

# Impact of Monetary Costs on Citizen Appeals of Planning Decisions

Stephen Rowley and Joe Hurley  
School of Global, Urban, and Social Studies, RMIT University

## Abstract

Access to the planning system is constrained by various direct and indirect costs that have potential to distort participation across socio-economic divides. While previous research has investigated disparities in planning participation by different socio-economic groups, the contribution of various direct and indirect costs in this equation is not well understood. This research focuses on the costs involved in appealing land-use planning decisions. In jurisdictions where appeal tribunals exist, direct costs include application fees and orders to pay other parties' costs; while indirect costs include costs of representation, holding costs associated with delays (for applicants), and the monetary value associated with attending and preparing for Tribunal hearings. Using the case study of appeals in Victoria, the research examines the nature of these costs and the relationship between appeal characteristics and changing cost regimes over time.

In mid 2013 the Victorian Civil and Administrative Tribunal (VCAT), increased fees by approximately 240% responding to increasing pressure to achieve cost recovery in justice systems. This increase provides an opportunity to examine the tension between direct regulatory costs and the broader principles of participation in and access to planning processes. It considers the way in which these factors were assessed in choosing to impose the costs. Using data from VCAT's registry from July 2012 to June 2014, this paper examines the role of direct costs in influencing planning participation by both planning applicants and objectors across the Melbourne metropolitan area. We examine the role of these quantifiable direct costs within the larger, and harder to quantify, context of various indirect costs of planning participation.

## Introduction

Public participation in the planning process is crucial to maintaining the legitimacy of planning systems by ensuring their objectives reflect, or at least take account of, community values. Yet the roles of participatory processes are also contested. When participation involves resolution of competing and opposed objectives, any resolution will involve adverse outcomes for some parties.

It is frequently through development assessment processes that underlying tensions and conflicts within planning systems are exposed and – hopefully – resolved. Yet this is not an easy process, with participatory processes such as third party notice and appeal regimes often exerting considerable costs on participants for their involvement. The nature and impact of those costs frequently remains unexamined. However the cost of involvement has important implications for the levels of equity of access and hence the democratic representativeness of planning systems.

This paper considers the issue of costs of participation in development assessment. In particular, we will consider the variety of types of cost that are incurred when different parties engage with objection and appeal processes. Through a case study approach we will examine a situation in which there has been a recent change in the direct financial cost regime. We seek to examine how the question of participation costs is framed when system changes are made, what the impacts of a cost change proved to be, and to consider the ramifications for planning systems of such costs.

## Development Assessment

The process of development assessment plays a critical role in shaping cities. It encapsulates the rules by which decisions on development proposals are made and the process of applying these rules. It is a critical avenue for the implementation of spatial policy as a mechanism to direct the principles and visions of city management and development into actual proposals for investment and change. While each

decision to approve, modify or reject a proposal for development might have limited significance on a metropolitan scale, the cumulative impact of these decisions determines much of the change in cities over time.

A lot is asked of development assessment process, as the “sharp end of planning practice” (Bedford et al 2002:315). It is often the point at which the potential future becomes clear to citizens as the specific detail of proposed local urban change is revealed. Resident response to increased development activity is often to oppose it, and is well documented (Vallance et al 2005; Woodcock et al 2011; Cook et al 2012). As a process that enforces policy requirements on proposals for development, it necessarily imposes actions and costs on proponents. A development assessment policy process must therefore be able to justify that imposition; and as far as possible be implemented in an orderly and efficient manner. At the core of development assessment is a merits-based assessment of proposals against policy provisions. However, it typically sits within a framework of a democratic decision making process. This is the case in Victoria, Australia, where this research takes place.

The development assessment process is therefore a complex balancing act between economic investment, policy objectives, and democratic process. It is often high stakes with inherent conflict between: development and residents’ resistance of change; policy intent and political process; and local and regional policy and politics.

Both the role of representative democracy and appeal rights in development assessment have been under sustained reform pressure in recent years, and the dominant reform discourse focuses on improving ‘efficiency’ and ‘cutting red tape’ (Clinch 2006; Productivity Commission 2011; Gurran and Phibbs 2013; Goodman et al 2013; Ruming and Davies 2014). In this paradigm all elements that could slow development are seen first and foremost as impediments to be removed, rather than mechanisms to achieve positive policy goals. The trend in the Australian context over recent decades has been increasingly to reduce democratic engagement, either via curtailing third party rights or increased use of mechanisms to bypass such rights (Cook et al 2013) or by reducing the influence local representative democracy via the role of local councillors (McRae and Hurley 2013). In this reform drive, democracy and participation are not removed, but repositioned, with the emphasis on shifting engagement to ‘upfront’ processes of strategic planning, limiting the time and cost implications of citizen engagement in development assessment, while still allowing for participatory planning outcomes (Wheelan 2006; Productivity commission 2011). However, Cook et al (2013) have highlighted the limited ability for citizens to fully understand the implications of planning policy, and therefore the limited willingness and ability to engage in these strategic processes. Inch (2014) argues that the focus on removing engagement in development assessment in favour of upfront process is designed to remove conflict from key tension points while allowing for the appearance of engagement and decision consensus.

