



# LAND USE PLANNING IN VICTORIA COUNCILLOR GUIDE **2016**

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Disclaimer: This publication is intended as a practical guide for councillors to the planning system and legislation in Victoria. It provides an overview and must not be used as a substitute for the official documents. These documents include the Planning and Environment Act 1987, the related regulations and planning schemes. This document is intended to provide guidance only. It should not be relied upon as official legal advice. It is emphasised that the views expressed in this document are those of the MAV and should not be regarded as being in the nature of legal advice. You should seek and be guided by your own legal advice with respect to any matters that require clarification or interpretation of the law



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# FOREWARD

OF ALL THE THINGS COUNCILLORS HAVE TO GET UP TO SPEED ON, PLANNING IS ONE OF THE MOST CHALLENGING. IT IS TECHNICAL, POLITICAL, CONTROVERSIAL AND PERSONAL, AND EVERY ISSUE HAS A DIFFERENT SET OF VARIABLES AND POLICY CONSIDERATIONS.

One thing for sure is that planning decisions have long term consequences, and it is really important to do your homework, take advice and put in the hard work.

Land use planning presents both opportunities and challenges for elected representatives. It contributes towards sustainability objectives, economic development, heritage and environmental conservation, as well as guiding development for long-term community benefit.

The planning system is increasingly complex with high levels of public involvement and scrutiny. Often it is only through planning matters that communities engage with their local council and too often, this experience is not positive.

To be effective councillors must understand and be able to explain their decisions locally; build and maintain constructive working relationships; actively contribute to local, regional and state policy development; and oversee the performance of their councils' planning assessment and policy framework.

This guide helps councillors understand the planning system in Victoria – its operating environment, relevant legislation, roles and responsibilities so that councillors are better equipped to perform their functions within the planning system.

We hope that this guide continues to be a useful reference document for all elected councillors in Victoria.



**ROB SPENCE**

Chief Executive Officer

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# ABOUT THIS GUIDE

WHY DOES IT TAKE SO LONG TO GET A PLANNING PERMIT?

WHY DID THE COUNCIL GRANT A PERMIT?

WHY WAS MY OBJECTION IGNORED?

WHERE CAN I FIND OUT ABOUT APPEAL RIGHTS?

WHY ISN'T THE COUNCIL DOING MORE TO STOP THIS TYPE OF DEVELOPMENT?

A councillor does not have to be a professional planner to respond to these kinds of questions but a basic understanding of the planning system is essential for a councillor to represent the local community effectively and know where to find more information about planning processes or issues.

Planning for the future needs of the community is a challenging and vital councillor responsibility. Planning decisions shape communities and influence the physical environment and quality of life. They have long term consequences and can affect people's livelihoods and amenity. A councillor needs to understand the important opportunities that the planning system provides to shape the future of the local community.

This guide provides councillors with an understanding of the planning system in Victoria. It helps councillors understand their role and responsibilities; unlocks some of the mysteries of the planning process and terminology; and provides practical advice about the operation of the planning system and the management of a council's planning functions and resources.

The Guide provides:

- An essential overview
- Information sources under subject headings
- A glossary of words and acronyms used in planning
- A planning enquiry checklist and
- Frequently Asked Questions

# PART ONE

## INTRODUCTION TO THE PLANNING SYSTEM IN VICTORIA

### THE PLANNING SYSTEM IN VICTORIA

PLANNING IS ESSENTIALLY ABOUT THE USE, DEVELOPMENT AND PROTECTION OF LAND IN THE PRESENT AND LONG TERM INTERESTS OF ALL VICTORIANS. THE *PLANNING AND ENVIRONMENT ACT 1987* (THE ACT) IS THE FOUNDATION OF THE PLANNING SYSTEM IN VICTORIA.

#### **Introduction**

The objectives of planning set out in section 4(1) of the Act provide a good starting point for understanding what planning is about. They provide for fair, orderly and sustainable use and development, protection of resources and biodiversity, conservation of buildings, areas or other places of special cultural value, protect public utilities and facilitate development in accordance with these aims. Importantly planning seeks to balance the present and future interests of all Victorians.

Residents often confuse the planning and building approval process. A councillor may be contacted about a concern that is a building matter and not a planning matter. The difference between the planning approval process and the building approval process and councils' responsibilities is outlined in Part 7: Planning Permit Assessment Process of this guide.

# COUNCIL'S PLANNING RESPONSIBILITIES

In carrying out its planning functions under the *Planning and Environment Act 1987*, a council has two key roles:

- As the planning authority, a council sets the strategic policy framework for the municipality and initiates changes to the planning scheme.
- As the responsible authority, a council administers the planning scheme for its municipality and makes decisions on individual applications for a planning permit.

The council has the responsibility to:

- Develop, monitor and review the planning scheme for the municipality
- Identify and implement the objectives and strategies to achieve the vision expressed in the Municipal Strategic Statement (MSS)
- Make decisions under the planning scheme, and ensure compliance with the scheme and any planning permits issued
- Represent the local community in matters of state significance
- Advocate on behalf of the local community.
- Provide leadership and direction for the smooth operation of the council's planning department.

These are challenging responsibilities, especially when there are different points of view about planning issues and decisions within the community and the council.

A council's policies and processes need to be robust and consistently applied to achieve and respond to local objectives in an often difficult operating environment.

The council, through the operation of its policies at the local level, is required to implement state policy. Councils also have a key role as representatives of the local community to advocate on the community's behalf, particularly in the assessment of projects of state significance or proposed changes to state policy.

The Act sets out a number of planning powers and responsibilities for councils associated with the day-to-day administration of the planning system. Many of the administrative responsibilities should be

delegated to council officers. These tasks include:

- Preparing and processing planning scheme amendments
- Processing and deciding planning permit applications.

A council comprises two parts – the elected councillors and the officers of the organisation. Generally speaking it is the role of councillors to set planning policies and direction, and the role of officers to carry out the administrative functions of the council at the direction of the councillors acting as a collective body.

Across Victoria councils face different planning issues and priorities, and have different resources available. Council is responsible for overseeing the performance of the policy framework as well as the administration of the permit assessment system. This includes:

Allocating resources to ensure:

- reasonable timeframes for processing permit applications;
- reasonable work loads for staff;
- arrangements are in place to enable consultation in addition to statutory requirements, such as pre-application consultation;
- adequate administrative support for professional staff;
- external expert advice is available in specialist areas such as heritage, urban design, land capability etc;
- compliance with the scheme and planning permits.

Confirming the planning unit's strategic planning tasks and work program for the next twelve months to meet the strategic priorities in the MSS.

Providing staff training and professional development opportunities.

# COUNCIL PLANNERS' ROLE

COUNCIL PLANNERS ARE QUALIFIED PROFESSIONALS. THEIR SKILL AND EXPERTISE SHOULD BE RESPECTED AND UTILISED. A COUNCIL PLANNER HAS TO MANAGE THE COMPETING INTERESTS OF THE PLANNING PERMIT APPLICANT AND THE OBJECTORS AND PROVIDE AN IMPARTIAL PROFESSIONAL SERVICE TO BOTH PARTIES AND THE COUNCIL. THE OBJECTORS AND APPLICANTS MAY HAVE UNREASONABLE EXPECTATIONS ABOUT THE PLANNING PROCESS AND SITUATIONS INVOLVING TENSION AND CONFLICT ARE PART OF THE COUNCIL PLANNER'S JOB.

A council planner with statutory planning responsibilities processes planning permit applications, assesses the planning merits of the proposal and the objections (if any) and prepares a report and a recommendation. Other council planners with strategic planning responsibilities are involved in policy development and amendments to the planning scheme.

The council planner provides impartial professional advice to councillors and the council so that informed decisions can be made. It's good practice for regular briefings to be held between councillors and council planners to discuss major or controversial planning permit applications as a way of improving communication and professional understanding.

Planners are not being professionally responsible if they give councillors a recommendation that they think the councillor wants to hear.

There will be occasions when a councillor or the council disagree with the council planner's recommendation. This is a part of the planning process and is well understood by council planners. Councillors need to try to understand the reasons behind the planner's view and be satisfied that an alternative view is justified having regard to the relevant planning considerations.

It is important for councillors to treat council planners with professional respect, and they will often find themselves working together in difficult or emotive situations.

Remember that councillors and council planners are on the same team and should be working together to achieve shared policy outcomes. Council planners are one of councillors' most important resources.

The council planner's role and responsibilities include:

- Providing timely advice and information to councillors and their constituents
- Assisting councillors explain the planning process and the planning scheme to residents, facilitating community understanding and input to planning processes
- Providing pre-application advice to permit applicants
- Monitoring and reviewing the MSS and supporting policies
- Providing advice about the implications of state policy, legislative changes etc
- Preparing and processing amendments to the planning scheme
- Representing the council at VCAT and at panel hearings
- Initiating strategic studies and managing consultants
- Managing the planning permit application process
- Assessing planning permit applications and making recommendations
- Making planning decisions under delegation
- Investigating complaints about breaches of the planning scheme and permit conditions
- Providing planning advice.

Council planners use terminology and acronyms such as ResCode, amenity, detriment, MSS, SPPF, Melbourne 2030, amendment, zone, overlay, and objection. These terms and acronyms are explained in the glossary in this guide.

It is good practice to encourage council planners to use plain English to explain the basis of the assessment and the recommendations submitted for a council decision.

Councillors should always ask a council planner to explain the report and recommendation if it is unclear. If the councillors do not understand the information, it is very unlikely the community will.

The success of the planning system relies on a co-operative relationship between council planners and the council as a collective body.

# COUNCILLORS' ROLE

COUNCILLORS HAVE BROAD AND ACTIVE INVOLVEMENT IN THE PLANNING SYSTEM. COUNCILLORS NEED TO USE THEIR TIME WISELY AND NOT BECOME OVERWHELMED IN DETAIL AT THE EXPENSE OF THEIR OTHER RESPONSIBILITIES.

A councillor needs to know about:

- State planning policies and implications for the local community
- The MSS and local planning policies
- The delegation policy for making planning decisions
- The basis of planning decisions
- Major, significant or controversial planning permit applications
- Changes to the planning scheme
- The key steps in the planning permit application process
- The key steps in the amendment process
- The outcome of reviews to the Victorian Civil and Administrative Tribunal (VCAT) and the implications for council policies and resources
- Where to refer people for more information.

## Responding to inquiries

Councillors are often contacted directly by individuals, usually to express a concern about a particular development or to find out information about process and timelines.

An individual councillor has a responsibility to the community, to fellow councillors and council officers to work co-operatively to implement the Council Plan and the MSS at the broad level and to respond appropriately to enquiries from constituents on planning matters. Often, the most effective response is to direct the enquiry to the council planner and follow up to ensure contact has been made.

A councillor is often the immediate and accessible contact between residents and the council. A councillor influences the planning decisions made by council and has power and responsibility as an elected member of the community. However, an individual councillor has no decision-making power. Planning decisions are made by council or by a sub-committee or council planner under delegation.

Most frequently, questions are about current planning permit applications. The adjoining landowners are usually given notice about planning permit applications because they may be affected, and they often ring their local councillor so that they are aware of their concerns.

## Consultation

The planning permit application process usually involves consultation and negotiation between the applicant for permit, the council planner and the objectors (if any).

A councillor may choose to participate in:

- The pre-application meeting arranged by the council planner
- Consultation either before or after notice (called 'advertising') of the application is given.

It's a good idea to participate in consultation to have a full appreciation of the proposal and the objectors concerns and often councillors can play a useful role in mediating solutions, where all parties are willing. Always discuss the proposal with the council planner ahead of any meeting to understand the policy context and the relevant planning considerations so that you understand the 'room to move'.

Always take a council planner with you when you attend any meetings with the applicant and objectors so that your comments are not misrepresented. Never make an early commitment on a planning application to the proponent or the objector, or on the timelines for process and decision. It is always better to have advice about the council planner's assessment of the application against existing policies and other relevant planning considerations and to wait and see what issues arise from consultation with the applicants and objectors.

