Reform of VCAT

Summary

In its planning review function, VCAT has evolved as an organisation which can override local Council policy with arbitrary decision making processes.

We believe that:

> **VCAT should, in its planning jurisdiction, be concerned only with appeals over legal and technical errors and inconsistencies in any decision or decisions by a responsible authority**.
>
> **As a prerequisite to having an appeal listed at VCAT, the appellant should be required to first demonstrate that the Council has failed to comply with its own policies and legal obligations in issuing either a notice of decision or a refusal for a permit. Matters of subjective judgement should not be appellable.**

This document discusses why we believe that VCAT needs to be reformed. The objectives of what our proposed reforms seek to achieve are clearly spelt out, followed by detailed policy to achieve those objectives.

1: Why should VCAT be reformed

The current system is wasteful and costly and perceived by the general public as having processes that are unfairly biased in favour of developers. Outcomes are unpredictable and inconsistent in that individual members are not bound by precedent and are able to apply their own subjective views to cases they hear without fear of challenge or review.

In considering appeals as though they are new applications, VCAT duplicates the work already done by Councils, resulting in unnecessary expense of time and money by Council and objectors. This encourages developers to submit ambit applications to Councils in the hope that VCAT might give them a permit for a slightly watered down version. The system discourages developers from getting it right in the first place.

Allowing VCAT to stand in the shoes of the responsible authority diminishes the right of the community to establish local interpretations of State policy guidelines through local planning schemes. These have received input from users and the community prior to receiving Ministerial assent and their integrity should not be compromised by an appeal tribunal.

Developers, Councils and communities will all benefit from a more efficient planning process.

There is currently no avenue to correct erroneous VCAT decisions, except on a point of law. This is prohibitively costly for most people, even on the rare occasions when a point of law exists.

In summary:

- Transparency of decision making improves confidence in the planning system.
- The need to provide a separate system of checks and balances on VCAT decisions is obviated.
- Economic benefits will flow through cost savings from avoiding lengthy delays.
- If an appeal is upheld then areas of deficiency in Council's policy or systems will be more readily highlighted with, perhaps, recommended remedies.

2: Objectives of the policy

1. That VCAT should not be a generator of planning policy

2. That VCAT should not be able to interfere with properly approved planning provisions by invoking state or metropolitan objectives

3. That VCAT should not overturn or interfere with decisions which have been properly made by a responsible authority

4. That VCAT should not impose the subjective opinions of its members in relation to planning, architectural or other questions

5. That any decision by VCAT should be consistent with all previous and properly made policies and decisions of the responsible authority

6. That an appeal to VCAT should not be seen as a chance for a second bite at the cherry.

7. That applicants for permits should not be in a position to benefit from making ambit claims to VCAT

8. That permits should not be amended without going through the usual notification and advertising process, unless by the common consent of all concerned parties

9. That responsible authorities be the sole sources for the issuance of permits

10. That VCAT should truly be a body of review and not itself a decision maker that is not subject to review

3: Policy

1. VCAT should, in its planning jurisdiction, be concerned only with appeals over legal and technical errors and inconsistencies in any decision or decisions by a responsible authority, and not with substantive planning issues.

2. As a prerequisite to having an appeal listed at VCAT, the appellant should be required to first demonstrate that the Council has failed to comply with its own policies and legal obligations in issuing either a notice of decision or a refusal for a permit. Matters of subjective judgement should not be appellable.

3. In hearing the appeal, VCAT should be required to take account of all relevant elements of the Victorian Planning Provisions, of any previously published planning or other relevant policies of the responsible authority, and of any previous decisions, directions or undertakings by the responsible authority relating to the subject or neighbouring properties, as provided for under Section 60 of the Planning and Environment Act 1987.

4. If the responsible authority has deemed it appropriate to use the powers granted to it by s60(1)(b) of the Planning and Environment Act 1987, the Tribunal should be required to restrict its assessment of the responsible authority's use of these powers to the consideration of the legal correctness, or otherwise, of this use.

5. Except as may be provided for in points 3 and 4 above, VCAT should be required to operate on the presumption that existing planning schemes and provisions already take proper account of state and metropolitan planning objectives and should not seek to re-implement such objectives.

6. In relation to a decision by a responsible authority, VCAT should have the following courses available to it:

   - Sustain the decision of the responsible authority to grant or not to grant a permit
   - Amend a permit or permits, but only with the consent of all parties to the appeal, and only if it is satisfied that no other party will be materially affected
   - Direct the responsible authority to issue new or modified permits, either subject to advertising conditions, or within 14 days, and/or
   - Rescind a permit or permits