The ‘cutting of red tape’ impulse is now seemingly normalised in state planning apparatus despite the obvious tension between the removal of regulation and achieving the principles that those regulations were established to deliver, which of course include those of participation and democratic representation (Goodman et al 2013). As March and Low (2004:42) highlight, inclusive governance cannot be “both rapidly decisive and representative; ... perfect market liberty is not possible while protecting equality; rights to a healthy environment conflict with unfettered rights to own and use land”. Therefore, development assessment is an active site of tension and conflict between the push for procedural efficiency on the one hand, and the delivery of democratic decision-making and participatory process on the other.

### **‘Costs’ in Development Assessment**

One critical aspect of the system in which the tension between efficiency and participation is apparent is the area of participation costs. The push for procedural efficiency is driven in part by a drive for lower costs for applicants, while the cost of participation in consultative processes will influence the representativeness of processes of democratic engagement. In practice, though, increasing third party participation will likely increase costs for applicants. The level of costs, and their distribution among players in the system, is therefore an important determinant of system efficiency and representativeness.

To fully understand this tension, it is necessary to consider the array of costs incurred within the system, with particular attention to planning appeals.

Costs can be broken, in the first instance, into *direct* and *indirect costs*. *Direct costs* are actual monetary costs imposed by the regulatory system. Most prominently, they include application fees, although other types of fees occur in certain jurisdictions. These are readily identified and quantifiable, since they are set in legislation or regulations. They can be contrasted with *indirect costs*, which include costs entailed by participants that are not set, regulated, or collected by any agencies managing the planning system. By their nature they are harder to define and quantify, but various commonly encountered categories of indirect cost can be identified. Perhaps the most obvious, and most readily conceived in monetary terms, are the financial costs for participants of representation and advice from expert professionals (including lawyers, planners, designers, and other technical experts called at appeals). These costs are somewhat hidden from outside observers of the system, in that they are hard for other parties to quantify. However they are very directly calculable for participants themselves, as they involve a direct financial transaction.

Some other indirect costs do not involve direct outlay of money but closely relate to financial cost. An example is the cost of time, which might simply be an allocation of a certain amount of labour for professional applicants such as developers, or might involve commitments of leave or time away from work for non-professional participants such as objectors. Conceptually these costs are easily conceived in monetary terms (the hourly costs of the time spent) although, in practice, participants might never undertake this accounting exercise. Developers will also consider the holding costs of any land subject to appeal; again, this cost is likely to be quite easily quantified by the developer, although it will be weighed against various other factors that may make the real cost of a decision to appeal hard to calculate (Cook et al 2012). For example, a developer considering an appeal will need to estimate the probability of victory and then evaluate other cash-flow and costing questions such as the cost of finance, the revenue that will come from the land during the time taken to pursue an appeal, costs of a fresh application in the event of loss at appeal, and the costs and potential profits from abandoning the appeal and disposing of the land.

Other indirect costs are far harder to quantify as an economic cost, however, but are nonetheless likely to be keenly felt, especially by non-professionals. They include stress and reputational costs (such as negative effects on relationships with neighbours) for both applicants and objectors (Cook et al 2013; Inch 2014).

The impact of these costs falls differently for various participants in the system. In the case of direct costs, in jurisdictions in which fees are structured with reference to costs of works and the nature of the application (as occurs in Victoria) developers will typically pay higher fees as an absolute value. However, that disparity in quantum of costs is contextualised by a number of factors. The developer is likely to have an increased ability to pay, since the expense exists in the context of a broader investment (or series of investments) that should yield a profit. Developer costs also involve a greater amount of choice, both in terms of whether to participate in the planning process in the first instance, and also in terms of how much they spend and the likely financial benefits of extra investment (since some expenditures will increase the prospects of success and hence profit). All these calculations are made in a context in which the quantum of the direct and indirect costs of pursuing an appeal may be relatively trivial compared to the wider costs of obtaining finance, acquiring land, preparing a planning application, and / or constructing the development.

A third party appellant has much less agency in determining his or her costs. There is less choice in the initial involvement in the planning system: while they can choose whether or not to object or appeal, they did not choose to have an application made near their property, and a decision not to appeal could involve accepting what they consider to be undesirable impacts upon their homes. While they may choose whether to be represented and how much representation, in practice these decisions are made in a quite different context to the choices of a developer. Resident objectors pay these costs from their own discretionary income, rather than within the context of an anticipated profit from the development (and, for regular developers, an ongoing profit stream from previous developments). There is usually no monetary upside for objectors from participation in the planning system: while a successful appeal might protect

land value, it does so only by preventing a loss of value, rather than allowing for actual reward. The costs are therefore potentially far more daunting when considered in the context of objectors' ability to pay.

In terms of non-monetary impacts such as stress, the intimate nature of planning appeals (given they frequently involve impacts upon participants' homes) means that the emotional strain of involvement can be considerable. Amateur, self-represented parties might also feel especially daunted by the prospect of a planning appeal and therefore more burdened by the stresses of an appeal than regular participants. Small developers, in particular, could also feel such burdens keenly, although it seems likely that the experience of regular developers will reduce the emotional cost of any given appeal. Clearly, however, it is difficult to generalise about emotional and reputational costs for any party. This reflects the broader difficulty of evaluating the impact of indirect costs of planning participation.

### **The Purpose of Direct Costs**

Indirect costs of participation, while potentially significant, can generally be regarded as a side-effect of system design. However, direct costs are purposefully introduced. This might be done for several possible reasons.