Conflict between parties at a consultation meeting is possible. Discuss with council staff the setting of ground rules for behaviour and the agenda at the outset of the meeting and remind those in attendance that a positive outcome is more likely if courteous behaviour prevails.

Training on conflict management in the planning process is available. A councillor's role is often to facilitate the meeting, to ensure all participants feel heard and to observe the proceedings to more fully understand the issues. Whilst it can be popular in the short term, it is better not to make commitments at a consultation meeting other than in general terms.

It may not be possible to resolve all issues and achieve consensus through consultation and at the end of the day, the council or its delegate will make a decision on the application and its merits.

## Making informed decisions

A councillor has a responsibility to be informed about planning permit applications that are presented to a council meeting for decision. The council planner's report is essential reading and should be discussed with council colleagues and the council planner well in advance of the meeting so as to have a full understanding of the relevant planning issues and any limits around the decision to be made.

A councillor's decision on a planning permit application should be based on a thorough understanding of:

- The proposal
- The relevant policies and controls in the planning scheme
- The decision guidelines in the planning scheme
- The reasons why a planning permit is required
- The objections and the council planner's assessment of the planning merits
- The reasons for the council planner's recommendation.

Although a councillor is not bound to agree with the planner's recommendation about an application it must be remembered that it is based on a professional assessment of the policies and relevant planning scheme provisions and consideration of the genuine likely impacts on objectors.

The council planner's report to council should explore options available to council. Sometimes conditions requiring amended plans or imposing other reasonable constraints such as hours of operation may address concerns.

When an application for permit is presented to council for a decision, council may support the officer's recommendation, support it in part or not support the recommendation.

This will lead to either the:

- grant of a permit with conditions
- grant of a permit subject to changes to the conditions recommended by the council planner
- the refusal to grant a permit which may or may not be consistent with the council planner's recommendation.

It is important that reasons for the decision are clear and stated. Whilst many planning decisions are not popular decisions, a good planning decision is one that is defensible and can be explained and understood.

For more information about the planning permit application process go to: Part Seven of this guide

## Information and communication

A councillor needs to remain independent in the process but informed of the issues along the way. A regular meeting with council planners is a good way to keep informed and these forums provide the opportunity for face-to-face discussion which builds trust.

A councillor should be able to explain the reasons for a planning decision made by the council, whether they agreed with it or not, as a collective body, with reference to the key issues and policy context. Its counter productive to undermine a decision or blame other councillors or council officers once a decision has been made.

A councillor needs to know about significant planning permit applications, amendment requests, major VCAT decisions and state policy initiatives early in the process.

Many planning departments within councils provide regular briefings to discuss major development applications early in the assessment process with councillors, giving them an opportunity to raise concerns, and also giving the applicant a chance to make changes before notice is given. A councillor should make sure that information flows both ways early in the process.

## Changing policy

From time to time applications will highlight issues causing frustration to both applicants or objectors which may indicate that further local policy work or advocacy at a state level is required to address the issue.

The Municipal Strategic Statement (MSS) and local policies in the planning scheme are important tools because they set out the strategic direction and guide planning decisions. VCAT has to consider the state and local policy frameworks including the MSS, when reviewing a decision.

A councillor can initiate changes to the existing local policies in the planning scheme and request the development of new policies if required. If you are dissatisfied with the content or operation of an existing policy, discuss the concerns with council colleagues and identify options to improve the effectiveness of the policy with council management. A council resolution may be necessary to give the review or project a priority in the administration's work program.

For more information about the MSS and planning policies go to: Part Four of this guide

## Conflict of interest

It is important that councillors are aware of and meet their statutory obligations relating to conflicts of interest.

A councillor must declare an interest and the nature of that interest in any matter that comes before a council meeting, special committee or assembly of council.

They must leave the meeting while the matter is being discussed and notify the mayor or chair that they are doing so, and remain out of view or hearing of the meeting room until after consideration of and voting on the matter.

In order to meet their statutory obligations councillors must understand any direct and indirect interests they may have in a matter.

A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood, that the person will receive a direct benefit or loss that can be measured in financial terms or that the residential amenity of the person will be directly affected.

An indirect interest arises from close association; indirect financial interest; conflicting duty; receipt of an 'applicable gift' or being an interested party in the matter.

A close association may be through a family member having a direct or indirect interest in a matter or a relative or a household member with a direct interest in a matter.

For example, a councillor is deemed to have an indirect interest arising from a close association if that councillor's son is a consultant to a developer with a planning application before council.

Indirect interests also include financial interests and conflicting duties. An indirect financial interest would result in a likely benefit or loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

Conflicting duties exist where there is a duty to another person or body arising from a position or role that may be impacted by a decision. This may relate to current or former community or professional roles.

For example, a councillor who was formerly employed by a company that undertook strategic planning work for a developer who is now making an application to the council is deemed to have an indirect interest arising from a conflicting duty created by their previous role even though no longer an employee.

Councillors should also be alert to any conflicting interests that may arise from the receipt of an applicable gift (to the value of \$500 or more in the five years preceding the decision) or from being an interested party.

Where a councillor (or family member) has initiated proceedings at VCAT or is party to civil proceedings, and the matter is subsequently considered by the council, then an indirect interest exists as a consequence of becoming an interested party.

No conflict of interest exists where the interest is remote or insignificant. This would be the case where the interest is in common with other residents, ratepayers or voters and does not exceed the interests held by other residents, ratepayers or voters or where the interest is remote.

If a councillor has no conflict of interest but considers that they have a personal interest that conflicts with their public duty that councillor may apply, giving reasons, to be exempted from voting.

Overall, a precautionary approach is recommended.

A useful rule of thumb is: when in doubt – declare and walk out!

## **Misuse of Position**

A misuse of position involves a councillor gaining or attempting to gain an advantage for themselves or seeking to cause detriment to the council or another person. This could happen through improper use of information, public funds or resources; unauthorised exercise of power; disclosing confidential information; or improper direction and influence of a council officer.

A councillor must not, for example, direct or seek to direct a member of council staff in the exercise of any delegated power in relation to planning applications or in relation to advice provided to council or a special committee, including advice in a council/committee report.

## **Remaining Unbiased**

Councillors naturally hold or form opinions on matters they consider in the course of their duties as elected representatives. However, common law requires that councillors remain open to persuasion notwithstanding their previously held views when they participate in decision making that affects people's rights.

Councillors are entitled to express their views but must always emphasise that they remain prepared to reconsider their position in light of all the evidence and arguments. Council decisions can be overturned by a court if a councillor is found to have prejudged a matter by not bringing, or appearing not to bring, an open mind to the decision making table.

For more information about interest go to: 'Ensuring Unbiased Democratic Council Decision Making, DELWP 2013'

# PART TWO

## TOP 10 ESSENTIAL ELEMENTS OF THE PLANNING SYSTEM

### TOP 10 ESSENTIAL ELEMENTS

THIS SECTION OF THE GUIDE PROVIDES A SHORT OVERVIEW OF THE TOP 10 ESSENTIAL ELEMENTS OF THE PLANNING SYSTEM, WITH AN EMPHASIS ON COUNCIL'S RESPONSIBILITIES. MORE DETAIL IS PROVIDED LATER IN THE GUIDE.

#### Introduction

It is suggested that you read this section in its entirety so that you get a good feel for how the planning system works.

The top 10 are:

- The *Planning and Environment Act 1987*
- Planning schemes
- Policy development and implementation
- Changing the planning scheme
- Planning permits
- Delegation
- Consultation and review by Victorian Civil and Administrative Tribunal (VCAT)
- Compliance
- Minister for Planning
- Continuous improvement and the role of councils

#### 1. Planning and Environment Act 1987

The *Planning and Environment Act 1987* (the Act) is the legislative basis of the planning system in Victoria. The purpose of the Act is: *"To establish a framework for planning the use, development and protection of land in Victoria in the present and long term interests of all Victorians"*.

The Act addresses:

- Objectives of planning and the planning framework
- Content, structure and review of the planning scheme
- A council's responsibilities to administer the planning system
- Preparation and content of Municipal Strategic Statements (MSS)

- The process for changing the planning scheme (called an amendment to the planning scheme) – Minister's authorisation, preparation, exhibition, submissions, panel hearing, adoption, approval and gazettal
- Provisions relating to development contributions
- The planning permit application process including notice, objections, referrals, matters to be considered, permit conditions, cancellation and amendment of permits etc
- Review rights to the Victorian Civil and Administrative Tribunal (VCAT)
- The Minister for Planning's responsibilities
- Enforcement provisions for breaches of the planning scheme
- Arrangements for advisory committees and panels
- Delegation powers
- Provisions for projects of state or regional significance.

A councillor does not need to have a detailed knowledge of the legal provisions of the Act to effectively contribute to the council's performance of its planning responsibilities. Because the Act is complex, technical and legal, it is good practice to get advice and refer questions to the council planner regarding processes, rights and interpretation of the provisions. This will avoid the difficulty of incorrect advice on a technical matter, which may have legal consequences.

For more information go to: [Part 3 of this guide](#)

## 2. Planning Schemes

Land use and development are controlled through planning schemes.

Every municipality has a planning scheme that sets out the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) which includes the MSS and local policies.

A councillor requires an understanding of the state and local planning policy frameworks in the planning scheme.

In addition to the policy frameworks, the planning scheme contains detailed provisions relating to zones, overlays, particular kinds of uses, administration of the scheme, exempt proposals, existing uses, decision guidelines, referrals, definitions and incorporated documents.

In summary, a planning scheme may:

- Make any provision which relates to the use, protection or conservation of any land in the area
- Set out policies and specific objectives
- Regulate or prohibit the use or development of land
- Designate land for public purposes
- Include strategic plans, policy statements, codes or guidelines relating to the use or development of land
- Require specific information to be provided with an application for permit
- Apply, adopt or incorporate any document that relates to the use, development or protection of land.

For more information on policy development go to: [Part 4](#) and [Part 5](#) of this guide.

## 3. Policy Development and Implementation

Strategic directions and policies provide the basis of the planning scheme and inform all planning decisions.

The planning scheme contains two policy sections:

- State Planning Policy Framework (SPPF) – prepared by the State Government/Minister for Planning
- Local Planning Policy Framework (LPPF) – prepared by the council and approved by the Minister for Planning.

The state section of the planning scheme sets out state planning policies relating to such matters as metropolitan development, settlement, environment, housing, economic development, infrastructure, subdivision, design and built form. A council cannot change state policies. If a proposed change to the planning scheme is inconsistent with state policy or interests, the Minister for Planning will not authorise the council to prepare that amendment.

A council's prime planning responsibility is to develop the Local Planning Policy Framework comprising the Municipal Strategic Statement (MSS) and local policies.

The MSS sets out the vision the council has for the future of the municipality. It is a statement of where the council wishes the municipality to go. Local policies guide planning decisions which over time will help the municipality achieve its vision, and promote transparency and consistency in decision-making. Importantly, policies have to be included in the planning scheme to be effective in decision making.

The planning scheme has a strategic base and a policy focus that is integrated with other council objectives identified in the Council Plan, and must be reviewed within a year of the four-yearly Council Plan being approved.

For more information go to: [Part 4](#) of this guide.

## 4. Changing the Planning Scheme

The planning scheme is dynamic and may be changed in response to a number of different circumstances such as to:

- Reflect a new strategic direction endorsed by the council following the review of the MSS
- Introduce a new policy emerging from a strategic study such as a review of industrial zones or completion of a heritage study
- In the context of the above, change the zoning or overlay controls which apply to an area.

A council can initiate a change to the planning scheme, but the Minister for Planning must authorise council to prepare an amendment and the Minister's final approval is required.

A planning scheme amendment is a public process, and can be technical and complex. The process requires considerable council resources and may take 12 months or more to complete.

Often changes to the planning scheme can be controversial and confronting for some residents. Strong and clear leadership by councillors, and active engagement through the public process is essential or a successful and efficient amendment process.

