



VCAT

Dominant influencer or mere tinkerer

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VCAT planning remains a popular whipping post for all those frustrated with the planning system. The popular press encourages the belief that VCAT is a pro-developer law unto itself, deciding a high percentage of planning appeals. This article considers these issues identifying how VCAT appeals are generated and examining results from a stratified sample of cases.

Melbourne contains some 75 per cent of Victoria's population. In 2016-17, Metropolitan Local Government Areas (LGAs) generated 71% of all Victorian planning permit applications and 85% of VCAT appeals. This activity is the focus of this article.

The distribution of Metropolitan Melbourne planning applications and VCAT appeals by LGA is far from even. Each LGA should account for some 3.2% of applications and appeals, but clearly population differences, rates of growth within LGAs and other development pressures will lead to variations in this share. Map 1 illustrates the different shares of planning permit applications by LGA in 2016-17.

Mornington Peninsula Shire had the largest share of all planning applications, with the inner to middle south east LGAs of Boroondara, Stonnington and Monash having the next highest share of applications, followed by Yarra Ranges, Banyule and Moreland. The lowest shares of applications were observed in the less established Growth Areas and the Cities of Frankston, Maribyrnong and Moonee Valley.

The shares of applications were adjusted to reflect resident population differences – the results of this analysis are shown on Map 2. Clearly the inner areas, excluding Melbourne and Maribyrnong, tend to have high levels of planning activity per resident, surprisingly Mornington Peninsula had the highest rate of applications. The subsequent case analysis did not suggest any reasons for these variations in activity levels.

Unsurprisingly, a reasonably strong correlation exists between LGAs with a high share of total planning applications and high shares of VCAT planning appeals. A few inner to middle area LGAs – Glen Eira, Darebin and, to a lesser degree, Monash – had significantly higher than expected shares of VCAT matters. Appeals from Yarra Ranges and Brimbank were significantly lower than their shares of planning applications.

Map 3 shows the difference between the share of VCAT matters and share of total planning applications for Metropolitan LGAs. The established inner areas are more likely to generate

appeals, with the exceptions of Stonnington and Melbourne. Frankston is also over represented, though this may reflect its role as a major activity centre in the Metropolitan Plan.

Development in the outer areas is often in new estates with few existing residents, lower density, and evolving neighbourhood character. These factors may contribute to a lower likelihood of appeals from these areas.

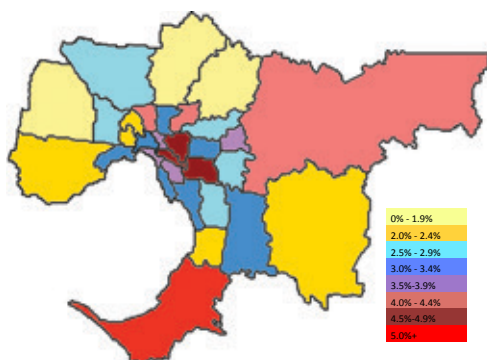
In preparing this article, comments were sought from the six cities with the largest shares of VCAT matters and those with the two lowest shares. Responses were received from only four of these eight Councils, three from those with the highest shares of VCAT matters.

Brimbank suggested their low share of VCAT appeals may reflect the highly multicultural nature of the local population, but also noted changes in the planning process with the Council moving to a fully digitised planning applications system. Brimbank, like many Councils, discusses and advises on all permit applications before the application is formally lodged. These processes, when dutifully undertaken, assist compliance with the LPP. No doubt other issues will affect the propensity to appeal, including attitudes of local residents and how well planning provisions match local preferences.

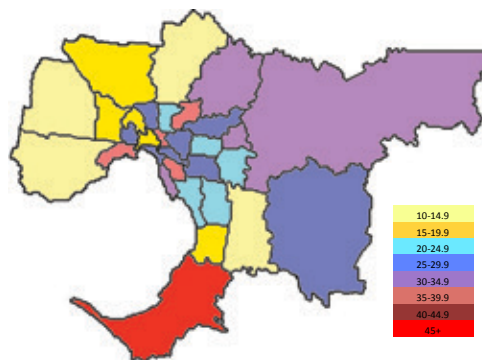
The councils associated with high shares of VCAT matters suggested their higher levels of VCAT applications may reflect population growth pressures in their municipalities. Yet, an examination of growth over the five years and single year to 2016 revealed that only one of these municipalities had a higher growth rate (slightly) than the Metropolitan median on either basis. Other suggestions were that it was a factor of the local resident attitudes or that it may simply be an anomalous year.