A key consideration for government is cost recovery. Paying for the administration of a planning appeals system through fees, rather than from the government's general revenue, has an advantage in aligning revenue with costs. Such an approach means that increase in usage of the system will be paired with a corresponding increase in revenue, reducing the need for ad hoc funding increases from general revenue when caseload increases.

Second, the application of a "user pays" fee could have value as a price signal to participants in the system to discourage frivolous or unnecessary appeals. While direct costs for lodging an appeal have been in place in Victoria since the establishment of the Victorian Civil and Administrative Tribunal and remained relatively unexamined until recent years, the value of adding a price of entry has occasionally been discussed by government within Victoria in the context of planning objections during the initial permit application stage. For example, in 2003 the system review *Better Decisions Faster* proposed an administration fee for lodging objections, with one of the stated benefits being to "[i]ncrease the seriousness with which objectors make submissions" (Department of Sustainability and Environment, 2003, p. 19). While this idea was never pursued, in 2009 then Planning Minister Justin Madden also floated the idea of fees for objections to minimise "frivolous and vexatious" objections, noting the perceived advantages of a price signal for such actions, stating: "I look forward to the review reflecting more of a market-type arrangement – which is not about privatising the planning system... but it is about having a more relevant pricing mechanism" (Dowling, 2009). The change was almost immediately ruled out by Premier John Brumby after press attention (Dowling and Rood, 2009).

While this discussion related to the introduction of a nominal fee in the initial notification phase when formerly there was none, at the appeal stage an "entry fee" has long been applied in Victoria. In this context, then, an additional price signal can only be applied by increasing the quantum of the direct cost. The effectiveness of such a measure might be presumed to vary across different income classes, raising questions about equity of access, particularly in the context of research showing existing social-economic bias in planning participation (Taylor et al (in press)). This therefore raises tensions with objectives of accessibility that surround planning appeals bodies in most Australian states. In Victoria, for example, the stated objective of the Victorian Civil and Administrative Tribunal in its inaugural report was to "provide Victorians with a tribunal that delivers a modern, accessible, informal, efficient and cost-effective civil justice service" (Victorian Civil and Administrative Tribunal, 1999).

### **Changes in Direct Costs of Citizen Appeals: The Victorian Experience**

The Victorian experience from 2012 to 2014 provides an opportunity to consider both the stated rationale for changes to direct costs, and also the ultimate impact of such changes.

In December 2012, the Victorian Department of Justice released a Regulatory Impact Statement foreshadowing the introduction of revised application fees for appeals across VCAT. It proposed to replace the existing regulations, which had been in effect since 2001 and were to sunset on June 2013 (Department of Justice, 2012, p. 23). The statement outlined the perceived problem for the Tribunal, in that it achieved an overall cost recovery through fees of only 14% of total expenditure, compared to between 30.2% and 35.7% for Victorian courts (Department of Justice, 2012, p. 39). In the Planning and Environment List in particular, cost recovery was found to be 15.1% of the cost of service delivery. This occurred in the context of total operational expenditure for the 2011-2012 financial year of \$39.4 million, of which \$8.84 million was allocated to the Planning & Environment List. At the same time, the Tribunal calculated that applications involving \$6.39 billion worth of development were initiated in the list in that financial year (Victorian Civil and Administrative Tribunal, 2012, pp. 32, 59).

The statement acknowledged the tension between cost recovery objectives and access to justice, framing it as a matter of balancing of objectives, which it defined as follows:

The objective of the proposed regulations is to ensure that users of VCAT make an appropriate contribution to the costs incurred in adjudicating their matters. An appropriate contribution is one which:

- Recognises that the work of the courts and tribunals yields a mix of private and public benefits;
- Ensures that user contributions reflect this mix; and
- Ensures that user fees do not prevent access to justice for users. (Department of Justice, 2012, p. 35)

Ultimately, it concluded that considerably greater cost recovery was required within the Planning & Environment List, recommending that fees increase to the point where cost recovery of 45% of the government appropriation funding to VCAT was achieved.

To this end, an increase in fees over a three-year period was proposed and ultimately introduced. Table 1, below, shows the extent of the fee increases for ordinary appeals. As can be seen, fees for objector appeals increased markedly, increasing in absolute terms to 243% of their 2012 value initially and to 335% of their 2012 value by mid-2015. In addition, daily hearing fees were introduced that increased the cost of matters that proceeded past the first day. Fees for applicant appeals also increased, with smaller matters increasing in cost consistent with those for objectors. Larger applicant appeals increased by a smaller proportion from a higher base.

**Table 1. Revised VCAT Application Fees, 2012-2015.**

<b>Fee</b>	<b>December 2012 (Pre-Review)</b>	<b>1 July 2013</b>	<b>1 July 2014</b>	<b>1 July 2015</b>
Objector appeal	\$322	\$785.60	\$986.40	\$1081.20
Applicant appeal, development under \$1 million	\$322	\$785.60	\$986.40	\$1081.20
Applicant appeal, development between \$1 million and \$5 million	\$322	\$1516.10	\$1903.90	\$2086.20
Applicant appeal, development over \$5 million	\$1290.60	\$1516.10	\$1903.90	\$2086.20

The three-year introductory period was intended to allow the Department of Justice to “evaluate the outcomes for individual litigants, individual lists, and for the tribunal as a whole” (Department of Justice, 2012, p. 84). The stated intention for the monitoring regime during this period was for the Department and VCAT to work together to:

- Identify the necessary data to be collected;
- create systems to record the appropriate data;
- develop costings from the full data set that encompass the full costs of particular activities; and
- develop and analyse a range of options for the nature of the fee structure and the level of fees at VCAT on the basis of costing data. (Department of Justice, 2012, p. 84)

While the objective of the evaluation period included discussion of impacts upon individual litigants, this discussion of the data collection process over the initial three years focuses primarily on establishing the data needed to establish VCAT’s own cost of providing services. It is silent on the issue of the data needed to evaluate impact upon litigants during the trial period.