For more information on how to amend a planning scheme, go to: [Part 6 of this guide.](#)

## 5. Planning Permits

There are over 50 000 planning permits issued in Victoria each year. Most of the council's planning resources and a lot of councillors' time can be spent on processing planning permit applications. Many planning permit applications are decided by staff under delegation, with only major, important or controversial matters coming to council.

The triggers for a planning permit depend on the planning controls that apply to the land and the changes that are proposed. Deciding what planning permits are required can be tricky, and it's good practice for councillors to refer questions about individual planning permit applications and the planning scheme to the council planner.

Council, or its delegate, decides whether or not to grant a planning permit based on an assessment of the proposal, the policies and decision guidelines in the planning scheme and the planning merits of any objections received. The planning permit authorises the use and development of land with conditions.

In the case where objections have been received the council decision is known as a Notice of Decision (NOD) to grant a permit. The NOD is issued as a permit after the specified time for an application for review to VCAT has passed and no application for review has been lodged.

Councillors are likely to be lobbied by applicants and objectors as part of the planning permit application process. It's a good idea to avoid making an early commitment to a planning permit application or timelines for decision. It is best to wait for council officers to assess the application against existing policies and to provide some guidance about a likely recommendation. It is also a good idea to wait and see what issues arise from consultation with the applicants and objectors.

Keeping informed, inspecting the site, discussing the application with council planners, participating in consultation processes and understanding the council planner's report and the reasons for the recommendation help councillors make informed decisions based on proper planning considerations as set out in the planning scheme.

To understand more about the main steps in the planning permit application process go to: [Part 7 of this guide.](#)

## 6. Delegation

Delegation means empowering a committee of council or a council officer to make a decision as if they were the council.

For routine matters council planners can decide if an application is consistent or inconsistent with policy and make an appropriate decision. Major development applications or applications that raise major issues of policy may require a council decision. Some councils have delegation protocols that allow almost all applications to be decided by council officers, rather than the council.

Delegation of decision-making is essential to enable the effective use of councillors' time, the smooth operation of the planning system and reasonable timeframes for decisions.

Councillors can determine the nature and extent of delegation in place and review the schedule of delegations from time to time, particularly as they become more familiar and confident in the planning process.

A council's main role is to develop policy for all applications to be assessed against.

Effective delegation and decision-making relies on clear policy expressed in the planning scheme.

For more information on delegation go to: [Part 7 of this guide](#).

## 7. Consultation and Review by VCAT

Consultation and notice to affected parties is part of the planning permit application process and the planning scheme amendment process.

Council has a responsibility to ensure that the extent of notice is reasonable, and that sufficient information is available with the application to enable an informed assessment of its likely impacts.

The council (or its delegate) is required to consider the merits of any objection as well as the merits of the proposed development and any changes proposed by the applicant to address the reasonable concerns of objectors. Often councillors play a lead role in negotiating a compromise between the applicant and the objectors.

Both applicants and objectors can request the Victorian Administrative and Appeals Tribunal (VCAT), to review a council's decision on a planning permit application. The applicant can also request a review of the conditions in the permit or council's failure to decide an application within 60 days.

VCAT operates independently under its own legislation and is administered by the Department of Justice. The Minister for Planning is not responsible for VCAT.

More information is provided regarding notification, consultation, lobbying, objections and VCAT in [Part 7 of this guide](#).

## **8. Compliance**

A council can use the enforcement provisions in the Act to remedy a breach of the planning scheme or obtain compliance with a planning permit. Formal enforcement proceedings involve VCAT or the Magistrates' Court.

Questions about compliance with the planning scheme or an alleged failure to comply with permit conditions such as the hours of operation or noise standards are best directed to the council planner for investigation and response.

## **9. Minister for Planning**

The Minister for Planning has a key role to play in the planning system. The Act sets out the wide-ranging planning powers and responsibilities of the Minister which include authorising the preparation of all amendments to planning schemes; approving amendments, appointing panels and advisory committees; preparing and approving amendments without exhibition to facilitate projects of state significance; and 'calling-in' planning permit applications and matters before VCAT in specified circumstances. The Minister is also responsible for the State Planning Policy Framework in the planning scheme.

Officers of the Department of Environment Land Water and Planning (DELWP) support the Minister and are available to provide information to councillors on the planning system and the State's initiatives and strategic policies.

## **10. Continuous Improvement and the role of Councils**

The planning system continues to evolve and improve as councils, the MAV, the DELWP and other stakeholders identify ways of improving process efficiency, reducing council resources and administrative costs, improving the outcome of the planning process to ensure that strategic policies are implemented; and identifying good practice for other councils to consider and apply in their municipalities to suit their needs.

Increasingly councils are using information systems to improve access to information and the range of services available – such as on-line lodgement and tracking of permit applications.

Both State and local government are working towards reducing the regulatory burden and improving the efficiency and performance of the planning system. Councillors can make a significant contribution through active support of continuous improvement initiatives.

The council also has oversight of the administration of the planning system, including processing planning scheme amendments, and deciding planning permit applications. Councillors, through their leadership and advocacy, often provide the catalyst for state-wide reforms and improvements to the planning system and policy framework.

# PART THREE

## THE PLANNING AND ENVIRONMENT ACT 1987

### THE PLANNING AND ENVIRONMENT ACT 1987

#### Introduction

The *Planning and Environment Act 1987* (the Act) is the legislative basis of the planning system in Victoria. Councillors do not need a detailed knowledge of the Act to successfully fulfil their planning role and responsibilities but a broad understanding of the content is required.

The Act sets out:

- Its purpose and objectives
- The structure and operation of planning schemes  
Procedures for changing planning schemes  
Provisions relating to planning permit applications
- Opportunities for review (appeals) to the Victorian Civil and Administrative Tribunal (VCAT)
- The Minister for Planning's powers and responsibilities  
Procedures for collecting development contributions  
Procedures for compensation for land required for a public purpose
- Enforcement and legal proceedings when a breach of the planning scheme occurs
- Procedures for the appointment and conduct of advisory panels
- Procedures dealing with projects of state or regional significance.

#### Objectives of Planning

The objectives of planning are set out in section 4 (1) of the Act. They provide a good starting point for understanding what planning is about and provide the basis of the structure and content of planning schemes.

The objectives of planning are to:

- Provide for the fair, orderly, economic and sustainable use, and development of land
- Provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
- Secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- Conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural and historical interest or otherwise of special cultural value
- Protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
- Facilitate development in accordance with these objectives
- Balance the present and future interests of all Victorians.

## The Planning Framework

Section 4 (2) of the Act sets out the objectives of the planning framework established by the Act. In summary, the objectives are to:

- Ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels
- Establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land
- Enable land use and development planning to be easily integrated with environmental, social, economic conservation and resource management policies at State regional and municipal levels
- Ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land
- Facilitate development which achieves the objectives of planning in Victoria and planning objectives in planning schemes
- Provide for a single authority to issue permits for land use and development and related matters and to co-ordinate the issue of permits with related approvals
- Encourage the achievement of planning objectives through positive actions by a council
- Establish clear procedures for amending planning scheme with appropriate public participation in decision-making
- Ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice
- Provide an accessible process for just and timely review of decisions without unnecessary formality
- Provide for effective enforcement procedures to achieve compliance with planning schemes, permits and agreements
- Provide for compensation when land is set aside for public purposes and in other circumstances.
- Planning is therefore essentially about the use, development and protection of land in the present and long term interests of all Victorians.

## The Responsible Authority and the Planning Authority

The Act makes a distinction between a responsible authority and a planning authority. Councillors need to understand when the council is acting as the responsible authority and when it is acting as the planning authority because it will have to consider different matters.

The responsible authority is responsible for the administration of the planning scheme including assessing planning permit applications. It is usually the council. However, the Minister is the responsible authority for some particular areas or types of applications for a planning permit. For example, the Minister decides all but relatively minor applications in Melbourne's CBD.

The planning scheme identifies the responsible authority for the area or parts of the area to which the planning scheme applies.

The planning authority prepares a planning scheme amendment, subject to the Minister for Planning's authorisation. It is usually the council. However, the Minister for Planning can prepare an amendment to a planning scheme and can authorise a Minister or public authority to prepare an amendment.

## The Planning Scheme

The Act provides for a planning scheme to be prepared and approved for every municipal district. All municipalities have a planning scheme. The planning scheme is the single instrument of planning control. It sets out the objectives, strategies, policies and controls for the use, development and protection of land.

For more information about the structure and content of planning schemes go to: **Part 5 of this guide.**

## The Victoria Planning Provisions (VPP)

The Act establishes the Victoria Planning Provisions (VPP) which is a comprehensive set of standard planning provisions developed by the State Government.

The VPP ensure that:

- The provisions in planning schemes are consistent across the State
- The structure of planning schemes is consistent across the State
- There is a clear strategic direction in the planning scheme
- There is a defined policy base for planning decisions
- The strategic direction in a planning scheme is dynamic and responsive to changing circumstances and community expectations.

The VPP includes:

- A standard structure for a planning scheme
- A mandatory State Planning Policy Framework containing State Government policy
- A set of standard zones
- A set of standard overlays
- Mandatory particular provisions applying to use and development
- Mandatory general provisions
- Mandatory definitions
- A list of incorporated documents.

## Definitions

Definitions are important because some words have particular meanings when they are used in the Act or a planning scheme. The Act defines building, development, use, subdivision and works. Many types of land uses are defined in the planning scheme.

'Development' includes the:

- construction or exterior alteration or exterior decoration of a building
- demolition or removal of a building or works construction or carrying out of works subdivision or consolidation of land, including buildings and airspace
- placing or relocation of a building or works on land construction or putting up for display of signs or hoardings.

'Works' includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

Other important terms are defined in the planning scheme at clauses 71-75.

The Act can be viewed on the Victorian Legislation and Parliamentary Documents home page at [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au) A printed copy of the Act can be purchased from the Information Victoria bookshop at 505 Little Collins St, online at [www.bookshop.vic.gov.au](http://www.bookshop.vic.gov.au) or via telephone 1300 366 356.

# PART FOUR

## STRATEGY PLANNING AND POLICY DEVELOPMENT

### STRATEGIC PLANNING AND POLICY DEVELOPMENT

#### Introduction

The term 'strategic planning' is used to describe activities relating to the future planning and development of the municipality. It is the area where councillors will have the most important long term impact.

Strategic planning activities include:

- Providing leadership and direction on key land use and development issues facing the municipality
- Developing, monitoring and reviewing the MSS and local policies that make up the Local Planning Policy Framework in the planning scheme
- Undertaking studies into key issues emerging in the municipality that could lead to a change to the planning scheme to refine the MSS, or support the introduction of a zone change or the introduction of an overlay or a change to an existing overlay, or a new policy
- An analysis of the implications of state policy at the local level
- The development of local policies to give effect to state policies; an example is the development of a housing strategy and related local housing policy to implement the directions in any Metropolitan Strategy.

Planning is much more than a regulatory or statutory process involving the administration of the planning scheme and assessment of permit applications. It is about developing strategic objectives and policies and making planning decisions to further the objectives and policies of the municipality. In addition to the state policies in the State Planning Policy Framework (SPPF), the local policies in the Local Planning Policy Framework (LPPF) of the planning scheme are a driving force in decision making.

In most zones in the planning scheme, a council has wide discretion about whether or not to grant a planning permit. The council has to make an assessment about how well a planning proposal meets a performance objective or outcome in the planning scheme as set out in the SPPF, local policies, and the objectives of the zone or overlay(s) which apply to the land. The council, as a collective body, has to decide if the proposal will result in an acceptable planning outcome.

The combination of wide discretion and performance based provisions can create uncertainty unless there is a strong policy base that explains how the council's discretion will be exercised, and that policy is consistently applied.

Most planning permit applicants and objectors have difficulty understanding this fundamental aspect of the planning system. It means that negotiation between the permit applicant, any objectors and the council planner is likely to be a usual part of the assessment process. There is scope to make changes to plans and comply with the planning scheme and achieve an appropriate planning outcome.

