

APPLICATION FOR ENFORCEMENT ORDER

Sections 114 to 120, *Planning and Environment Act 1987*

The relevant fee must accompany this application.

This application should be sent to or lodged with:

The Principal Registrar
Victorian Civil and Administrative Tribunal
55 King Street,
Melbourne, 3000.

(Telephone (03) 9628 9777; emergency after hours recorded information service (03) 9625 3403;
Fax (03) 9628 9789).

Application Number:

Date Received:

I APPLY TO THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL FOR AN ENFORCEMENT ORDER UNDER SECTION 114 OF THE PLANNING AND ENVIRONMENT ACT 1987 AS SET OUT BELOW:

The Applicant submits that if the Respondents do not file an objection to the making of this Order with the Tribunal within 14 days from the date of service on them of this Application, the Tribunal should make the Order under Section 116 of the Planning and Environment Act 1987 without further prior notice to the Respondents.

1. THE APPLICANT

Name of person applying for order:	Boroondara City Council
Address:	Municipal Offices, Inglesby Road, Camberwell
	Telephone: 9278 4819
	Fax: 9278 4802
Address for service of documents (if different from above)	as above care of Tom Harrington
	Telephone:
	Fax:

2. WHO IS THE ORDER TO BE MADE AGAINST? ("The Respondents")

Name	Walker Corporation Pty Limited ACN 001176263
Address	Registered Office Level 7 3 Rider Boulevard Rhodes, NSW 2138
Name	Kew Development Corporation Pty Limited ACN 119766264
Address	Registered Office Level 7 3 Rider Boulevard Rhodes, NSW 2138
Name	Department of Human Services
Address	Level 7 5 Lonsdale Street, Melbourne 3000

3. THE LAND about which an order is sought ("the subject land")

Address: 115 Princess Street, Kew being the land identified as DPO 3 in the Boroondara Planning Scheme Maps

Municipality: Boroondara

Please attach a copy of a recent search of the title to the land.

NOTE: If a search of title is not supplied, the normal procedure of the Tribunal is to ask the applicant to provide one, and wait for it before taking further action on the application. The search must not be more than 14 days old.

4. WHO OWNS THE SUBJECT LAND?

Name: State of Victoria
Address of owner: Parliament House, Treasury Place, Melbourne

5. WHO OCCUPIES THE SUBJECT LAND?

Name: As far as the applicant is aware, the Owner is the occupier of the land.
Address of occupier:

6. GROUNDS ON WHICH THIS APPLICATION IS MADE

A. Describe what is being done or not done that is a breach of the Act, Planning Scheme, Permit conditions, etc.

The construction of buildings without a planning permit. (see attachment for a fuller description of what is being alleged)

B. Specify the provision being contravened:

- Section 126 of the Planning and Environment Act 1987;
- Either clause 32.01-6 of the Planning Scheme or clause 32.01-4 of the Planning Scheme.
- ~~Condition of Permit no. n/a, a copy of which is attached;~~
- ~~Paragraph of the agreement made under Section 173 of the Planning and Environment Act 1987, a copy of which is attached.~~

C. State who is contravening this provision:

- Walker Corporation Pty Limited ACN 001176263 as the developer of the land;
- Kew Development Corporation Pty Limited ACN 119766264 as the builder; and
- Department of Human Services as the owner of the land.

Note: Describe what is being done or not done and how the use or development contravenes or will contravene the Act, a Planning Scheme, a condition of a permit, or an agreement under section 173 of

the Act. You should specify the provision being contravened and the way in which it is being contravened. If a contravention of a planning permit or a section 173 agreement is involved you should attach a copy of the permit or agreement and any relevant plan. You should state the name and address of the person or corporate entity who is contravening the relevant position.

7. WHAT PLANNING SCHEME APPLIES TO THE SUBJECT LAND?

State the name of the Planning Scheme: **Boroondara Planning Scheme**

8. WHO ELSE MAY BE AFFECTED?

A. Are you aware of any other person or persons who have been or may be adversely affected **by the alleged contravention?** If so, you are required to supply details of names and addresses. Attach a list if necessary.

No

B. Are you aware of any other person who may be adversely affected **if the order is made?** If so, you are required to supply details of names and addresses. Attach a list if necessary.

