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ADR in land valuation matters

Compulsory conferences produce high settlement rate in land valuation list

John Baker-Smith

This article reports on the intensive program of compulsory conferences (CCs) conducted in the Victorian Civil and Administrative Tribunal's (VCAT) Land Valuation List from August 2001 until the end of January 2002.

If settlement is the yardstick of success, then the success rate achieved in CCs has been significant. Twenty CCs in matters under the *Valuation of Land Act 1960* (Vic) have been listed in the above period. Sixteen settled at the CC, one settled prior to the CC and one settled after the CC. The remaining two matters were adjourned during CCs and may yet settle.

Increase in applications

A significant increase in the number of applications lodged with the Land Valuation List in the latter part of 2000-01 prompted a review of procedures. In 1999-2000 the Land Valuation List received 26 applications. In 2000-01, the number of applications jumped to 145.

The increase has largely been due to the completion by councils of new general municipal valuations of land for rating purposes. An objection process is available to persons aggrieved by such valuations and this process may ultimately lead to the matter being referred to VCAT. In 2000-01, 92 per cent of applications to the List were of this type.

Late in 2001 a decision was taken to list virtually all applications of this type for CCs. Such listing occurs after the parties have complied with standard preliminary directions — made in the

absence of the parties — requiring the filing and exchange of information. The first attendance by the parties at VCAT will usually be at the CC.

CCs are conducted under s 83 of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act). Section 83(2) sets out the functions of a CC as follows:

- (a) to identify and clarify the nature of the issues in dispute in the proceeding;
- (b) to promote a settlement of the proceeding;
- (c) to identify the questions of fact and law to be decided by the Tribunal;
- (d) to allow directions to be given concerning the conduct of the proceeding.

Robust mediation

In general, I regard the CC process as being a robust form of mediation. The focus in both a CC and a mediation is on identifying the key

initially conducted by two VCAT members, a legal member and a valuer member. Towards the end of 2001 valuer members began to conduct such CCs on their own. (Schedule 1 to the VCAT Act provides that VCAT need not be constituted by a lawyer in this class of proceeding.) If such a matter does not settle at the CC, the valuer member is able, there and then, to give directions regarding VCAT's further conduct of the matter.

Savings in time

A typical CC in these matters takes less than half a day. A typical hearing would take longer — particularly when time spent viewing the subject land is taken into account.

In typical matters — where the subject land is a residential property and the applicant is the owner — the applicant will be unrepresented. The respondent Council (the rating authority) will usually be represented by the valuer

The focus in both a CC and a mediation is on identifying the key issues and on finding an outcome the parties can agree on, and live with.

issues and finding an outcome the parties can agree on, and live with. In a CC, however, the person conducting the process will probably be a little more interventionist and directive than a mediator would be in conducting a mediation — hence the word 'robust'.

The *Valuation of Land Act* CCs were

responsible for the valuation which is the subject of the proceeding.

Reasons for success

Why has listing matters of this type for CCs been so successful? There are a number of factors.

The principal factor is that the nature of the proceeding lends itself to the CC



process. The issue between the parties is the correctness of a valuation, often of a residential property. Additional matters relevant to the valuation may come to light as a result of the early directions given in the proceeding, and even during the CC itself. These matters may result in the parties agreeing to some adjustment being made to the valuations previously put forward by one or both of them.

The manner in which such CCs are conducted by VCAT members is critical. The valuer members conducting CCs commenced the process with sound skills, and have been able to build on those skills with each CC conducted.

The process has clearly been embraced by the parties, as evidenced by the results. The process at a CC is straightforward, easily understood, directed at the key issues and less formal than a full VCAT hearing.

Where the CC results in settlement, there are significant savings in both time and costs as a result of avoiding the need to prepare for, and attend, a full VCAT hearing.

Where the CC is successful, it is the parties who arrive at a satisfactory agreement. In these circumstances, the outcome is not imposed by VCAT.

CCs are also conducted in other types of matter within the Land Valuation List. While the results are encouraging, it is too early to assess the success of

the CC process in these other matters.

Future

In February 2002 a number of CCs were listed in regional Victoria. Where it is practical to do so, VCAT is keen to conduct CCs in locations that are convenient for the parties.

There is a need to take into account feedback from the parties about the CC process to ensure that it is operating efficiently and fairly.

A key challenge is to deal with matters in as timely and efficient a way as possible — while maintaining a process that is fair for all parties. While the success rate of CCs to date has been impressive, we need to bear in mind the potential for additional inconvenience and costs that parties may bear where the CC does not result in a settlement, and how any such inconvenience and costs might be minimised. ●

John Baker-Smith is the Deputy President in charge of the Land Valuation List at VCAT. For more information about the Tribunal go to www.vcat.gov.au.

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