The statement did, however, include impact on litigants as one of its criteria in a multi-criteria analysis assessing the relative merits of different proposed funding models. In this consideration, four funding models (a status quo option, 30% cost recovery, 45% cost recovery, and the ultimately pursued option of a tapered introduction of 45% cost recovery) were assessed against five criteria, being:

- Equity between court users and tax payers
- Equity between different groups of court users
- Access to justice
- Transitional considerations
- Impact on service levels.

The analysis then scored each criteria against the “base case” scenario of no application fees (Department of Justice, 2012, pp. 76–80). Scores were applied on range of from -10 points (for the largest negative impact) to +10 points (for the largest positive impact). The exact basis for the scores applied was not explained in detail and appears to have been somewhat intuitive. This assessment is reproduced as Table 2.

**Table 2: Department of Justice Multi-Criteria Assessment of Fee Options**

<b>Criterion</b>	<b>Option 1: Remake fees at existing levels</b>	<b>Option 2: Restructure fees and move to 45% cost recovery</b>	<b>Option 3: Restructure fees and move progressively from 35% to 45% cost recovery</b>	<b>Option 4: Restructure fees and move to 30% cost recovery</b>
Equity between court users and taxpayers	+3	+10	+9	+6
Equity between different VCAT user groups	+3	+6	+6	+6
Access to justice	-1	-5	-4	-3
Transitional considerations	+10	+1	+3	+5
Impact on VCAT service levels	+3	+10	+9	+6
<b>Total</b>	<b>+18</b>	<b>+22</b>	<b>+23</b>	<b>+20</b>

The analysis is of interest for its implicit assumptions including both the scores placed against particular factors, and the effective weighting that results from the choice of categories. For example, the “access to justice” impact of the status quo versus adopted fee structures (a differential of -3 points) is entirely offset by the impact of the category for “equity between different VCAT use groups.” Including a second

category relating to “equity between court users and taxpayers” effectively means the equity of cost-sharing principles has twice the impact on the ultimate outcome as access to justice principles.

Similarly, the category for “impact on VCAT service levels” has a positive effect of six points for the accepted Option 3 versus the status quo. The inclusion of this category inherently directs the outcome of the table towards a fee increase, since it implies any failure to increase fees is met by an inevitable rundown of services rather than the shortfall being offset by funding from general revenue. Furthermore, if that is to be the case, it is then difficult to understand why a category for “equity between court users and taxpayers” is also included. Logically it would seem one or other category should be excluded, depending on whether or not cost shortfalls are assumed to be made up from general revenue. (This direct equivalency is hinted at in the table itself by the identical values applied to both categories). Excluding one of these categories would result in Option 1 – the status quo – outscoring all the other options.

### **Measuring the Impacts of Changes in Direct Costs**

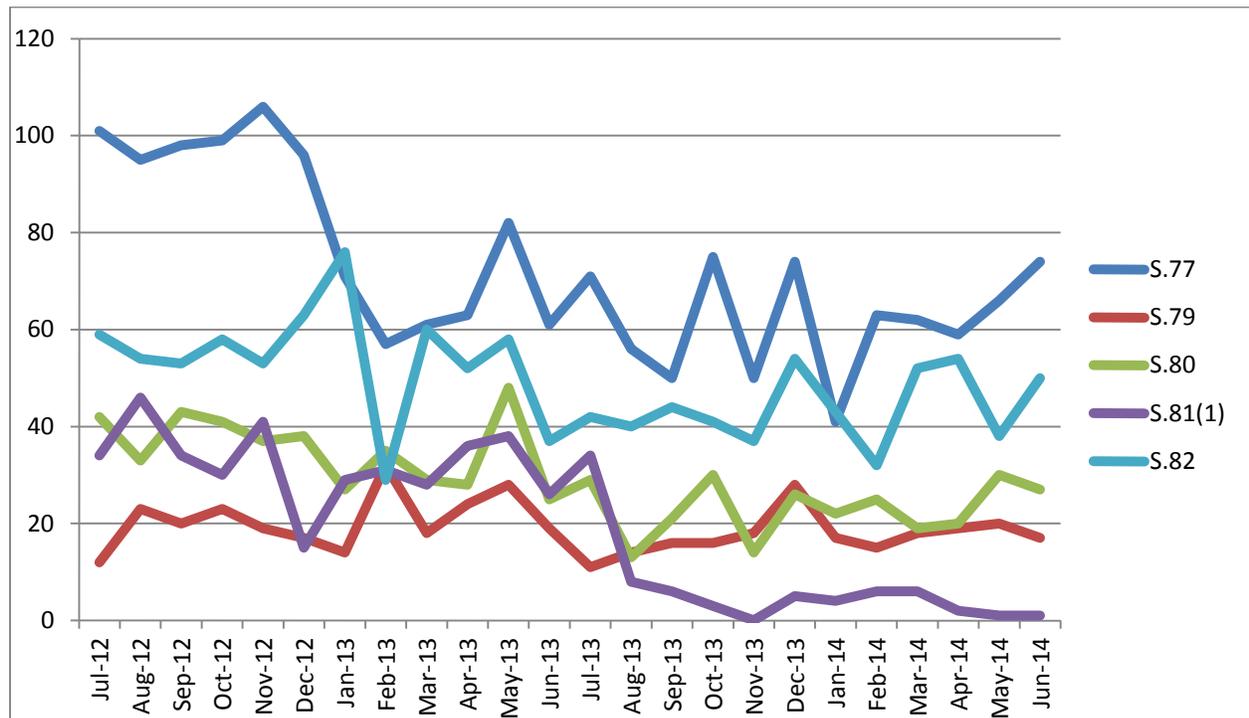
The preceding discussion suggests that the consideration of the impacts of fee changes was structured in a manner that overstated the system efficiency benefits of cost recovery. In addition, while nominally established as a trial to test the impact of the fee increase, it did not clearly establish the data collection required to adequately measure this impact.

