

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P510/2022, P511/2022
PERMIT APPLICATION NO. PLN/2021/616

P510/2022

APPLICANT	ID Ross Watt Road Pty Ltd
RELEVANT AUTHORITY	Macedon Ranges Shire Council
REFERRAL AUTHORITY	Greater Western Water
JOINED PARTIES	Southern Rural Water Department of Environment, Water, Land and Planning Melbourne Water Corporation
SUBJECT LAND	89 Ross Watt Road GISBORNE VIC 3437

P511/2022

APPLICANT	ID Ross Watt Road Pty Ltd
RESPONSIBLE AUTHORITY	Macedon Ranges Shire Council
REFERRAL AUTHORITIES	Country Fire Authority (CFA) Department of Education and Training Department of Environment, Land, Water and Planning Department of Jobs, Precincts and Regions Downer Tenix Environment Protection Authority Greater Western Water Head, Transport for Victoria Melbourne Water Corporation Powercor Southern Rural Water
SUBJECT LAND	89 Ross Watt Road GISBORNE VIC 3437
HEARING TYPE	Practice Day Hearing
DATE OF HEARING	29 July 2022
DATE OF ORDER	1 August 2022



ORDER

Extension of time to commence proceeding – P510/2022

- 1 Pursuant to section 126 of the *Victorian Civil and Administrative Tribunal Act 1998*, the time for commencing proceeding P510/2022 is extended until and to include the date on which the application was lodged with the Tribunal, namely **29 April 2022**.

Parties to proceeding – P510/2022

- 2 Pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*, the following persons are joined as parties to proceeding P510/2022:

Southern Rural Water

Melbourne Water Corporation

Department of Environment, Water, Land and Planning

Practice day hearing, compulsory conference and hearing details

- 3 The details set out in the Tribunal's initiating order are **changed**.
- 4 This application is listed for a practice day hearing, a compulsory conference and a hearing as detailed below.

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

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

Practice Day Hearing:	
Date	25 November 2022
Start time	For details of the start time, please refer to the Tribunal's website (www.vcat.vic.gov.au/todays-hearings) after 5.00pm on the day before the hearing
Duration	1 Hour
Conduct	Online Platform

Compulsory Conference:	
Date and time	10 November 2022 10.00 am – 4.30 pm
Conduct	Online Platform

Hearing:	
Date and time	20, 21, 22 & 23 March 2023 and 27, 28, 29 & 30 March 2023



	10.00 am – 4.30 pm
Conduct	Online Platform

The details of the online platform will be provided to the parties before the hearing.

Compulsory conference

- 5 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).
- 6 No later than **10 business days** before the compulsory conference the applicant must give all parties a copy of any amended documents it wants to discuss or rely upon at the compulsory conference.
- 7 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.
- 8 Any document to be relied on for the compulsory conference that is provided to the Tribunal must be clearly marked “**For Compulsory Conference**”.

Practice day hearing

- 9 The purpose of the practice day hearing is:
 - the timetable for exchange of evidence, submissions and a tribunal book;
 - whether a conclave of witnesses would be beneficial to the proceedings;
 - appropriate timing for the amendment of the material in either or both proceedings; and
 - to give directions about the future conduct of the proceeding.

Hearing fees

- 10 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 the VCAT website www.vcat.vic.gov.au/fees

Teresa Bisucci
Deputy President

APPEARANCES:

For ID Ross Watt Road Pty Ltd	Peter O'Farrell, of counsel instructed by Sashank Krishnamoorthy, lawyer, Norton Rose Fulbright
For Macedon Ranges Shire Council	Barnaby McIlrath, lawyer, PE Law
For Durham Shaw, John Dawson	In person
For Greater Western Water	Jun Yu, lawyer, Maddocks Lawyers
For Country Fire Authority, Powercor, Downer Tenix, Department of Jobs, Precincts and Regions, Environment Protection Authority, Department of Education and Training	No appearance
For Southern Rural Water	Matthew Townsend of counsel, instructed by Andrew Sherman, Russell Kennedy Lawyers
For Head, Transport for Victoria	Jasmine Bartlett, team leader statutory planning
For Department of Environment, Land, Water and Planning	Tim Norden, programme manager planning approvals
For Melbourne Water Corporation	Mish Watt, planner



REMARKS

- 1 These applications were listed for a practice day hearing to consider future conduct. P510/2022 is a proceeding under section 149 of the *Planning and Environment Act 1987* (**PE Act**) seeking review of the failure of the Macedon Ranges Shire Council (**council**) to approve a development plan. Whilst P511/2022 is a proceeding under section 79 of the PE Act seeking review of the council's failure to grant a planning permit within the prescribed time.
- 2 The proceedings were listed for hearing for three days commencing 29 August 2022. At previous practice day hearing the parties agreed to the giving of notice of the application for the approval of the development plan.¹ As a consequence of this notice, the Tribunal received several statements of grounds including from John Dawson and Durham Shaw. At the practice day hearing, I was advised that Mr Durham and Mr Shaw did not seek to be joined to the proceeding. Thus, there was no need for me to consider any such submissions.
- 3 Further, at the practice day hearing, Southern Rural Water, the Department of Environment, Water, Land and Planning (**DEWLP**) and Melbourne Water Corporation sought to be joined to P510/2022, nothing that they are parties to P511/2022.
- 4 The applicant objected to their joiner to P511/2022 and council supported such joinder.
- 5 Having heard from the relevant parties, I consider it appropriate to join Southern Rural Water, DEWLP and Melbourne Water Corporation to the proceeding involving the consideration of the development plan because some of the central issues in the proceedings involve hearing from the referral authorities. This is evident in the Schedule 4 of the Development Plan Overlay, where a development plan must show various things including but not limited to:
 - How development interfaces with and relates to environmentally significant and landscape sensitive areas.
 - Consideration of the topography of the land, particularly with regard to the provision of usable open space, site features such as vegetation, corridors of habitat significance.
 - Location of infrastructure.
 - Stormwater management plans, environmental assessment
- 6 Given the detailed nature of Schedule 4 to the Development Plan Overlay, I consider it beneficial for the Tribunal hearing these applications to be assisted by these bodies.
- 7 Council requested that I refer to the documents forming part of the applications before the Tribunal. For the avoidance of doubt:

¹ Pursuant to clause 4 of Schedule 4, Development Plan Overlay.



- the Development Plan, the subject of notification has been prepared by Collie Town Planners Pty Ltd, is entitled 'Gisborne Area 1 Development Plan [89 Ross Watt Road]' and is dated 8 July 2022; and
 - the subdivision plan, has been prepared by Breese Pitt Dixon, is entitled '89 Ross Watt Road Gisborne Indicative Subdivision Layout Plan', Project No. 7213, Drawing Ref. 7213_UD_ODP_V8.2
- 8 Further, in preparing for this proceeding, I become aware that the application under section 149 of the PE Act (P510/2022) was lodged out of time. There was no objection to an extension of time being granted and thus, I extend the time for the proceeding to be filed with the Tribunal.
- 9 The proceeding is scheduled for another practice day hearing to consider matters of detailed procedure, should the matter proceed to a hearing.

Teresa Bisucci
Deputy President



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 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	
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

