

## **VCAT Reforms advocated by SOS (updated Oct. 2013)**

(some discussed at SOS meeting with Justice Garde, 19 Mar.2013)

**NB: implementation of most of these reforms would not only improve the quality of planning outcomes and the fair and efficient administration of justice, but also substantially reduce the number of cases and the duration of hearings in the planning list, thus also reducing VCAT costs.**

**The reforms below should be introduced because of the above multiple benefits, instead of adopting a user-pays approach in attempting to meet the costs of an unsustainably escalating caseload in the VCAT P&E List.**

**1 VCAT should only review Council process, not act as the Responsible Authority**  
*(It is crucial that VCAT have some capacity for oversight and remedial action to deal with flawed local government development application assessment processes. This oversight would improve the decision-making process, reducing the number of appeals and the workload of both councils and VCAT, as well as improving the quality of decisions and providing more accountability and greater certainty for all parties - a more efficient and effective system).*

*NB 1: Introduction of this reform would remove the need for some reforms below*

*NB 1: SOS is reviewing this policy. The concept of Merits Reviews lies at the heart of the administrative tribunal system since it was established in the 1970s so it will be difficult to persuade law-makers to change or remove it. However, part of the intent of MR was to indirectly improve the decision-making processes of govt. authorities, which has clearly failed in town planning, even arguably doing the opposite by encouraging councils to “second-guess” the Tribunal and take a weak approach to implementing discretionary policies. If VCAT were required to take a stronger and more consistent stance on upholding policy (local policy in particular – point 5), that phenomenon would cease or even be reversed, in line with the original intent of the MR system. So a hybrid policy on MR may be more feasible. (refs. 8, 9)*

**2 Limit the substitution of amended plans at VCAT to cases involving a change of circumstance which necessitates modification of the proposal. In these cases, another review application fee should be introduced for substituting amended plans (refs. 1, 2)**

*(Purpose – to deter ambit claims and induce developers to negotiate any amended plans with all parties at the council assessment level. It is statistically evident that developers know they will get a more favourable outcome (on average) from VCAT than from Council)*

**3 Introduce case management practices to reduce the increasing use of legal practitioners and expert witnesses (ref. 3)**

**4 In cases where an expert witness is requested by a permit applicant and approved by VCAT as being warranted, limit this to one of two options to remove witness bias:**

**(a) a single court-appointed witness only, to be paid by VCAT but with those costs reimbursed by the requesting party (usually the permit applicant, who pays for their expert witness(es) currently anyway).**

**(b) “hot-tubbing” with one or more witnesses from opposing parties who must give and discuss their evidence concurrently.**

**(refs. 3, 4, 5, 6)**

**5 VCAT to lobby to amend s60 P&E Act so as to establish the pre-eminence of local incorporated policy, supported by a ministerial directive to VCAT (ref. 7, 8).**

*NOTE: Despite VCAT Members frequently deferring to state policy when it differs from local policy, the primacy of local policy is clearly implied in the planning regime. Eg, new Planning Practice Note 8 (“Writing a Local Planning Policy”) states “An LPP guides how discretion in a zone, overlay or a particular provision will be exercised”; and the preamble to Rescode (“Requirements”) states that where local variations to Rescode standards occur in schedules and overlays, these local variations apply, not the basic standard set out in Clauses 54 and 55.*

**6 Combine the deletion of failure (s79) appeals with the introduction of a sliding scale of prescribed timelines for council decisions (eg, 30 – 90 days), depending on the size and complexity of the development application. Penalties would be incurred by a Council for failure to decide after a further 30 days beyond the applicable time limit.**

*(Unscrupulous developers typically lodge confusing &/or incomplete applications, to avoid a council decision within the present 60-day limit so the case can proceed straight to VCAT. Technically, this is a breach of VCAT’s role, which is to act as a court of review, not primarily as a responsible authority. Thus the earlier suggestion of former VCAT head Justice Morris to repatriate the council application fee to VCAT in failure appeals should not be considered)*

**7 VCAT to lobby the State Government for more mandatory guidelines in planning schemes for Rescode standards as well as for zone and overlay schedules (refs. 2, 8, 9)**

**8 VCAT should become a “one-stop-shop” for enforcement cases (including assuming the powers of a magistrate’s court to award costs) (refs. 10, 11, 12)**

**9 Weight placed by Members on Delegate Reports should only be to the degree justified by the empirical evidence presented at VCAT hearings (ref. 9)**

**10 Restore affordable and equitable access to VCAT by reversing the June 2012 VCAT appeal fee rises and substitute these with (10% + CPI) maximum rises, recognizing that implementation of many of the other suggested reforms will substantially reduce VCAT overheads, party costs and delays.**

**11 Re-instate the low-cost availability to the parties of audio CDs of VCAT case hearings (as occurs in most legal jurisdictions in other states and within Victoria) (ref. 13)**

**11 Restore more accountability to VCAT by re-instating the yearly publication of Planning List case statistics which were discontinued in 2009**

**12 Equalise time limits for permit applicants & objectors for lodging appeals**

**13 Tighten wording of permits and conditions (ref. 14)**

**14 Deter presentation of false evidence by prosecution under s136 VCAT Act of parties or witnesses who attempt to mislead the Tribunal (ref. 15, 16)**

**15 Maintain accessibility of VCAT file inspections based on recouping actual costs**

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