No

NOTE Section 117(1) of the Act requires the Tribunal to give to persons in the categories 8A and 8B above an opportunity to be heard or to make a submission. If the Responsible Authority or other parties who are given notice of this application are aware of persons who should have been specified in 8A or 8B but have not been so specified, they must inform the applicant and the Registrar in writing of the names and addresses of those persons as soon as possible, and the applicant should promptly give notice of the application to those persons.

9. WHO IS THE RESPONSIBLE AUTHORITY? (IF NOT THE APPLICANT)

Name: **Minister for Planning**

10. THE APPLICANT SEEKS THE FOLLOWING ORDERS:

State the orders that you want the Tribunal to make.

- That the development of the land by the construction of buildings intended to be used for community care houses or dwellings must cease until a planning permit is obtained from the responsible authority.
- Costs
- Such other orders as the Tribunal determines to be appropriate

11. OTHER ACTIONS AFFECTING THE LAND:

Are you aware of any other proceedings before the Tribunal relating to this land? If so give details, including application numbers.

No.

VERIFICATION - COMPLETE ONE PANEL

<p>PANEL A – APPLICATION BY RESPONSIBLE AUTHORITY <i>The application must be signed by an officer of the responsible authority authorised for the purpose.</i></p>	<p>PART B – APPLICATION NOT BY RESPONSIBLE AUTHORITY <i>The applicant's signature must be witnessed by an adult witness.</i></p>
<p>..... Name of Officer (print)</p>	<p><i>Michael Deil</i> Signature of applicant – For and on behalf of the City of Boroondara</p>
<p>..... Signature</p>	<p><i>Tom Harrington</i> Signature of witness</p>
<p>..... Date</p>	<p><i>TOM HARRINGTON</i> Name of witness (print)</p> <p>Municipal Offices, Inglesby Road, Camberwell</p> <p>..... Address of witness</p> <p><i>24</i> August 2006..... Date</p>

PAYMENT OF FEE

The filing fee of \$31.00 or application for exemption must accompany this Application.

If you wish to apply to have the fee waived that you must:

1. be the holder of a current Government Benefit Card and provide a copy; and
2. provide a statement setting out the following:
 - a) The applicant's current net income (weekly or monthly); and
 - b) A statement as to what effect the payment of the fee will have on the applicant's financial situation (ie will the payment result in the applicant suffering financial hardship).

If the above information has been provided, the Principal Registrar will consider the request and advise the applicant of the outcome.

If the fee has not been paid or waived your application will be deemed not to have been lodged until the fee is paid or waived by the Principal Registrar.

SERVICE OF APPLICATION

After lodging the application with the Tribunal you will receive an acknowledgment letter with an enclosure. A copy of your Application together with a copy of the Tribunal's notice must be served on all parties named in the Application within 7 days.

INFORMATION FOR RESPONDENTS

If an enforcement order is sought against you, there are two alternatives which you may follow.

1. If you do not contest the application:

Unless the Tribunal receives a written objection from a Respondent (a person against whom the order is sought) within 14 days from the date of service of the Application on that Respondent, the Tribunal, may make an order under Section 116 of the Planning and Environment Act 1987.

This order may be in the terms of the order sought by the Applicant as set out in the Application, or in different terms, if the Tribunal thinks fit.

2. If you do contest the application:

If you wish to argue that the order sought should not be made, you should contest the application.

You must file a written objection with the Tribunal within 14 days from the date of service of the Application on you. This document must set out your grounds of objection to the making of an enforcement order. You must also serve a copy of the objection on the Applicant and Responsible Authority (if not the Applicant) within the 14-day period.

Once the Tribunal receives an objection, it must arrange for a hearing of the Application, at which the Applicant, the Respondent, and certain other persons will have an opportunity to be heard.

PART 2 - ADDITIONAL INFORMATION REQUIRED FOR APPLICATION FOR INTERIM ENFORCEMENT ORDER

Section 120 of the Planning and Environment Act 1987.

An additional filing fee of \$31.00 or application for exemption must accompany this application.
(see notes on page 4)

IMPORTANT NOTES:

An Application has to be made for an enforcement order under Section 114 before an application for an interim enforcement order under Section 120 can be heard. The two applications may be lodged simultaneously. An application for an interim or ex parte interim enforcement order should only be made when there is genuine urgency.