The zones and overlays in the planning scheme contain decision guidelines to assist a council, as a collective body, assess a planning permit application against the relevant planning considerations. The decision guidelines always require the council to consider the State Planning Policy Framework and the Local Planning Policy Framework.

All planning schemes contain:

- The State Planning Policy Framework (SPPF)
- The Municipal Strategic Statement (MSS)
- Local policies to guide decision-making.

If the objectives and strategies in the MSS and the supporting local policies are clear and unambiguous, then councillors can be confident about delegating most planning permit application decisions to the council planner.

## Review of Planning Schemes

The Act requires councils to review the planning scheme, including the MSS, not later than one year after approval of a Council Plan. The review assesses the efficiency and effectiveness of the planning scheme in achieving the objectives of planning and to report the findings of the review to the Minister.

The MSS includes a section on monitoring and review which usually contains the benchmarks or actions that the council will use to assess the effectiveness of the MSS during the period between reviews.

An interim assessment should be undertaken by the council administration on an annual basis. Councillors should be informed if the annual review finds that a strategy in the MSS is not achieving the desired outcome or having unexpected results.

As the date for the review approaches, councillors should discuss with the planner an appropriate structure and process for the review. It may be appropriate to establish a small working group of councillors to develop a revised draft MSS. The review should involve consultation with stakeholders such as resident groups, government agencies and representatives of professional groups.

The review itself is not an amendment to the planning scheme, however if adjustments to the MSS are needed, an amendment will be necessary to make the changes. Stakeholders should be invited to respond to any proposed changes to the MSS before they are finalised for formal exhibition and wider public consultation.

The review of the MSS must be linked to the review of the Council Plan because the Act requires the MSS to be consistent with the Council Plan.

For more information about the review go to: [Planning Practice Note 32](#). Available from [DELWP website](#)

## The Municipal Strategic Statement (MSS)

The Municipal Strategic Statement (MSS) is the foundation of the strategic planning framework and provides the basis of planning decisions in a municipality. A councillor needs to know what the MSS says about the future direction of the municipality. If a development proposal is not consistent with the MSS, it will be difficult to justify its approval, and vice versa. Generally speaking, the MSS sets out a broad vision for the future and identifies key issues facing the municipality. It may be necessary

to change the MSS to enable support for a type of proposal, which takes time. Councillors and planners must consider the MSS when it makes a decision about a planning permit application.

The Act requires the MSS to contain:

- The council's strategic planning, land use and development objectives
- The strategies for achieving the objectives
- A general explanation of the relationship between those objectives and strategies and the controls on the use and development of land in the planning scheme
- Any matter that the Minister directs to be included.

The MSS must be:

- Consistent with the current Council Plan
- Reviewed as part of the planning scheme review at least once every four years.

The MSS is not set in stone. It must respond to the changing needs of the community and other influences such as state policy. Council can change the strategic direction expressed in the MSS. A change to the MSS requires a planning scheme amendment.

A change to the MSS may be necessary to:

- Implement a new strategy such as a retail strategy or an open space strategy
- Respond to a particular issue
- Implement a State Government strategy at the local level.

Changes to the MSS between the regular four-yearly review are infrequent. The MSS should be written to accommodate changes consistent with its broad strategic intentions. Frequent changes undermine the broad strategic directions and the stability and certainty established in the MSS.

## Local Policies

The planning scheme requires a council to express its local policies in the Local Planning Policy Framework (LPPF). Policy underpins and guides decision-making through the exercising of discretion in a zone or overlay and, consistently applied, leads to greater certainty.

Local policies are developed by the council to reflect the community's priorities and to guide decisions about permit applications and amendments to the scheme. Local policies can be developed at any time when needed to respond to local circumstances. A council can change an existing policy or introduce a new policy through an amendment to the planning scheme. This process takes time and resources.

For more information about local policies go to:

- The LPPF section (Clause 21 and 22) in the planning scheme.
- Planning Practice Note: Writing a Local Planning Policy (December 1999) available from the DELWP website.

# PART FIVE

## PLANNING SCHEMES

### PLANNING SCHEMES

#### Introduction

Councillors do not need a detailed knowledge of every provision in the planning scheme to successfully fulfil their planning role and responsibilities.

However, a councillor must:

- Be familiar with the State Planning Policy Framework (SPPF)
- Be familiar with the Local Planning Policy Framework (LPPF)
- Understand why a planning permit is required and the relevant planning considerations and decision guidelines for each application presented for decision.

The planning scheme sets out the way land can be used and developed through policies and objectives. It generally affects all land in the municipality. The scheme includes both written text and maps that show the zones and overlays that affect land. It provides information about policies and the circumstances when a planning permit is required to make changes to the use or condition of land or to develop land.

The planning scheme is a legal document that requires interpretation by a qualified planner.

The planning scheme is important because it determines the development potential of land. The starting point for consideration of any planning permit application is to check what the planning scheme says about the way in which the land may be used or developed. This information determines why a planning permit is required and which policies are relevant to the decision about the application.

#### Structure of the Planning Scheme

All planning schemes have the same structure and contain the following information:

- Table of contents\*
- Objectives of Planning in Victoria#
- Purpose of the planning scheme#
- User Guide#
- State Planning Policy Framework#
- Local Planning Policy Framework (MSS & local policies)+

- Zones^
- Overlays^
- Particular provisions for certain uses such as advertising signs, car parking, native vegetation, gaming venues etc^
- General provisions^
- Definitions#
- Incorporated documents^
- List of amendments\*.

\*Not formal part of Scheme #Fixed state content  
^Can contain local content +Wholly local content

The content is selected from the Victoria Planning Provisions (VPP). A council can reflect local circumstances in the planning scheme using:

- The Local Planning Policy Framework
- Schedules to the zones and overlays where available
- The incorporated documents schedule.

#### The State Planning Policy Framework

The State Planning Policy Framework (SPPF) gives effect to the State Government's land use policies. It sets out a range of policies for matters such as metropolitan development, settlement, environment, housing, economic development, infrastructure and particular uses and development.

A council:

- Must take the SPPF into account and give effect to the SPPF when it decides a planning permit application or makes a decision about an amendment to the planning scheme
- Cannot change the SPPF
- Can only introduce a local policy that is consistent with the state policy. This is the first test for any local policy proposed to be included in the planning scheme, including the MSS.

For more information about the State Planning Policy Framework go to: The SPPF section (Clause 11 to 19) in the planning scheme.

## The Local Planning Policy Framework

The council is responsible for preparing and implementing the LPPF. A Local Planning Policy Framework (LPPF) that sets out the council's vision for its municipality and the local policies it will apply to achieve the vision. The LPPF must be consistent with the SPPF and contains two parts:

- The Municipal Strategic Statement (MSS) Local planning policies.
- The preparation, monitoring and review of the MSS are vital council planning responsibilities.

The MSS provides the vision for the future of the municipality and the basis for selecting the zones and overlays that are applied in the planning scheme. It is important to be very familiar with your MSS.

The Act requires the MSS to contain:

- The council's strategic planning, land use and development objectives The strategies for achieving the objectives
- A general explanation of the relationship between those objectives and strategies and the controls on the use and development of land in the planning scheme
- Any matter that the Minister directs to be included.

The MSS must be:

- Consistent with the current Council Plan
- Reviewed as part of the planning scheme review at least once every four years.

Local policy is a key tool available to implement the objectives and strategies in the MSS. It provides the opportunity for a council to express its expectations about:

- certain types of planning permit applications
- future land use and intentions for an area
- the factors that will influence its decision
- the basis for planning decisions about specific issues in a local area, such as car parking, advertising signs, neighbourhood character or non-residential uses in residential areas.

A local policy must be:

- Strategically justified
- Tested through the amendment process
- Part of the LPPF of the planning scheme
- Clearly expressed to avoid ambiguity
- Of genuine assistance to the applicant and decision maker
- Applied consistently
- Monitored and reviewed.

Council's planner should monitor and review the effectiveness of local policies and discuss with councillors proposed changes to the existing policy or the introduction of new policy to provide additional guidance where required.

Councillors must be familiar with their local policies in their planning scheme because they must be taken into account in planning decisions made by the council or reviewed by VCAT.

Local policies provide direction and guidance to planning permit applicants and set boundaries or limits around the extensive discretion to grant permits in the zones and overlays in the planning scheme. For example, in a heritage overlay, a planning permit is required to demolish a building. In deciding a planning permit application for demolition, the council has to consider the LPPF.

The LPPF may include a policy that assists the council decide when it is appropriate to grant a permit to demolish a building. But such a policy would need to be expressed very carefully. For example, a decision based on a policy that the council would only grant a planning permit to demolish a building if the building was shown to be structurally unsound is unlikely to be upheld by VCAT if the building does not have a reasonably high level of heritage significance.

Sometimes more than one policy is applicable to a planning decision and some of those policies may be in conflict with each other. Council will have to weigh-up different objectives, policies and relevant planning considerations when it makes a planning decision. This can lead to tension because individual councillors may give different weight or different priority to the same policies and come to a different view. It is important to work through these points of difference to provide clear guidance.

To be effective in decision-making a local policy must be in the planning scheme. Local policies can be incorporated (most weight) or referred to in the planning scheme. Applicants will generally inform themselves about which policies are relevant and how they will be applied. It is highly likely that an applicant will challenge a council decision to refuse a permit where that refusal is based on a policy that is not in the planning scheme.

VCAT will give considerable weight to a policy that is in the planning scheme compared to a policy that is not. Like council, VCAT may have to weigh-up different objectives, policies and relevant planning considerations when it reviews a planning decision made by council. This can lead to dissatisfaction because VCAT may give different weight or different priority to the same policies and come to a different decision to the council.

#### For more information about Local Policies go to:

- [The LPPF section \(Clause 21 and 22\) in the planning scheme.](#)
- [Planning Practice Note: Writing a Local Planning Policy available from the DELWP website.](#)

## Zones

The zones in the planning scheme identify land for particular uses eg residential, business, industrial and so on. The zone selected may reflect existing patterns of land use or the new strategic land use direction for an area. Zones are shown on the planning scheme map and their requirements are listed in the planning scheme under the name of the zone.

Zones are important because they control the use and development of land. An applicant wishing to change the use of land may:

- Not require a planning permit at all
- Not require a planning permit provided specified conditions are met
- Require a planning permit
- Require a planning permit with specified conditions
- Be prohibited in a particular zone.

The zone contains a list of uses that are identified as:

- Section 1 uses – Permit not required
- Section 2 uses – Permit required, often with a condition that must be met
- Section 3 uses – Prohibited uses.

In addition to the change of use provisions, the zone may also require a planning permit to:

- Subdivide land
- Construct a building
- Construct or carry out works.

The zone contains a purpose and decision guidelines that council must address when making a decision about a planning permit application. It may also have a schedule that the council can use to reflect local circumstances. For example, the council can use the schedule to the General Residential Zone to change specified siting and design standards for single dwellings.

Zones are important planning tools. They are used to reflect the council's strategic direction expressed in the MSS as well as existing patterns of land use. For example:

- A regional council could encourage new employment opportunities by zoning suitable land Industrial 1
- A metropolitan council could encourage higher density development around an activity centre by zoning adjacent land Residential Growth Zone.

#### For more information about Zones go to:

- [‘Using Victoria’s Planning System’](#)
- [The zone provisions in the planning scheme \(Clause 31 to Clause 37\)](#)

## Overlays

The overlays in the planning scheme impose planning permit requirements in addition to the zone. They affect subdivision and buildings and works. An overlay generally addresses environmental and built form matters. An overlay usually has a schedule that applies different requirements to different areas in the municipality that are covered by the same overlay.

The purpose and decision guidelines in the overlay and schedule are very important because they must be taken into account when the council makes a decision about a planning permit application.