Nevertheless, the implementation of such a large and sudden increase in fees does provide an excellent opportunity to examine the impact of such changes in direct costs. Indeed, some media commentary occurred during 2014 when the release of VCAT’s annual report indicated a sharp drop-off in the rates of appeal between the 2012-2013 year (before the fee rise) and the 2013-2014 year (after the first stage of the fee increase). It was noted in these reports that the total number of cases in VCAT’s Planning & Environment List dropped in this period from 3443 to 2186 (Lucas, 2014; Victorian Civil and Administrative Tribunal, 2014, p. 33). While suggestive, such annual data is vulnerable to other factors, such as fluctuations in construction activity or broader system reforms such as changes to residential rezoning that were also in the early stages of implementation during 2013.

Monthly data, however, provides an excellent opportunity to isolate the impact of the fee rise. Unlike other structural reforms, a VCAT fee rise should not take time to “wash through” the system and impact on appeal rates. For example, changes in activity in the construction sector or the design of zones would be felt first at the permit application stage; given that the permit process can vary from a few weeks to a year or more, they would show only a gradual impact on VCAT rates. By contrast, the introduction of the fee rise took effect literally overnight, commencing as of 1 June 2013. If this change in direct costs were to negatively impact participation rates, it would be expected that it would impact in month-to-month data between May and June 2013. The monthly figures therefore provide the opportunity to distinguish the impact of fee changes from other system factors, which would be expected to occur more gradually across the year. Furthermore, if third party and first party appeals could be distinguished, it could be assessed whether there were differences in the price sensitivity of different participants. It might be supposed that third party appeals would be more price sensitive because of the relatively increased cost of the decision to appeal compared with other costs of – and rewards from – an applicant’s participation in the planning process.

In order to assess these impacts, a copy of selected registry data for the period of July 2012 to June 2014 was obtained from the Tribunal. It included each entry on the Tribunal register in the subject period coded by appeal type (based on the Section of the Act under which the appeal was commenced) and including date lodged (a total of 5573 appeals). By separating the data into monthly sets and counting the number of appeals of different types, the behaviour of the list throughout this period could be ascertained.

