may be entitled to become a party to this proceeding if you file and serve a statement of grounds in accordance with this order, unless 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 hearing of the proceeding.

The attached statement of grounds form (Form A) should provide sufficient information so that the issues you intend to raise can be clearly identified. Normally VCAT does not have copies of any objections or communications made to the relevant authority so do not assume that VCAT is aware of any statement you may have already made.

Withdrawals

If you are a respondent and wish to withdraw your objection at any time after you lodge your statement of grounds, you must inform VCAT, the applicant and the relevant 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.

Compulsory conference

If this proceeding is specified in item B of order 1 as being listed for a compulsory conference, the information about compulsory conferences in Appendix B is relevant.

Hearing fees

If you are the permit applicant or permit holder 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. You are required to pay your fee at Counter Services on the ground floor at 55 King Street by 9.30am on each day of the hearing. Payment of fees in advance will not be accepted. If you do not pay the fee, your hearing may be adjourned. For the latest fee information or further information regarding this process, please check the VCAT website or phone (03) 9628 9777.

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street Melbourne VIC 3000 Website www.vcat.vic.gov.au
GPO Box 5408 Melbourne VIC 3001 Email «CourtEmail» Facsimile
Ausdoc DX 210576 Melbourne

Telephone «CourtPhone»
«CourtFax»

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 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.

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Telephone «CourtPhone»
«CourtFax»

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**

VCAT reference number	
Applicant	
Responsible authority	
Other parties	

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.

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

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

Signature: _____ **Date:** _____

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