Overlays and their schedules provide the opportunity for a council to reflect local circumstances and give effect to a strategic direction in the MSS and implement a local policy. For example, a council can use:

- A heritage overlay to require planning permission to alter, remove or demolish any building in a precinct identified as having heritage significance and so manage change in that precinct
- A design and development overlay to impose a height or set back requirement to ensure that new development is compatible with the existing built form and landscape character
- A development contributions plan overlay to impose a levy to pay for improved drainage in a catchment or an infrastructure contributions plan
- A vegetation protection overlay to require a planning permit before significant vegetation can be removed.

Often these decisions are only taken after an appropriate study has been commissioned from suitably qualified experts to identify, for example, heritage significance or character.

For more information about overlays go to:

- 'Using Victoria's Planning System'
- The overlay provisions in the planning scheme (Clause 41 to Clause 45).

## Particular Provisions

The particular provisions in the planning scheme may also apply to land uses and development. These provisions cover a range of matters including:

- Subdivision and a public open space contribution
- Easements, restrictions and reserves
- Advertising sign controls
- Car parking
- Uses with adverse amenity potential (eg. industrial uses)

The particular provisions are the same in all planning schemes. A council cannot change them. However some provisions include schedules that provide for local content.

For more information about the particular provisions go to:

- 'Using Victoria's Planning System'
- The particular provisions in the planning scheme (Clause 51 and Clause 52).

## General Provisions

The general provisions provide information about some of the technical aspects of the planning scheme including:

- The administration of the planning scheme
- Uses, buildings, works, subdivision and demolition exempt from a planning permit requirement
- Existing uses and continuation rights
- Decision guidelines
- Referrals of applications
- Applications on land owned by the responsible authority

The general provisions are the same in all planning schemes. A council cannot change them.

For more information about the general provisions go to:

- 'Using Victoria's Planning System'
- The general provisions in the planning scheme (Clause 61 to Clause 67).

## Definitions

Words used in the planning scheme have their ordinary meaning unless they are defined in the scheme or in the Act.

It is necessary to use some technical terms to define particular kinds of land uses in the planning scheme. The use of definitions:

- Enables planning permit applications to be processed in a consistent way
- Enables clarity and the consistent interpretation of the planning scheme
- Identifies accurately the nature of the use or development proposed
- Avoids confusion and uncertainty about when a planning permit is required.

A council cannot change the definitions.

The definitions in the planning scheme include: General terms such as basement, building height, gross floor area and storey

Outdoor advertising terms such as advertisement area, floodlit sign and panel sign

Land use terms that have special meanings in planning schemes such as 'Accommodation', 'Restricted retail premises', 'Cinema based entertainment facility', 'Residential building'

'Nesting diagrams' that show which land uses are grouped within a broader land use category such as 'Dwelling' which is nested in 'Accommodation'.

For more information about definitions go to:

- 'Using Victoria's Planning System'
- The definitions section in the planning scheme (Clause 71 to Clause 75).

## Incorporated Documents

There is a list of incorporated documents at the back of the planning scheme. Incorporated documents are important because they are part of the planning scheme and have to be taken into account by council when it makes a planning decision.

VCAT will consider any relevant incorporated document when it reviews a council decision.

Generally speaking incorporated documents are guidelines relating to specific land uses or developments prepared by government bodies outside the planning system. For example, *Guidelines for Environmental Management – Septic Tanks Code of Practice*, Publication 891, Environment Protection Authority, March 2013 and the Victorian Code for Broiler Farms 2009, are incorporated documents in all planning schemes in Victoria.

There is also scope to include as incorporated documents development plans which set out the parameters for development on a particular site.

Reference documents referred to in the MSS or the policy sections of the planning scheme are not part of the planning scheme and have little statutory weight and generally provide background information about the basis of local policies in the planning scheme.

For example, it is common to find a heritage study included as a reference at the end of a local policy dealing with heritage in the LPPF. The heritage study is the data on which the heritage policy is based.

For more information about incorporated documents go to:

- 'Using Victoria's Planning System'
- Incorporated and reference documents, Planning Practice Note, available from the DELWP website
- Clause 81 in the planning scheme.

# PART SIX

## AMENDING THE PLANNING SCHEME

### CHANGING THE PLANNING SCHEME

Changing the planning scheme is called an amendment to the planning scheme. Council requires the Minister's authorisation to prepare an amendment before the council commences the amendment process. Final approval from the Minister is also required.

Council's responsibilities include:

- Initiating a change to the planning scheme
- Assessing requests to change the planning scheme
- Requesting the Minister's authorisation to prepare and approve an amendment
- Processing changes to the planning scheme including preparing the amendment documentation, exhibition, review of submissions, the independent panel process, consideration of the panel report
- Adopting the amendment and forwarding it to the Minister for consideration and approval.

Deciding to change the planning scheme is a significant decision because it affects the way in which land can be used and developed. The consequences of a change to the planning scheme are enduring and need to be made with care and purpose.

The amendment process can take many months and involves considerable council resources, as well as public involvement, and to be successful requires active leadership and support from councillors.

There are some restrictions on the types of amendments that a council can request authorisation to prepare. A council cannot prepare an amendment to the State Planning Policy Framework or the Victoria Planning Provisions.



## Initiating a change to the Planning Scheme

Planning scheme amendments are necessary in a variety of circumstances which include:

- Implementing a new State Government policy direction
- Implementing a new strategic direction or objectives following the review of the planning scheme
- Introducing a new local policy to implement a strategic study's recommendations
- A change to an existing policy to clarify its objectives or remove ambiguity about its operation
- Changing the zone that applies to land so that a different purpose and range of land uses can be considered, and in some cases a development application that would otherwise be prohibited can then be considered
- Introducing or changing an overlay applying to the land
- Incorporating a document into the planning scheme to give it statutory weight in the decision-making process
- Correcting a technical mistake
- Removing or varying a restrictive covenant.

Council can initiate an amendment to the planning scheme or agree to a request for an amendment from a party external to council.

A council does not have to agree to a request to prepare an amendment to change the planning scheme. There is no right of review if the council refuses an amendment request.

If the council initiates an amendment in its own right or agrees to support a request for an amendment from another party, the council must obtain the Minister's authorisation to prepare the amendment. If the council's request for authorisation to proceed with the amendment is refused there is no right of appeal. Amendments that are inconsistent with state policy or interests will not be authorised to proceed.

The Minister can amend any planning scheme at any time without exhibition (i.e. notice to other parties). The Minister can exempt him or herself or any planning authority, including a council, from the normal notification and exhibition requirements if the Minister considers that compliance is not warranted or that the interests of Victoria or any part of Victoria make such exemption appropriate. The Minister has implemented guidelines about the circumstances in which the Minister would consider approving an amendment without exhibition.

The Minister usually consults with the council and affected landowners before an amendment is approved without formal notice.

## The Amendment Process

Following the Minister's authorisation, the council undertakes most of the steps in the amendment process. In summary, the process involves:

- Council decides an amendment is required
- Council prepares the draft amendment documentation and requests the Minister for Planning's authorisation to proceed to prepare the amendment
- Minister authorises the council to prepare the amendment
- Council arranges exhibition of the amendment for at least one month and invites submissions. Exhibition usually includes notice to owners and occupiers who may be materially affected by the amendment as well as to prescribed Ministers and public authorities
- Council receives and considers submissions after the exhibition period closes. If there are no submissions council can proceed to approve the amendment
- If there are submissions, council has to decide to change the amendment as requested in the submissions or refer the submissions to an independent panel or abandon the amendment
- If the decision is to refer the submissions to a panel, council requests the Minister to appoint an independent panel and refers the submissions to the panel. This is the usual course of action when submissions requesting a change to the amendment are received
- Minister appoints a panel from members of Planning Panels Victoria
- Panel conducts public hearings. The council and all submitters are invited to make submissions to the panel
- Panel prepares a report to the council with recommendations about the future of the amendment
- Council considers the panel report and makes a decision about the amendment
- If adopted by the council, the amendment is forwarded to the Minister for consideration and final approval unless the Minister authorised the council to approve the amendment
- If approved, the amendment is gazetted
- After gazettal, the amendment is in effect and the planning scheme is changed

- The planning scheme on display in the planning department is updated to reflect the amendment.
- If a council decides to abandon the amendment at any stage of the formal process, it must advise the Minister. There are timeframes set for various steps of the amendment process.

For more information about the amendment process go to:

- [Part 3 of the Planning and Environment Act 1987 'Using Victoria's Planning System'](#)
- [Ministerial Direction No. 15 – The Planning Scheme Amendment Process](#)

### Requesting a change to the Planning Scheme

A councillor can request a change to the planning scheme using normal council processes. The need for an amendment will usually become clear during the planning scheme review, and through day to day involvement in planning matters and should be considered in the context of the annual council planning and budgeting processes.

The planning department's commitment to resource the preparation and processing of the amendment within an agreed timeframe is essential. The process may take many months and involves considerable resources.

An amendment may not be necessary to address a particular concern. It's good practice to discuss concerns with councillor colleagues and council planners to explore other options that may result in a more effective or timely solution.

If an amendment is the preferred option, a formal council resolution to prepare an amendment is recommended. Because the processing of an amendment may involve considerable time and have resource implications for the council, it would need to be included in the planning department's work program and budget. The reasons a council decides to prepare an amendment should be documented for future reference.

### Minister for Planning's Authorisation

The Minister's authorisation is required to prepare an amendment. In deciding a request from council, the Minister is likely to seek advice from officers of the DELWP. The advice results in three potential outcomes:

- The proposed amendment is inconsistent with state policy or interests and will not be authorised to proceed
- The proposed amendment may have an impact on state policy or interests but is authorised to proceed, with or without conditions

It's good practice for council planners to discuss a proposed amendment with officers of DELWP at an early stage to avoid later disappointment if the Minister decides that the proposed amendment is inconsistent with state policy or interests.

The amendment is required to be submitted to the Minister for final approval. The Minister then decides whether or not to approve the amendment as submitted or in a modified form.

The Minister's decision to approve or reject the amendment is final.

### Considerations for Council

Councillors should be informed of all options to achieve their planning objectives and discuss these with the council planner. Is an amendment really necessary or are there other options?

If an amendment is the preferred option, council has to consider the following:

- The State Planning Policy Framework
- Any relevant ministerial direction
- The Victoria Planning Provisions
- The MSS, strategic plan, policy statement, code or guideline that forms part of the planning scheme
- Any significant effects on the environment
- Any significant effect the environment may have on the use or development envisaged in the amendment.

The council may also take into account the social and economic effects of the amendment.

The council, as the planning authority for the amendment, must be satisfied that the amendment:

- Is necessary
- Is consistent with the State Planning Policy Framework Implements the vision, objectives and strategies of the MSS Satisfies the Strategic Assessment Guidelines for Planning Scheme Amendments, General Practice Note available from the DELWP website.

The Minister will consider the same matters when deciding a request to authorise an amendment or to approve an adopted amendment submitted for approval.

## Notice of an Amendment

Once the council is authorised to prepare an amendment, the next steps involve the preparation of the amendment documentation and arrangements for exhibition.

“Exhibition” refers to the time when the amendment is on public display and submissions can be made to the council. The exhibition period must be at least one month.

The Act sets out the formal notice requirements for an amendment. The Act requires copies of the amendment to be:

- Sent to the Minister for Planning
- Available for inspection at the council offices.
- The Act requires notices about the amendment be given to:
  - Ministers and public authorities that may be materially affected
  - Owners and occupiers who may be materially affected
  - Prescribed Ministers and public authorities.

‘Materially affected’ means that some detrimental impact may result. A notice is also published in the newspaper and the Government Gazette.

While there are formal notice requirements, the council could also consider arranging additional informal information sessions to discuss the amendment with the broader community. This could be particularly appropriate if the amendment is complex such as proposed changes to the MSS following the four-year review of the planning scheme.

## After Exhibition

Submissions are lodged during the exhibition period. At the end of the exhibition period, if there are no submissions, council can proceed to adopt the amendment and complete the amendment process.