Using reported VCAT cases for 2016-17 as of December 2017 and the PPARS data; it appears that approximately 2.8% of planning applications were then appealed to VCAT. After removing procedural cases and corrections from the count, this share falls to around 2.4%. This activity level hardly justifies the common view of VCAT as a major determinant of planning decisions within the Victorian system.

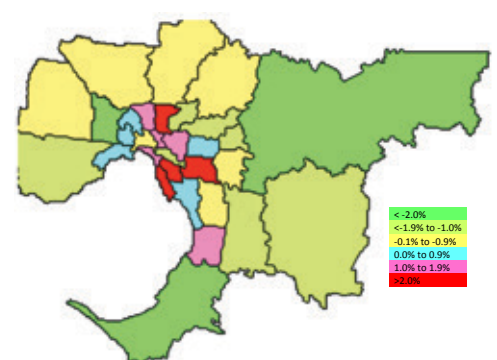
A stratified sample of 230 VCAT cases was derived for more detailed analysis of VCAT appeal results. The sample aimed to replicate, within reason, the share of cases from the metropolitan LGAs plus some regional LGAs of all VCAT decisions. The sample was extracted in late August 2017 from then reported decisions, at the time, for the period November 2016 to June 2017. Subsequent adjustments to ensure the sample more effectively reflected Metropolitan LGA shares of the total appeals for 2016-17 were made, by replacing decisions for over represented Councils with decisions for underrepresented Councils.



Map 1 Metropolitan Planning Applications Share by LGA 2016-2017



Map 2 Metropolitan Planning Applications per 1000 residents by LGA 2016-2017



Map 3 Share of metropolitan VCAT matters less share of Metropolitan Planning Applications 2016-17

Cases in the Metropolitan Melbourne sample accounted for 208 of the 1097 VCAT cases reported as of December 2017 (19.0%). While care should be taken with sample-based inferences, the results provide some insights into VCAT's influence. The VCAT decisions are grouped by result with decisions with procedural matters and administrative corrections being removed from the data. The other decisions are grouped as either affirmations or variations of the Responsible Authority decisions and decisions set aside. Further grouping identified whether or not a permit was issued.

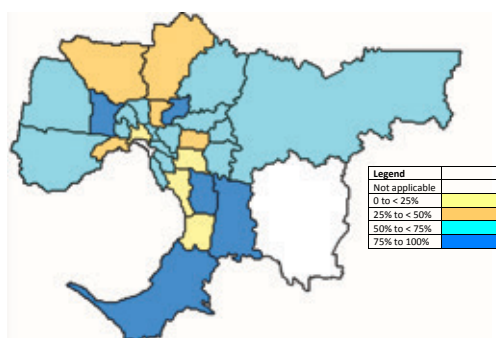
The shares of the total VCAT cases reported and of the sample by LGA and share of sample decisions affirmed or varied are illustrated on Chart 1. This indicates Monash and Yarra are overrepresented and Mornington Peninsula underrepresented in the sample. The contrast between these two areas could not be greater, with Monash having a relatively low share of decisions being affirmed and Yarra a high rate of affirmation.

Glen Eira, Boroondara and Banyule also accounted for relatively high shares of affirmed decisions (21.3%) of the total. In these latter Councils, affirmed decisions accounted for 71.4%, 53.8% and 80.0% respectively of non-procedural decisions cases appealed to VCAT. Conversely Frankston and Kingston also experienced significantly lower ratios of decisions affirmed to sample share. Map 4 illustrates the share of affirmed decisions by LGA.

Within this sample, 70% of the applications were for property developments with many applications being for construction of two or more double storey units/apartments on a single lot. A further 9% of appeals related to Use, and or Use and Development. Almost 4% related to subdivision issues, while 17% of determinations were related to procedural matters and corrections.