**Figure 1 – Number of appeals by originating section, total numbers**



**Figure 2 - Number of appeals by originating section, proportion of total**

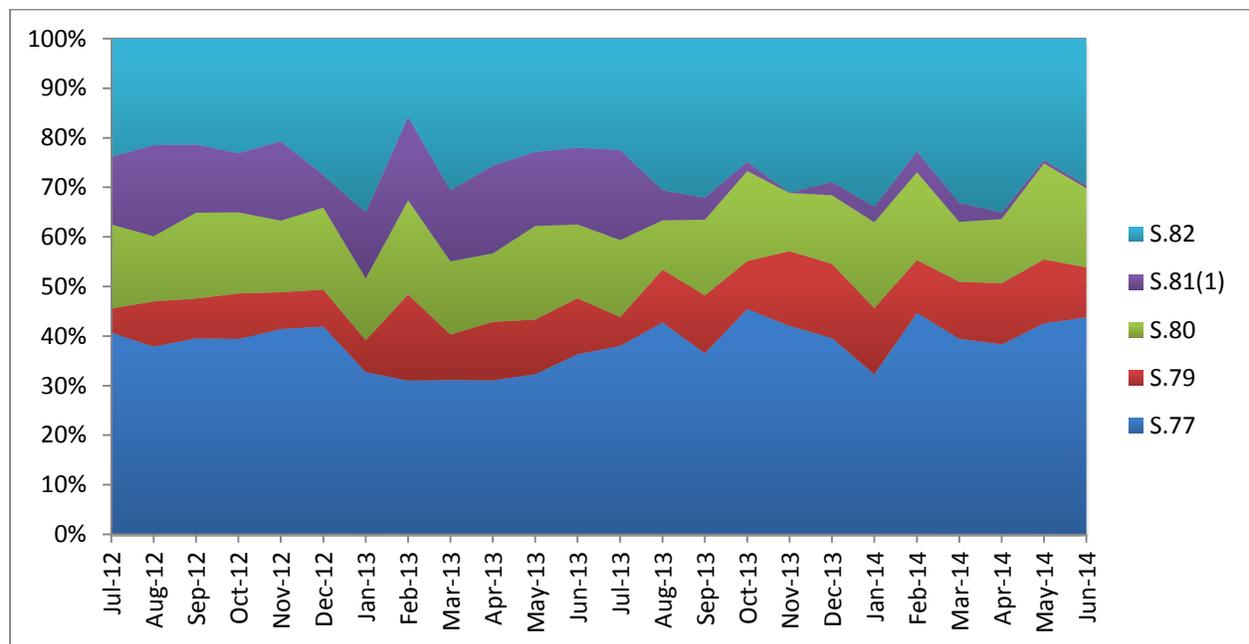
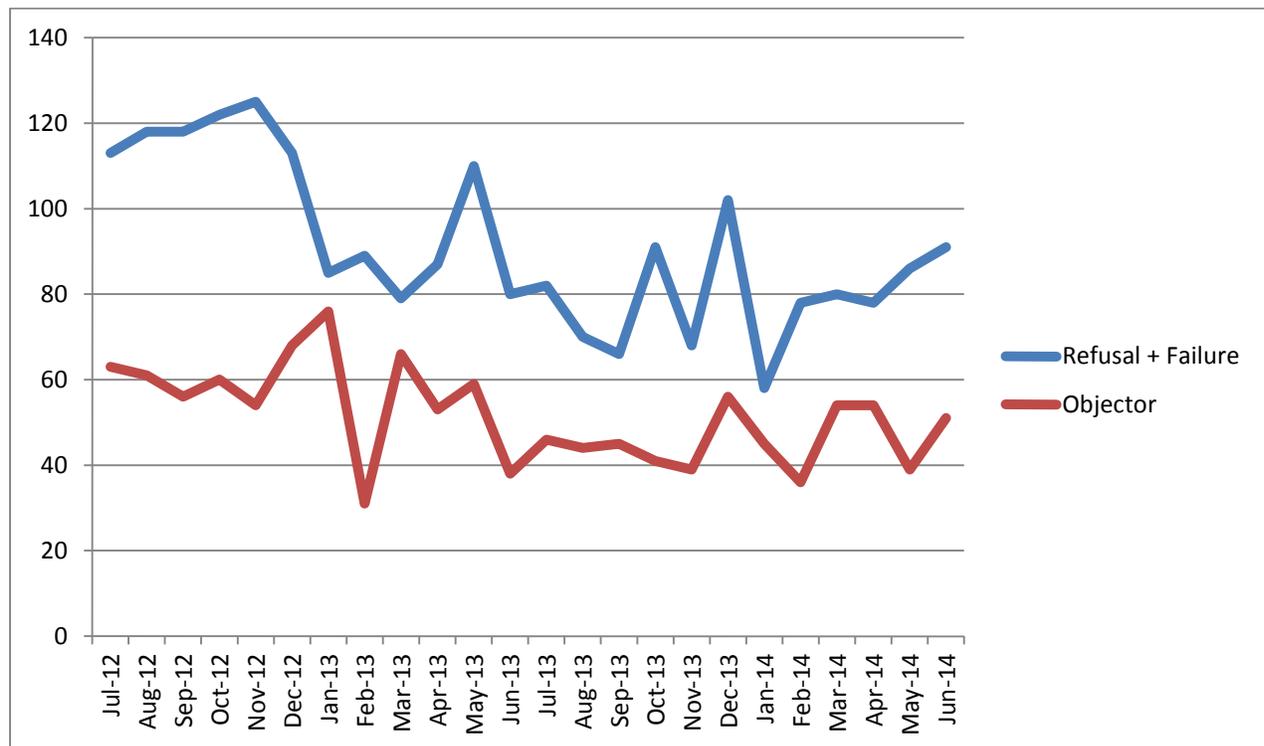


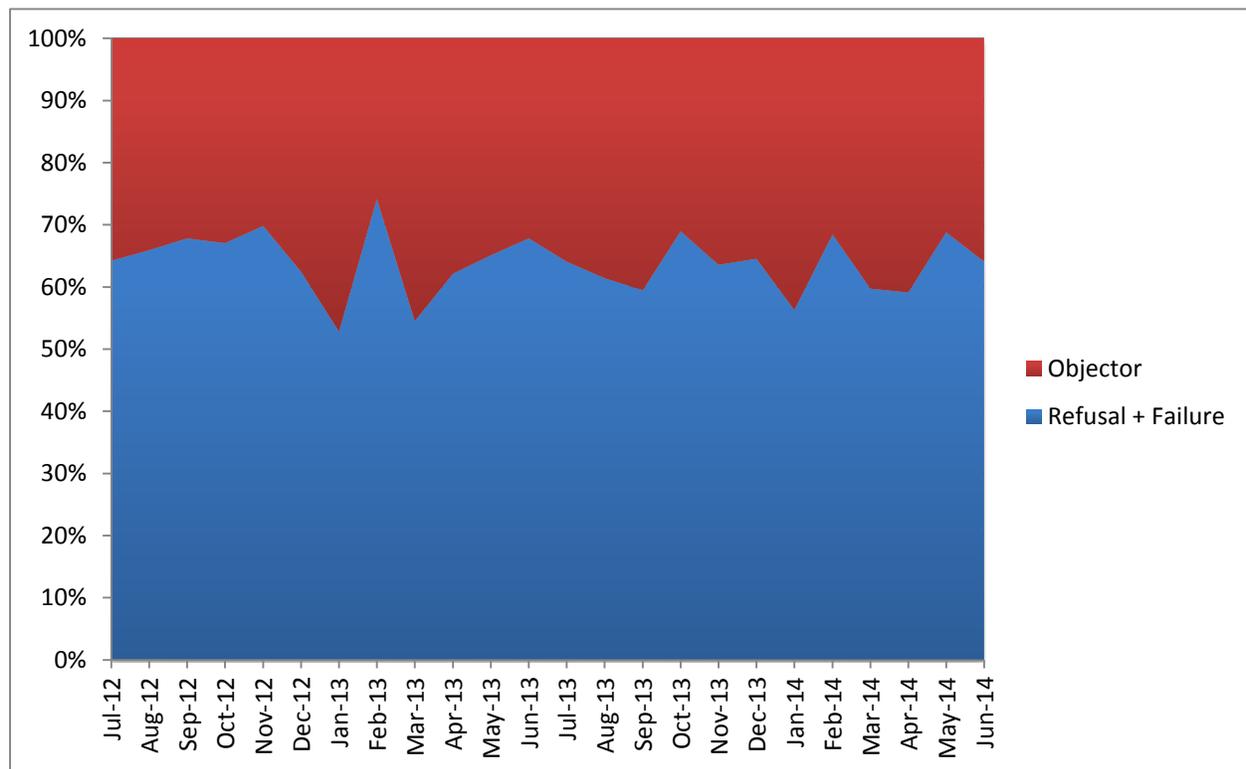
Figure 1 shows the number of appeals received with regard to the principal originating sections of the Planning & Environment Act. They include the main possible appeal paths following a planning permit application: Section 77 (applicant appeals against refusal), Section 79 (applicant appeals against a failure to decide an application within a specified period), Section 80 (applicant appeals against a condition