If there are submissions, council has to consider the submissions and decide one of the following:

- To change the amendment as requested in the submission(s)
- To refer the submission(s) to a panel
- To abandon the amendment.

This decision should be based on an objective assessment of the submissions received and advice from council planners. If the council does not change the amendment as requested by a submission, the council must refer the amendment and submissions to an independent panel appointed by the Minister for Planning or abandon the amendment.

## The Panel Process

The Minister appoints independent panels to consider amendments and submissions. The panel members are selected from Planning Panels Victoria and are experienced professionals with expertise in areas such as planning, urban design, heritage, traffic engineering, economics and environmental management.

They are appointed on the basis of their knowledge of the issues relevant to the amendment and submissions. The panel usually comprises one or two members.

The panel:

- Conducts hearings
- Provides the opportunity for the council to make a submission outlining the amendment and its response to the submissions
- Provides other submitters with an opportunity to present a submission
- Considers the submissions and the amendment
- Prepares a report and a recommendation to council.

Council must consider the panel report and recommendation before it makes its decision about the amendment.

## Participating in the Panel Process

A councillor can attend the hearings, and make a presentation to the panel as an individual councillor as distinct from representing the council. Generally the council officers represent council at panel hearings. The panel will ask a councillor to clarify their status at the hearing and any submission made during the exhibition to avoid confusion. Any direct or indirect interest should be disclosed and may prevent the councillor’s involvement should the matter be considered by the council later.

If a councillor wants to make a submission about an amendment or present a submission to the panel as an individual councillor, it’s a good idea to advise the CEO and the council planner presenting the submission on behalf of the council.

## Panel Report and Recommendation

The council is not bound by the panel’s report and recommendation but it must consider them when it makes its decision about the amendment. The panel’s report must be made public no later than 28 days after the council receives it. If council makes a decision that is inconsistent with the panel’s recommendation, council is required to explain to the Minister the reasons why it did not accept the panel’s recommendation.

Councillors should read the panel's full report as well as the council planner's summary. It's a good way to learn about the planning system.

### **Adoption of the Amendment**

Council can make a decision about the amendment after it considers the Panel's report. The council can decide to:

- Abandon the amendment, or
- Adopt the amendment, with or without changes.

A decision to adopt the amendment must be made by the full council. The adopted amendment is then forwarded to the Minister for Planning for consideration and final approval.

### **The Minister's Powers**

The Minister for Planning has powers to authorise a council to prepare an amendment. The Minister also considers the amendment, the submissions, the panel report, council report and advice from the Department before deciding to approve an amendment adopted by a council.

The Minister is likely to consult with the council before making a decision that is contrary to the council's decision. However, the Minister's decision about an amendment is final and there is no right of review.

# PART SEVEN

## PLANNING PERMIT ASSESSMENT PROCESS

### PLANNING PERMIT APPLICATION

#### Introduction

This section is about the planning permit application process and the councillor's role in that process. Very quickly upon election, councillors are faced with having to make decisions about planning permit applications.

Councillors will spend a lot of time involved in the assessment of planning permit applications. The process involves consultation and negotiation between applicants and objectors, and councillors often find themselves in a mediating role.

Councillors need to manage their time effectively and also recognise that many planning decisions are tough decisions and can be unpopular. Whilst council's prime planning function is to provide leadership and set the strategic direction for the future of the municipality it is inevitable that the day to day processing of planning permit applications, particularly those directly affecting constituents, will be brought to the attention of councillors.

It is critical for councillors to understand the legal context, the local planning policy framework, key steps in the process, the reason a permit is required, and the extent of their discretion so that they are able to manage expectations, explain council processes and decisions and make a positive contribution to this process.

Councillors are often kept very busy by the immediate demands placed on them by parties to current applications. Councillors should identify the council planner handling the application, direct questions to the planner and monitor the application process. Councillors should not be expected to provide technical planning advice to applicants or third parties.

Councillors should negotiate arrangements with the planning department so that they are informed in a timely way about applications that may prove time consuming. It is important that the council planner conveys council's policy clearly and consistently at the pre-application stage, when the opportunity to inform the application is greatest.

At the conclusion of the assessment process, it is important that a councillor is confident that they are making the right decision about a planning permit application.

Most planning permit applications in Victoria are determined under delegation to council officers so as to ensure the smooth operation of the planning system. There will be significant applications that officers prefer council to decide and most councils provide for applications to be 'called-in' for a council decision.

Remember, the council, as a collective body, and not individual councillors, decide planning permit applications that are put to council for decision, and all councillors are responsible for the quality of council decisions.

Councillors will have the benefit of a comprehensive report prepared by the council planner, including an analysis of the relevant policy context, a professional assessment of the grounds of objection and a recommendation to council and the reasons supporting it.

#### The basis of a permit decision

##### THE PLANNING AND ENVIRONMENT ACT 1987

Planning permit application decisions are among the most influential and politically sensitive areas of council's responsibilities, particularly when an application is controversial with many objections.

The Act sets out the matters that a council must consider when it makes a decision about a planning permit application. The matters are:

- All objections and submissions
- Comments or directions from any referral authorities
- Any significant environmental effects of the proposal
- Any significant effect the environment may have on the proposal.

A council may also consider the following:

- Any significant social and economic effects
- Any strategic plan, policy statement, code or guideline adopted by the Minister, government department, public authority or municipal council
- Any amendment to the planning scheme which has been adopted
- Any other relevant matter.

## THE PLANNING SCHEME

The planning scheme sets out matters that the council must consider. These are:

- The State Planning Policy Framework (SPPF)
- The Local Planning Policy Framework (LPPF) – the MSS and local policies
- The purpose of the zone or overlay
- The decision guidelines in the zone or overlay
- Incorporated documents
- The orderly planning of the area
- The effect on the amenity of the area
- The proximity of the land to any public land
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality
- Whether the proposed development is designed to maintain or improve the quality of the stormwater
- The extent and character of native vegetation
- The degree of flood, erosion or fire hazard.

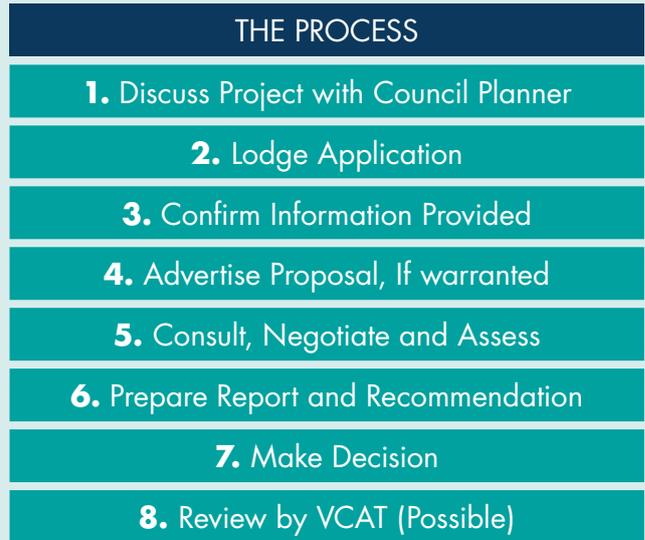
Not all of these matters are relevant considerations in every application. However, the assessment of a planning permit application must address the SPPF and the LPPF to ensure that it is consistent with the strategic policy framework.

### Permit Application Process

The main steps in the planning permit application process are:

- Pre-application meeting with council planner
- Applicant lodges application and addresses issues raised in the pre-application meeting
- Council planner confirms all information required is provided, and if it has been, refers application to referral authorities and internal council areas eg traffic, urban design, heritage etc
- If further information is required, council planner requests this in writing with a timeframe for response
- Council planner decides if advertising of application is required

- Advertising completed; council planner considers any objections
- Council planner arranges consultation with applicant and objectors – possible changes to be negotiated to address reasonable concerns
- Council planner assesses application and considers objections, comments from referral authorities etc and prepares report with a recommendation
- Council, or delegate, decides to grant a permit or refuse to grant a permit
- Review by VCAT (possible).

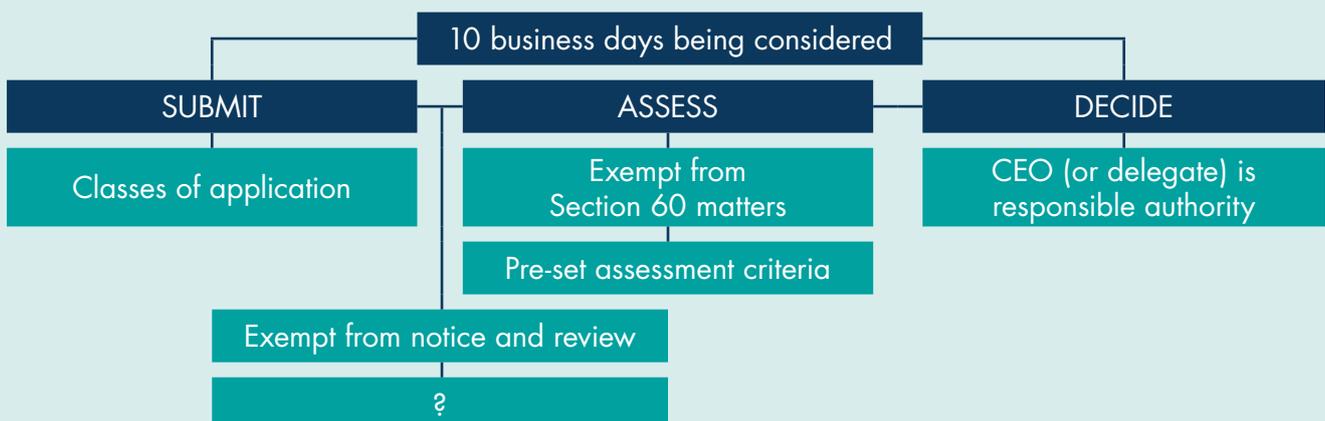


### VICSMART

A short permit process called VicSmart is available for simple matters and such matters will be assessed against pre-set criteria. The process does not include notice, referral or application for review.

For more information about the planning permit application process go to:

- Part 3 of the Planning and Environment Act 1987 'Using Victoria's Planning System'



## PRE-APPLICATION CONSULTATION

Most councils encourage pre-application consultation before an applicant finalises the plans and formally lodges an application.

A council should encourage pre-application consultation and support it with appropriate resources. Experienced planners should provide pre-application consultation services because they can provide the direction with confidence, consistency and authority. Staff should keep notes of the discussion. When councillors intend meeting an applicant or objector, they should take a senior planner with them.

Councillors should not provide a definitive view on any proposal without reference to technical planning advice.

Pre-application consultation helps to:

- Determine the planning scheme provisions and policies that apply and will be used to assess the proposal
- Encourage development that is consistent with local policies and discourage development that is not consistent
- Confirm why a permit is required and the information required to support the application and avoid initial delay
- Identify any potential concerns and how these can be addressed before the application is formally submitted
- Indicate the likelihood of support for the proposal, the process and timing of the application
- Identify key stakeholders to be consulted before the formal process commences.

A councillor should be advised about any future planning permit applications for major developments that are brought to the attention of staff through pre-application consultation. When you have strong views about a proposal, you should discuss them with the council planner and ask the council planner to advise the applicant. A further meeting could be arranged to discuss changes to the proposal to address the concerns.

## REQUIRED INFORMATION

The first decision the council planner makes about an application is to confirm that all the information required to assess the proposal has been submitted.

The information required will depend on the type of application. Council planners often develop information checklists for common types of applications. This helps applicants know the council's information requirements in advance of making an application.

If further information is required, the council planner requests the information in writing with a date for response. The application is not processed any further until the information is provided and may lapse if the information is not provided in time.

## REFERRALS TO OTHER AGENCIES

Referral authorities are authorities that the planning scheme says must be sent copies of certain types of applications that may affect their interests. There are two types, a 'determining' referral authority and a 'recommending' referral authority.

