

### **APPENDIX 3: Two VCAT decisions involving council responses to errors of their own making**

In *Nakkasoglu v Bayside (2000)*, VCAT awarded costs against Bayside Council for repeatedly failing to acknowledge and act to correct mistakes it had made:

*The Responsible Authority's actions were twice in breach of the requirements of Section 73 of the Planning and Environment Act. The Council firstly endorsed plans which depicted the development not in the form directed by the Tribunal (thus in breach of Section 73(a) of the Act), but also endorsed revised plans which contained changes to the development which caused an increase in detriment to other persons, (in breach of Section 73(c)).... the City of Bayside showed no inclination to take a lead, and put others to the expense of bringing proceedings which, if the Council had been acting responsibly, in prompt fashion, would not have been necessary.*

**(Nakkasoglu v Bayside CC [2000] VCAT 682 (31 March 2000))**

In *Stonnington v Dixon (1996)* - quoted in *Nakkasoglu* above - VCAT refused to award costs against a council which acted promptly to rectify a problem it had caused:

*The aim of the planning system and more particularly responsible bodies such as responsible authorities should be to find a mechanism which leads to the resolution of the conflict as quickly as possible and at least cost to the parties as possible. Tools to achieve this end can be negotiation, a request under Section 87, a declaration application under Section 14, or a combination of all three... It is in the public interest that responsible authorities take a lead in resolving procedural disputes. It is important that responsible authorities not ordinarily be exposed to punitive costs for taking action to resolve a procedural mistake, they may be exposed to both costs and damages if the procedural mistake is of their making.*