applied to a permit) and Section 82 (objector appeals against a decision to grant a permit). These figures confirm the slump in appeal numbers, but show that it occurred approximately six months before the introduction of the new fees, with the dramatic change occurring between November 2012 and January 2013. Furthermore, there is little sign of any differing price sensitivity between different categories, and certainly not a heightened sensitivity for third party appeals. When the mix of appeals is presented as a portion of total appeals (Figure 2) there is, in fact, a marginal increase in the proportion of both Section 82 (objector) and Section 77 (applicant against refusal) appeals. However this effect is due to the decline of other types of appeal, notably Section 87A (cancellation or amendment of Tribunal-issued permits) and Section 81(1) (appeals against refusals of extension of time to act on a permit). These are due to other legislative changes.

**Figure 3 – Number of appeals (Refusal, Failure and Objector Appeals only), total numbers**



**Figure 4 – Number of appeals (Refusal, Failure and Objector Appeals only), proportion of totals**



Isolating the totals for the two main types of first party appeal (refusals and failures to grant a permit) and third party appeals (appeals by objectors against grant of a permit) gives a sense of whether differing price sensitivity has impacted upon the willingness to lodge. Surprisingly, there is little discernible effect in the proportional mix of appeals (Figures 3 and 4). The early 2013 drop in appeal numbers is still apparent, but affects both categories equally. There is no discernible shift towards first party appeals. The data therefore suggests that the rates of appeal are not price sensitive and certainly that no difference in price sensitivity between applicants and objectors has been shown.

One possible conclusion from this data is that any point at which price sensitivity occurs is as at a higher level than the system has thus far reached. Alternatively, given that previous literature suggests clear correlation between socio-economic factors and participation rates, it might be that the key points of price sensitivity had been reached prior to 2012 and had already impacted those who would be discouraged by an increase in direct costs. In this view, the price changes have had little impact on participation rates because the cohort of system participants is already self-selected based on ability to pay.

The apparent lack of price sensitivity of system participants can also be placed in the context of the discussion of direct and indirect costs. It could be that the lack of impact indirectly sheds light on a hidden aspect of the system: the extent of indirect costs. One possible explanation of the apparent lack of price sensitivity to an increase in direct costs is that these costs are relatively trivial in the greater context of the decision of whether or not to appeal. Seen this way, the indirect costs – the time commitment, costs of representation, stress, and strained relationships with neighbour and other parties – already exert such a significant effect that they greatly outweigh the direct costs. In such a view, those who would be dissuaded by an increased application fee have already been dissuaded from participation in the system by other factors. Conversely, those who were untroubled by the extent of these indirect costs are sufficiently motivated that the increase in direct costs does not significantly impact their decision as to whether to appeal. The direct costs can be envisaged as the visible portion of an iceberg: the measurable portion of a larger, hidden costs calculation undertaken by system participants.

## **Conclusion: The Limitations and Dangers of Costs as System-Shapers**

Participation costs sit at the crux of longstanding conflicts in the planning system between ideals of participatory planning and the pressure for system efficiency. Yet the Victorian experience is an example of the way that discussion about the purpose of imposing participation costs remains both relatively limited, and shaped by largely unstated assumptions about their role in the process. The consideration of the potential impact of increasing costs at VCAT included limited recognition of the broader system purposes of third party participation.

A full discussion of the role of costs in the process needs to recognise that costs take many forms, including both direct and indirect costs. For example, the argument that imposition of costs is necessary as a barrier to frivolous involvement in the system fails to recognise that direct costs are likely a small component of the wider costs of involvement. The Victorian experience of increasing direct costs of participation in planning appeals suggests this did not act as a disincentive to participation. While that outcome in one sense supports the use of costs for cost recovery – since it can be argued the cost impost did not discourage participants – it also suggests that price signals may be of limited value as a moderator of inappropriate behaviour. Without a fuller understanding of the roles of the various costs of participation, using costs to direct system behaviour will at best be imprecise.