VicRoads, for example, is a determining referral authority if the application involves new access to a main road. In some instances such a referral authority may object to a permit being granted for the proposed use and/or development, in which case the council must refuse to grant a permit. If the referral authority has no objection to the grant of a permit provided certain conditions specified by it are included in any permit granted, the council still has the discretion to refuse a permit, or grant a permit which includes the referral authority's conditions, plus any other conditions it considers appropriate.

The application may also need to be sent for comment to other council departments or external experts or agencies for specialist comment on issues such as traffic generation, drainage, environmental impacts and heritage conservation.

The comments of specialists will often be important in evaluating a proposal or submissions about it and developing appropriate responses to any issues that may arise. For example, if objectors are concerned about traffic and access, the comments from council's engineering services may provide expert advice that can resolve the issue.

## NOTICE OF THE APPLICATION

The council planner decides if notice of the application (called 'advertising') is required and how this will be done. Section 52 of the Act sets out the notice requirements for an application. The Act requires notice to be given to the owners and occupiers of lots adjoining the land subject to the application unless the council is satisfied that the granting of the permit would not cause material detriment to any person. "Material detriment" means there would be some detrimental impact, such as a detrimental impact on amenity by virtue of increased overshadowing, building bulk, traffic generation noise etc.

Notice is not given for some applications because:

- The zone or overlay in the planning scheme specifically exempts the application from notice requirements, or
- The council is satisfied that the application would not cause material detriment to any person.
- The application is a VicSmart application

Permit applications must be advertised for a minimum of 14 days. Notice is usually given by letter to surrounding property owners/occupiers and a sign is displayed on the site.

A councillor may be contacted about the application when advertising commences. Councillors are often asked about the reasons for the advertising decisions made about particular applications. It's a good idea to discuss the application with the council planner before responding to a question about the advertising, or better still, refer the query to the council planner handling the application.

## OBJECTIONS

Objections can be received during the advertising period and at any time thereafter until a decision about the application is made. This is important. Obviously the earlier an objection is received the better, but unless a decision is made, it is not too late to object.

Any person can object to the granting of a permit, including persons who were not formally notified about the application. However, an objection must:

- Be in writing
- State reasons for the objection
- State how the objector will be affected by the granting of a permit.

When the advertising is complete, the council planner will begin to formally assess the application. Councillors should be advised when the advertising has been completed and the reasons for any objections to the proposal.

Objections must be carefully considered on the basis of the genuine likely impact of the proposal and the planning scheme provisions and not the number of objections or the number of signatures on a petition.

If objections are not supported by relevant planning considerations identified in the Act and the planning scheme, the objections should not influence the planning decision.

Concerns about loss of property value and blocking of an individual view are not relevant grounds of objection, nor are objections to gaming venues, brothels and like uses on moral grounds. Similarly, the impact of additional shadowing on private open space in June is not a relevant ground of objection because the planning scheme sets 22 September as the applicable date.

Councillors should discuss the objections with the council planner to confirm their planning merit. It is helpful for councillors to be able to clearly explain what relevant planning matters they are able to consider and it is often possible, subject to the council planner's advice, to include conditions (or to amend the proposal as part of the council's decision) to address objectors' reasonable concerns.

## FURTHER CONSULTATION

Following completion of the advertising, many councils facilitate further consultation between the applicant for the permit and the objectors. It may be possible to change

the plans to address the objectors' reasonable concerns based on proper planning considerations. The council planner may have additional matters from referral authorities, for example, that require negotiation with the applicant.

A councillor should be advised about the post advertising consultation meeting and any resolution that follows. Councillors are encouraged to attend these meetings to hear about the proposal and the objectors' concerns first hand, as well as to explore any changes that could be made to address the issues of concern.

Post advertising consultations can be productive if there is a real chance of the applicant and objectors negotiating changes to the application that address reasonable planning concerns. In some circumstances this may be an unrealistic expectation, but with good will on all sides can often lead to resolution of most issues.

Some councils arrange consultation meetings as standard procedure when any objections are received. Others arrange these meetings only when a compromise may be possible or at the request of the applicant or objectors.

Councillors are most effective in these meetings when they have a good understanding of the site, the proposal and objector concerns. Often it is most useful for councillors to chair the meeting as it enables them to be impartial and to facilitate a fair hearing for all parties and for the staff to provide expert advice. Even in contentious matters, when no mutual resolution is likely, these meetings often help in improving understanding of relevant planning matters and to explain the policy context to the community in a less formal setting.

## ASSESSMENT

The council planner responsible for the application will undertake a comprehensive assessment of the proposal following completion of referrals, advertising and any subsequent consultation between the objectors and the applicant. The council planner will make a recommendation and set out the reasons for the recommendation in a detailed report that addresses the planning considerations. In deciding whether or not to recommend that a planning permit be granted, the following matters should be considered and addressed in the council planner's report:

- The planning scheme, in particular the State Planning Policy Framework, the MSS and the local policies, the zone and overlay provisions, the decision guidelines and incorporated documents
- The reasons for objections and an assessment of their planning merits
- The views of referral authorities
- Comments from other council departments
- Significant environmental effects
- Social and economic effects
- Any adopted amendment
- Any other relevant planning consideration, such as the impact on amenity
- Any strategic plan, policy statement, code or guideline including any approved regional strategy plan.

The Act states that any strategic plan, statement, code or guideline adopted by a council may be considered before a council decides an application. However if these documents are not part of the planning scheme, less weight can be given to them compared to a document that is incorporated into the planning scheme. A councillor can discuss including policies in the LPPF of the planning scheme, or including guidelines or development plans as incorporated documents in the scheme, with the council planner to give them more statutory weight. There are requirements about how and when this is appropriate.

Regard must be given to the number of objectors when considering social effect.

The council planner makes a recommendation to:

- Refuse to grant a permit for specified reasons, or
- Grant a permit or issue a Notice of Decision to grant a permit (if objections have been received) with or without conditions.

The reasons supporting the recommendation must be identified in the report.

- Most permits contain conditions. The conditions must: Relate to the use or development approved by the permit, and
- Be reasonable; and
- Be able to be implemented.

Section 173 of the Act allows a council to enter into an agreement with the owner of land to achieve planning objectives in relation to land. For example, an agreement under section 173 could be used to require a landowner to commit to design standards for a development or contribute to an intersection upgrade directly related to the proposed development. The requirement to enter into an agreement is usually included as a condition on the permit.

In the case of VicSmart applications the assessment is limited to the criteria and relevant local policy in the planning scheme. The decision is either a permit or a refusal.

For information about constructing a planning permit and a range of model permit conditions, refer to the MAV/DSE publication [Writing Planning Permits](#)

## THE DECISION

Councillors have a responsibility to be informed about the planning permit applications that are presented to a council meeting or a planning committee meeting for decision. A councillor must read the council planner's report and it may be necessary to discuss the application with council colleagues and council management well in advance of the council meeting so that all the planning issues are understood. It is important to understand the planning merits of the objections and the relevant planning factors that will influence the decision.

The decision about a planning permit application must be based on a thorough understanding of:

- The proposal
- The applicable policies and controls in the planning scheme
- The purpose of the zone or overlay(s) as set out in the planning scheme
- The decision guidelines in the planning scheme
- The reasons why a planning permit is required
- The objections and the council planner's assessment of the planning merits of them
- The reasons for the council planner's recommendation.

There are many planning factors that council has to consider and balance when it assesses a planning permit application and decides whether to grant or refuse a planning permit. Most factors require judgement to be made and priorities to be set. Council has to decide if the proposal will result in an acceptable development. Local policies in the planning scheme are particularly important in the decision making process and provide direction to applicants and the community about the way in which council will exercise its discretion in the zones in the planning scheme. The council has to make decisions that are consistent with policy and transparent, fair and reasonable given the relevant planning considerations.

The council planner's recommendation is based on a professional assessment of the policies and planning scheme provisions that are relevant to the assessment of the application.

Council is not under an obligation to grant a planning permit simply because the council planner recommends approval or no objections have been received or the zone provides the opportunity for a planning permit application. Clause 31 of all planning schemes states that because a use is subject to a permit does not mean that "...a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines in the zone, and any of the other decision guidelines in clause 65."

However, if the council decision is contrary to the council planner's recommendation the council must be satisfied that the contrary decision is justified on planning grounds. The council planner's report and recommendation is a public document and is also provided to VCAT as part of the basic information if there is an appeal. Where council does not support a council planner's recommendation, it is necessary to set out clearly the reasons for this.

The Act requires the council to be responsible for the planning decisions that it makes. Almost every planning decision is likely to disappoint someone. However, council has a responsibility to make decisions that are soundly based on proper planning considerations. It is irresponsible to refuse an application simply because there are many vocal objectors in the council chamber

on the night. Objections have to have a proper planning basis in order to influence the decision. Those without foundation must be disregarded however unpopular the decision may be. It is critical that councillors feel well informed and are able to explain these decisions to objectors or applicants.

Council will play no role in deciding VicSmart applications. These must be delegated to the CEO.

## REVIEW BY VCAT

Permit applicants and objectors (usually) have the right of review of a council decision through VCAT. Councillors need to be aware of the following key points:

- There are time limits for applications for review and they are strictly observed
- Objectors have 21 days from the date of the council's decision to lodge an application for review, but applicants have 60 days
- Some zones and overlays contain exemptions from review for certain types of applications. Where an exemption applies, an objector does not have a right of review to VCAT, and the application would also have been exempt from the notice requirements
- VCAT will consider all the relevant planning considerations including the State Planning Policy Framework, and the Local Planning Policy Framework in the planning scheme
- The council planner's report is provided to VCAT and is available to all other parties.
- The council representative at a VCAT hearing represents the council. If the council overturned the council planner's recommendation, it may be appropriate to appoint another council planner or independent person to represent the council at the VCAT hearing, and while this is not necessary, it is desirable
- The council should be briefed about significant VCAT decisions and the interpretation of policy as it is applied by VCAT. This may initiate a review or clarification of the operation of a policy
- The VCAT processes are technical and complex. Councillors should refer all questions to the council planner.
- A party can apply for costs to VCAT. There are examples where costs have been awarded against councils when the decisions of the council have not been based on planning considerations.

For more information about the planning permit application process and VCAT go to:

- 'Using Victoria's Planning System'

## Delegation

The decision about an application can be made by:

- A council planner under delegation
- A committee of council planners under delegation
- A committee of council
- The full council.

The effective functioning of council's planning department and the planning system relies on delegation of decision-making responsibilities to appropriate council planners. Delegation has a number of significant advantages to council and the community including:

- The council has more time to address higher order priorities and responsibilities such as policy development or major applications
- Council officers take more responsibility for giving advice and making decisions and are able to provide consistent and informed advice to applicants and objectors
- The processing/decision time for applications is significantly reduced thus enabling council to improve its level of customer service
- Significantly reduced workloads for councillors and council officers.

If all applications were presented to committee or full council for decision, the timeframe for processing would be unreasonable. There is no need for the council to decide the majority of applications, particularly if there is a clear policy direction in the planning scheme to guide the appropriate decision.

Not all applications are decided under delegation. A council may prefer to decide major or significant planning permit applications. Applications may also be referred from the administration to council for decision. Councillors can also call-in applications and request that council decide the application. Councils may have a policy that identifies the types of applications or circumstances when delegation does not apply.

The council planner or planning committee with delegated authority can decide applications that are consistent with policies under the council's instrument of delegation. For example, an application to extend a house in a heritage overlay that is consistent with council's heritage guidelines and is supported by council's heritage adviser should be decided under delegation. The council's responsibility is to approve the heritage guidelines. It can then delegate the implementation of them to the council planner. In some councils, almost all applications are decided by the council planner under delegation. This is good practice.

The senior officer who makes a decision under delegation is not bound to accept the council planner's recommendation about a planning permit application.

It should be noted that all VicSmart applications must be delegated to the CEO.

Councillors should ensure that they are familiar with the delegations policy and that it meets their expectations and needs. It is an important tool to assist with the efficient operation of the planning function of council. Council can change the delegation at any time to reflect changing circumstances or preferred arrangements.

