



The Carlton Residents Association Inc.

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Presidents Review
VCAT
Level 1, 55 King Street
Melbourne, Vic. 3000

Dear Sir,

Carlton Residents Association is appreciative of the fact that Victorians do have access to a mechanism which facilitates appeals against planning decisions, a right not universally enjoyed.

The following comments are directed towards the Administrative Division's role in adjudicating on planning and environmental issues.

Philosophically, VCAT is a court of appeal/review and as such it is asked to adjudicate on decisions based on interpretation of the relevant legislation.

CRA believes that the decisions made in the planning process are generally discretionary, due to the way legislation has been drafted, and this is at the root of many disputes. It is probably fair to say that true reform will not be achieved by independent reviews of either VCAT or the Legislation, but rather, by a comprehensive review of the total system.

Notwithstanding the comments above, the following is a list of VCAT processes that have generated concern for CRA. These are elaborated on below.

- 1. Accessibility and affordability**
- 2. Members' Propensity to be "planners" rather than "judges"**
- 3. The sidelining of local policies developed by Councils**
- 4. Dubious independence of expert witnesses**
- 5. Lack of consistency in Members' decisions**
- 6. Right of Reply for objectors and councils**

7. VCAT's tendency to act contrary to its own practice notes

8. Assistance offered to unrepresented participants

9. Alternative Dispute Resolution

1. Accessibility and affordability

VCAT currently promotes itself as a Court of Law designed to be accessible to people who are not legally represented. This may have been the original intention, however the current reality is that VCAT has become an institution little different from other courts of law, to the extent that to appear at VCAT without having read "Pizer's Annotated VCAT Act", is to be disadvantaged.

In short, it has become an intimidating process for most of the people it was designed to accommodate. The current perception is that to have any hope of success, it is necessary to engage legal practitioners at great personal expense.

A requirement that the employment of professional advocates should only be by the consent of all parties to a dispute, might produce a more equitable environment.

2. Members' propensity to be "planners" rather than "judges".

The distinction between the planning process and the appeal system is not always appreciated by VCAT Members.

We believe that the role of VCAT is to ensure that the relevant authority's assessment of the application in relation to its compliance with all relevant state and local legislation has not been in error or unreasonable and has not unreasonably disadvantaged other stakeholders.

We do not consider that reinterpretation of these regulations is appropriate.

Notwithstanding the previous comments, some errant councils have bowed to local lobbying and "handballed" unpalatable decision-making to VCAT. From our experience VCAT has usually been alert enough to thwart these tactics. Perhaps some way could be found to penalise councils that use such tactics.

3. The sidelining of local policies developed by Councils

Members often discount local planning scheme requirements in favour of more general principles. If the planning system acknowledges that local schemes are an appropriate mechanism and the system accommodates the resources to establish them, then they should be acknowledged and carry as much weight as other relevant legislation. .

4. Dubious independence of expert witnesses

There is a range of opinions on any specific issue. A hired witness is obliged to offer the most favourable version for his/her client and could hardly be criticised for that. Some less generous observers might even suggest that the bias of the opinion is beyond the “acceptable” range and has been bought.

The adoption of a pool system for expert witnesses administered by VCAT might produce a more equitable outcome.

5. Lack of consistency in Members’ decisions

This is a problem of lesser magnitude than some of the above and is probably more the product of the discretionary nature of the legislation than a criticism of the Members. Never the less, inconsistency does occur.

6. Right of Reply for objectors and councils

Objectors and Council normally present before the proponent, but are often denied the opportunity to refute untruths or misrepresentations which may be appended to the proponent’s lodged submission during the hearing.

Objectors and Council should have the right of reply in these cases.

7. VCAT’s propensity to act contrary to its own Practice Notes

The changing of hearing dates and the granting of adjournments without reference to the other parties is a form of injustice and smacks of accommodating the professionals. It further reinforces the inaccessibility referred to above.

Another allied problem is the admission of amended drawings/documentation/reports without an appropriate time for review by the opposing parties.

The residing Member has the authority and means to prevent these inequitable practices.

8. Assistance offered to unrepresented participants

The degree of assistance offered to individuals or community groups appears to vary from Member to Member, however the general perception of lay participants is that “they are on their own”. Perhaps resentment of proponents contributes to the degree of assistance offered by the Members.

9. Alternative Dispute Resolution

ADR is an admirable philosophy and when used properly it can be an expeditious and economical solution. However, too many ADRs seem to be approached with compromise as an essential element of the outcome. Compromise is not appropriate and should not be sought when either party is clearly in the right.

The above are submitted for your consideration and in the hope that a better VCAT will evolve from this review.

Authorised by the General and Planning committees,
Carlton Residents Association (Inc)

Warren Green,
Planning Committee Member

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