Furthermore, the impact of costs needs to take into account the variation in impact upon different parties. Disparities in impact across socioeconomic categories are to be expected, but first and third party participants also experience costs in quite a different manner. Compared with third party participants, first parties have greater choice in the decision to participate in the process (and hence incur costs), as well as improved ability to recoup costs if they are successful in their application. Third party appellants are also likely to be less well-equipped to deal with various non-monetary costs such as stress. Failure to account for such differences will lead to disparities in system access. This has the potential to undermine the rationale for allowing third party objections and appeals as part of the development assessment process.

The push for system efficiency in the development assessment process has genuine societal benefits and should not be dismissed as simply driven by self-interest of groups such as the housing and development industries. The Victorian planning system has considerable inefficiencies that would benefit from rationalisation to reduce unnecessary or unproductive bureaucracy. However using price signals as a method of achieving system efficiencies creates risks of misdirected outcomes. While carefully designed system reform achieved through improvements in the design of planning schemes can achieve efficiencies by excluding targeted categories of application, the use of price signals raises the prospect of efficiency instead being achieved by the exclusion of certain categories of participant. If third party rights are to be maintained as a genuine component of systems they need to be protected from a user pays model that distributes the burden of system funding in an inequitable manner.

## **References**

- Bedford, T., Clark, J., & Harrison, C. (2002). Limits to new public participation practices in local land use planning. *Town Planning Review*, 73(3), 311-331.
- Clinch, J.P. (2006), Third Party Rights of Appeal: Enhancing Democracy or Hindering Progress?, *Planning Theory & Practice*, 7(3), 327-330.
- Cook, N. Taylor, E. Hurley, J. and Colic-Peisker, V. (2012), 'Resident third party objections and appeals against planning applications: implications for higher density and social housing', *AHURI Final Report No. 197*, Australian Housing and Urban Research Institute, Melbourne.
- Cook, N., Taylor, E., Hurley, J. (2013). "At home with strategic planning: reconciling resident attachments to home with policies of residential densification." *Australian Planner* 50(2): 130-137.
- Department of Justice, 2012. Regulatory Impact Statement: Victorian Civil and Administrative Tribunal (fees) Regulations 2013.

- Department of Sustainability and Environment, 2003. Better Decisions Faster: Opportunities to Improve the Planning System in Victoria.
- Dowling, J. (2009). Planning Objectors May Be Forced to Pay Fees. *The Age*, 10 September 2009.
- Dowling, J., Rood, D., 2009. Planning Objector Fee "Not on Agenda." *The Age*, 11 September 2009.
- Goodman, R., Maginn, P., Gurrán, N., & Ruming, K. (2013). Simpler, Faster, cheaper—Australia's Urban Aspirations and the Planning Reform Agenda. In *SOAC 2013* (pp. 1-17). State of Australian Cities Research Network.
- Gurrán, N. & Phibbs, P. (2013) Housing supply and urban planning reform: the recent Australian experience, 2003–2012, *International Journal of Housing Policy*, 13:4, 381-407, DOI: [10.1080/14616718.2013.840110](https://doi.org/10.1080/14616718.2013.840110)
- Inch, A. (2014). 'Ordinary citizens and the political cultures of planning: In search of the subject of a new democratic ethos', *Planning Theory*, 1473095214536172.
- Lucas, C. (2014). Planning Disputes at VCAT Plummet on the Back of Fees Hike. *The Age*, 19 September 2014.
- March, A., & Low, N. (2004). Knowing and steering: Mediatization, planning and democracy in Victoria, Australia. *Planning Theory*, 3(1), 41-69.
- McRae, B., & Hurley, J. (2013). Spinning the Wheel: examining decision making process and outcomes in development assessment. In *State of Australian Cities National Conference 2013* (pp. 1-9). State of Australian Cities Research Network.
- Productivity Commission (2011), Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments, Australian Government: Canberra.
- Ruming, K.J. & Davies, P.J (2014): "To what extent 'an entirely new approach to how planning is done'? Tracing planning system reform in New South Wales", *Australian Planner*, DOI: [10.1080/07293682.2014.889183](https://doi.org/10.1080/07293682.2014.889183)
- Taylor, E., Cook, N., and Hurley, J. (in press) "Do objections count? Estimating the influence of residents on housing development assessment in Melbourne", *Urban Policy and Research*
- Vallance, S., Perkins, H.C. and Moore, K. 2005, 'The results of making a city more compact: Neighbours' interpretation of urban infill', *Environment and Planning B: Planning and Design*, 32, 715–733.
- Victorian Civil and Administrative Tribunal, 1999. New Beginnings... Together: Inaugural 1998-1999 Annual Report.
- Victorian Civil and Administrative Tribunal (2012). VCAT Annual Report: 2011 / 2012.
- Victorian Civil and Administrative Tribunal (2014). VCAT Annual Report: 2013 / 2014.
- Whelan, M. (2006), Third Party Appeal Rights and the Efficiency of the Planning System, *Planning Theory & Practice*, 7(3), 340-343.
- Woodcock, I., Dovey, K., Wollan, S. and Robertson, I. 2011, "Speculation and Resistance: Constraints on Compact City Policy Implementation in Melbourne", *Urban Policy and Research*, 29:4, 343-36