VCAT is perceived as taking planning decisions away from Local Government, yet of all non-procedural matters, 56% of Responsible Authority decisions were affirmed, with less than half set aside.

Within the VCAT decisions to set aside the responsible authority's decision, 39% had a permit granted, 3.5% saw no permit issued. Based on this sample, VCAT permit approvals, which set aside Council decisions, accounted for only 1.1% of planning applications. In many of these decisions, the applications included amended plans, which reflected the stated concerns of the Responsible Authorities. This hardly indicates a VCAT domination of planning decisions. As VCAT's decisions frequently concern high profile or controversial decisions, its influence appears more significant.



Map 4 Share of Planning Decisions Affirmed by VCAT by Metro LGA 2016-2017

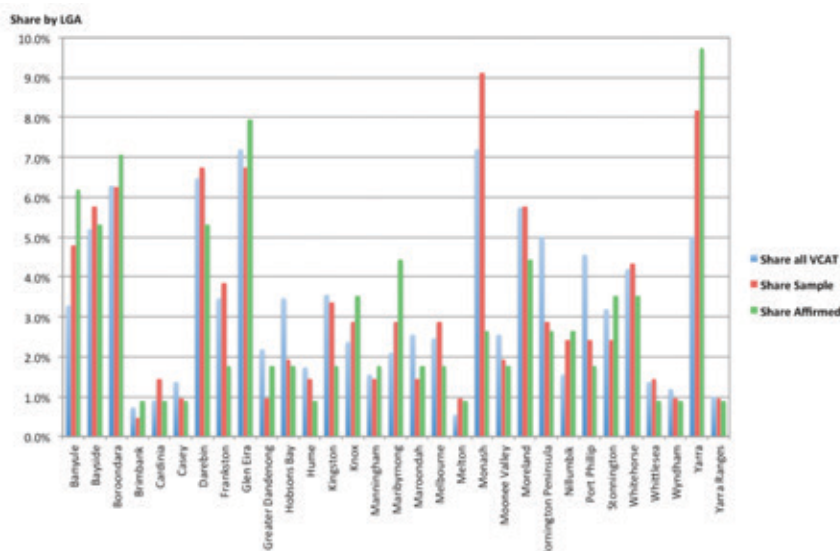


Chart 1 VCAT cases share of total, share of sample and share of decisions affirmed by LGA, 2016-17

A Zone was identified in 200 of the 230 cases in the sample: prominent zones were: General Residential Zone 52.3%, Neighbourhood Residential Zone 23.1%, and 5.5% in the Commercial Zone. This reflects the planning provisions preference for development in the GRZ with its encouragement of more intensive development and greater prominence in Municipal Planning Provisions.

The sample indicates VCAT was more likely to set aside Responsible Authority decisions in the GRZ (47.6%), with 72% of the appealed decisions in the GRZ having a permit being granted or a variation approved. Within the NRZ only 38.3% of Responsible Authority Decisions were set aside. In the NRZ, a total of 86% of appealed cases had permits or variations approved. In 16% of the sample cases, VCAT noted Council officers had recommended approval and VCAT subsequently set aside the Council decision.

VCAT plays an important part of the Victorian Planning system helping to ensure its transparency, consistency and accessibility. It considers a low share of planning decisions and mostly affirms Council decisions. Hence it does appear to be the dominant influence of popular myth. Frequently VCAT decisions to set aside the initial decision considered plans that were amended to ameliorate the Responsible Authorities' initial concerns, so VCAT apparently provides an independent means of resolving planning issues.

The spatial disparity between applications and VCAT referrals can be partially explained by distance from the centre, but there are clearly LGA specific factors at work. There is need for greater understanding of why some Councils' decisions are more or less likely to be appealed and/or affirmed. Can the factors in these Councils that lead to higher or lower rates of appeal to VCAT and subsequently affect the outcome of these appeals be identified? This analysis should consider processes, people/skills, leadership, community expectations and policy clarity among other factors. It would also be valuable to consider changes over time. ●

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