An application for an interim and ex parte interim enforcement order should be supported by an affidavit swearing to the truth of the contents of the application and of any other facts on which the application is based. An application for an interim or ex parte interim enforcement order should be accompanied by a draft setting out the text of the order sought.

Section 120(3)(b) of the Act requires the Tribunal, before making an interim enforcement order, to consider whether the application should give any undertaking as to damages. The undertaking gives some protection to a person against whom an order is made where it is ultimately decided that no enforcement order should be made and the person has suffered loss by reason of the interim enforcement order having been made.

I APPLY TO THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL FOR AN INTERIM ENFORCEMENT ORDER UNDER SECTION 120 OF THE PLANNING AND ENVIRONMENT ACT 1987 AS SET OUT BELOW:

12. WHY IS AN INTERIM ORDER BEING SOUGHT?

Explain why the case is urgent. Describe the harm that would happen if an interim order is not made.

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13. HAS NOTICE OF THIS APPLICATION BEEN GIVEN TO ANY OTHER PARTY?

YES/NO

If yes, set out details of the notice and to whom it was given.

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If no, explain why the case is so urgent that an interim order should be made before notice is given to any other person about this application.

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14. IS THE APPLICANT PREPARED TO GIVE AN UNDERTAKING AS TO DAMAGES?

YES/NO

The usual form of such an undertaking is:

If the Tribunal ultimately decides that an enforcement order should not be made, and a court or the Tribunal decides that any person has suffered loss or damage as a result of the making of this Interim Enforcement Order and further decides that I should compensate that person for the loss and damage suffered, I undertake that I will pay the amount assessed by the court or the Tribunal to that person.

VERIFICATION – COMPLETE ONE PANEL

<p>PANEL A – APPLICATION BY RESPONSIBLE AUTHORITY <i>The application must be signed by an officer of the responsible authority authorised for the purpose.</i></p> <p>.....</p> <p>Name of Officer (print)</p> <p>.....</p> <p>Signature</p> <p>.....</p> <p>Date</p>	<p>PART B – APPLICATION NOT BY RESPONSIBLE AUTHORITY <i>The applicant's signature must be witnessed by an adult witness:</i></p> <p>.....</p> <p>Signature of applicant</p> <p>.....</p> <p>Signature of witness</p> <p>.....</p> <p>Name of witness (print)</p> <p>.....</p> <p>Address of witness</p> <p>.....</p> <p>Date</p>
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Attachment "A"**Description of what is being alledged**

- The land is owned by the Crown and is part of the former Kew Residential Services site.
- The land is zoned Residential 1 Zone under the Boroondara Planning Scheme (**Scheme**)
- The land is also affected by a Development Plan Overlay (Schedule 3) (**DPO 3**)
- A development plan known as the Walker Development Plan – Kew dated December 2005 was approved by the responsible authority in this case being the Minister for Planning. The plan was prepared by Walker Corporation Pty Limited.
- The land is being developed by a builder identified on Building Permit BS 15132 20060890/0 as Kew Development Corporation Pty Limited either on behalf of Walker Corporation Pty Limited or on behalf of the State of Victoria (per Department of Human Services) for purposes consistent with that which is described in the approved Development Plan, namely for community houses.
- The respondent has claimed that the buildings being constructed are community care units as referred to under clause 52.24 of the Scheme. (see attached email from Angela Fetterplace)
- Boroondara City Council contends that the buildings may be community care units as referred to under clause 52.24 of the Scheme or may be dwellings.
- Assuming that the buildings are community care units as referred to under clause 52.24 of the Scheme, a planning permit is not required for the use of the land. However, under clause 32.01-6 of the Scheme, a planning permit is required because a community care unit is a section 2 use of the land.
- If the building being constructed is not a community care unit, then, it comprises a dwelling. The Building permit describes what was permitted as a residential care building being a single storey dwelling and carport. If that is the case, noting that there is already at least one other dwelling on the land, a planning permit would be required for the construction of more than one dwelling on the land under clause 32.01-4 of the Scheme.
- Either way, a planning permit is required for the construction of buildings. As far as Boroondara City Council is aware, no planning permit has been sought or obtained for the building under construction.

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