

2018 MAV Rural and Regional Planning Conference

How to prepare, present and write
policy for VCAT

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OUTLINE:

Benefits of presenting

Before you go

What is Council's role?

Cross examination

Right of reply

Conditions

Policy

Other resources available

Questions



Introduction

Different types of hearings:

- Application for review of refusal
- Conditions review
- Application for review where objectors
- Extensions of time

- Enforcement orders
- Declarations

The role of the Council representative will be different depending on the type of hearing.

Benefits:

- professional development
- better decision making
 - de novo hearing(mostly)
 - expert Tribunal
 - learning experience

Before you go ...

- Use RFI to ensure you have information to make proper assessment - makes for better decision making, makes for better Tribunal outcomes.
- Tribunal stands in the shoes of Council
- PNPE2 materials / Draft conditions
- What are the grounds?
- What is the case about? (case concept)
- Ensure you have the most recent plans
- What else will the Tribunal want to see/know?

Council's role?

- Fair assessment – positive and negative
- Photos
- Decision making framework
- Local policies v state policies (assume Tribunal knows SPPF)
- VCAT decisions – include both for and against
- Explaining / defending Council's decision
- Take your time, pay attention to the Tribunal member

Expert evidence and cross examination

- **Expert evidence**
 - Peer review may be a cost effective option
 - Use internal resources
 - Can you phone a friend?

Expert evidence and cross examination

○ **Cross examination**

- Why do it?
- Have a plan (refer to your case concept)
- Research – who is the expert, previous decisions
- What are the assumptions?
- Closed questions
- Don't give them a free kick
- Know when to stop

Right of reply and conditions

- Only new matters/issues
- Use concessions from cross examination
- Conditions

Conditions

- Without prejudice discussion

Policy

- Practice notes
- Role of policy
- Examples of poor wording
- See eg *McNaughton v Surf Coast SC* [2016] VCAT 2107 at [30]-[37]

Other resources

- VCAT website
- Panels
- Learn from others

Questions?

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