## Communication

Councillors need to have processes in place to ensure that they are informed of:

- Major or significant applications likely to be controversial or of public interest
- Where these applications are at in the assessment process
- Which major applications are being advertised
- When major applications have completed advertising and any objections received
- Likely timeframe and process for decision.

It is vital that councillors are kept informed about major applications as they are processed and that they have the opportunity to participate in any pre-application consultation or further consultation organised by the council planner after notice of the application. At this point in the process, changes to the proposal may be negotiated to address the objectors' concerns.

As a councillor, it's good practice to:

- Make sure council officers keep you informed, early in the process
- Attend briefings with the council planner
- Refer all technical questions to the council planner
- Participate in consultation processes
- Invite the council planner to attend any meetings with the applicant or objectors
- Avoid making an early commitment about a permit application or timelines for decision
- Discuss the application with councillor colleagues
- Read the council planner's report and discuss the recommendation well ahead of the council meeting where a decision will be made.

A councillor is most likely to be contacted when notice of an application is given. The application process is technical and complex and it is recommended that applications be discussed with the council planner for a full understanding of the proposal and process.

The council is required to keep an up-to-date register of planning permit applications. A councillor does not

need to know about every application. However, a structured process for providing information about major planning permit applications will help keep councillors informed.

Options include:

- Electronic access to the planning permit applications register
- Circulation of a weekly list of applications
- Circulation of a bulletin of major applications currently being advertised
- Regular briefings with council planners

Discuss the information options with council management to decide the most appropriate process for your council.

## Resourcing Council's Planning Department

Most of the council's planning budget will be spent on processing planning permit applications. The development industry relies on reasonable timeframes for decisions and the community expects to be consulted as part of the assessment process. Considerable resources are required for the effective functioning of the planning department, particularly if the council encourages pre-application consultation and negotiation after advertising is finished.

## Lobbying

Objectors and applicants often contact councillors to lobby for support or to express a concern about the processing of an application.

A councillor can expect to be lobbied as part of the political process associated with the technical assessment of planning permit applications. Councillors should be cautious so as to not provide incorrect advice that may complicate the situation.

A council planning department is the engine room of the planning permit application process. Adequate resources and training are required to maintain an efficient process. A council often has to find new ways of improving efficiency and keeping experienced planning staff in times of reduced resources and record numbers of applications per year. The most effective approach is to include a high level of delegation of decisions to council planners and to consider pre-lodgement certification for planning permit applications, fast track and expanded use of technology.

It's good practice to avoid making commitments about process, timing and decisions that are outside your control. Often councillors spend a significant amount of time explaining the planning process to 'first-time' users of the system. This is a key responsibility of council staff and questions about specific applications should be followed up or referred to the council planner.

## Building Approvals

Residents often confuse the planning and building approval process. A councillor may be contacted about a concern that is a building matter and not a planning matter. It is important to understand the difference between the planning approval process and the building approval process and the council's responsibility.

The Victorian legislation makes a clear distinction between a planning permit issued under the *Planning and Environment Act 1987* and a building permit issued under the *Building Act 1993*. Planning and building approvals are subject to different and completely separate approval processes.

A planning permit authorises a change in the use of land and/or the development of land, if required by the planning scheme. 'Development' is defined in the Act to include:

- Alterations to the external appearance of a building
- Demolition
- Works to change the condition of land
- Subdivision
- Display of signs.

A planning permit is concerned with the location of a proposed use and/or development and its impacts on neighbouring land, the neighbourhood and the streetscape.

A building permit authorises the construction or demolition of a building or structure if it complies with the *Building Regulations 2006* and the *Building Act 1993*. A building permit cannot be acted upon if any planning permit is required under the planning scheme but has not been obtained.

A building permit ensures that minimum standards of safety and construction are complied with, that a single dwelling is sited appropriately on its lot, that properties on abutting land are protected during construction, that the building will have adequate light and ventilation, and that the lot and the development will be adequately drained.

If a proposed building complies with the building regulations, a building permit will be issued. The building surveyor issues the building permit, after confirming compliance with the building regulations. The building regulations are the only matters that the building surveyor is required to consider before issuing the building permit.

The building approval system has been privatised which means that a private building surveyor or municipal building surveyor issues the building permit.

The council is not necessarily involved in the issue of a building permit.

A private building surveyor must lodge a copy of the building permit with council within seven days of issue.

If a planning permit is required:

- The building permit cannot be issued until the planning permit has been issued
- The building permit must be consistent with the planning permit.

What is built must be:

- Consistent with the building permit, and
- Consistent with the planning permit, if a planning permit is required, as well as a building permit.

There is no basis for intervention by a council or councillor in a building matter that does not require a planning permit if:

- The building complies with the building regulations
- A building permit has been issued, and
- The 'as-built' building is consistent with the building permit.

The distinction between a building permit and a planning permit is confusing for the general public and it can be difficult to find out if a concern is a planning or building matter.

If a complaint arises and the facts about a complaint are not known, a councillor may unwittingly give incorrect advice. The matter should be referred to the council planning or building department for clarification. You are not expected to know everything.

For more information about the building approval system in Victoria go to:

- The Victorian Building Authority website at [www.vba.vic.gov.au](http://www.vba.vic.gov.au)

# PART EIGHT

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### APPLICATION FOR REVIEW

The council's decision about a planning permit application may not be final. The Victorian Civil and Administrative Tribunal (VCAT) can review a decision, unless the planning scheme specifically says that the application is exempt from review. An appeal to VCAT is called an application for review and the person who makes the application for review is called the applicant for review. VCAT:

- Functions in accordance with the *Victorian Civil and Administrative Tribunal Act 1998*
- Consists of experienced and qualified legal, planning and other professionals
- Conducts hearings in an informal but structured manner
- Conducts de novo hearings (that is, hears the matter anew, or puts itself in the shoes of the council)
- Considers all submissions and decides on the planning merits of the application
- Issues a written decision with reasons
- Makes a new decision, affirming, changing, or overturning the decision it was asked to review
- Directs a council to implement its decision
- Is independent of the State Government.

Councillors should avoid giving advice about applications for review. The Tribunal's processes are technical, legal and complex. Incorrect advice about time limits for reviews, circulation of statements of grounds, the content of submissions, amending plans, review rights, costs, points of law, enforcement etc can have serious consequences for the applicant, objectors and the council.

It is recommended that a councillor refer inquiries about VCAT to:

- The council planner
- The Tribunal's public information counter.

Detailed information about VCAT is provided in:

- 'Using Victoria's Planning System' – Chapter 5
- [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

#### Requesting an Application for Review

Unless the planning scheme says that the application is exempt from review, a review can be initiated by:

- An objector lodging an application for review of the council's decision to grant a planning permit. This must be done within 21 days of notice of the decision (to grant a permit)
- An applicant lodging an application for review of the council's decision to refuse to grant a planning permit or any condition included in the permit. This must be done within 60 days of the decision
- An applicant lodging an application for review because the council has not made a decision within 60 days of the permit application being lodged. This is called 'failure to determine'.

VCAT strictly observes the time limits for lodging applications for review.

For VicSmart applications, only the applicant can make an application for review against refusal or conditions.

## Exemption from Right of Review

An objector does not have a right of review for every planning permit application decided by the council. The zone or overlay in the planning scheme that applies to the land may exempt specified applications from notice to other parties and from third party review rights. This can be confusing to a person who has not been involved in the planning system. The answer to the questions “why wasn’t I told and why can’t I appeal?” could be that the application is exempt from notice and review. Alternatively the proposal may not have required a planning permit at all. It’s good practice to direct questions about rights of review to the council planner.

## Council's Responsibilities at VCAT

The council’s responsibilities are to:

- Provide information requested by VCAT so the hearing date can be set
- Attend directions hearings
- Prepare and present a submission to the hearing
- Comply with a direction of VCAT.

## VCAT'S Responsibilities

VCAT reviews a council’s:

- Decision to grant a planning permit
- Decision to refuse to grant a planning permit
- Decision to include conditions on a planning permit
- Failure to decide a planning permit application within time.

VCAT considers requests to:

- Amend and cancel planning permits
- Issue enforcement orders and interim enforcement orders.

## Participating in a VCAT Hearing

When a matter goes to VCAT a hearing is held. These are:

- Are open to the public
- Follow a structured order of presentation of submissions.

The participants are:

- The council’s representative
- The representative of the referral authority if the council refused to grant a permit because a referral authority objected to the permit being granted
- An objector, who requested the review or lodged a statement of grounds in response to the permit applicant’s request for a review
- Persons opposed to a permit being granted who did not lodge statements of grounds objections, who may be affected by the grant of a permit, and who are given leave by the Tribunal to be heard or be joined as parties\*
- The permit applicant, who requested the review or lodged a statement of grounds in response to the objector’s request for a review.

*\*For example, a person who has bought the house next door after the closing date for lodging a statement of grounds had passed.*

At the hearing:

- The council representative describes the proposal, and then explains the policies and controls that are applicable to the assessment of the application, why a planning permit is required and the reasons the council made the decision it did
- If a referral authority is involved, its representative will explain why it is opposed to the proposed development
- The objectors, or their representative, explain their concerns about the proposal
- The permit applicant or the representative of the permit applicant, details why a planning permit should be granted and/or why a planning permit condition should be changed or deleted.

Parties may be represented before VCAT. Representatives are usually lawyers or town planners. Parties may call evidence from expert witnesses, such as engineers, heritage consultants and urban designers. These experts may be cross-examined by the other parties.

## Tribunal Decisions

The Tribunal takes into account the same planning considerations that the council was required to consider when it made its decision. However, the Tribunal makes its own assessment of the relevant planning considerations and the planning merits of the proposal.

After considering all the submissions, the Tribunal may agree with the council's assessment and conclusion and affirm the council's decision. Alternatively it may come to a different conclusion and overturn the council's decision.

A councillor may wonder why the Tribunal came to the decision it did, especially if the decision seems inconsistent with the council's policies.

The Tribunal sets out the reasons for its decision in writing. A councillor should read the decision in full. The decision may indicate, for example, why the Tribunal gave more or less weight to a planning matter compared to the council. For example, the Tribunal will give a local policy that is not in the planning scheme less weight compared to a local policy that is in the planning scheme, or may give more weight to state policy. An incorporated document in the planning scheme will be given more weight compared to a reference document. The Tribunal's decision may indicate an ambiguity about the interpretation or application of a local policy in the planning scheme or a gap or uncertainty in the MSS.

The Tribunal, like the council, has to apply the policies in the planning scheme, decide priorities and weigh-up a number of planning considerations, as part of its assessment of a proposal. It has to make a judgement and come to a view about how well a proposal meets an objective or policy outcome in the planning scheme.

Because planning schemes generally confer a good deal of discretion in relation to decisions on planning permits and because a major influence on decision making is the policies in the planning scheme, differences of opinion about the planning merits of the same development proposal may well be justified. However, the Tribunal (and the council) has a responsibility to make decisions that are based on an assessment of the applicable planning considerations. This means that the Tribunal will disregard irrelevant considerations no matter how strongly they are put.

## Unfavourable Decisions

The Tribunal's decision is final unless there is a question of law that can be taken to the Supreme Court. Legal advice is essential before following this course of action.

Council officers should keep council advised about:

- Current applications for review and the council planner's recommended approach
- The Tribunal's decision in each case
- The reasons for the decision.

This information will also keep councillors informed and may flag issues of concern regarding council's local policy. A councillor can discuss unfavourable outcomes with the council planner to address any deficiencies that the decision has shown in the policy framework or other area. Options will depend on the circumstances but could include a change to the planning scheme to strengthen a policy or other local provision in the planning scheme.

For more information about VCAT go to:

- 'Using Victoria's Planning System' – Chapter 5
- VCAT Practice Note Planning series is available from the VCAT public information counter on Level 7, 55 King Street Melbourne, or telephone (03) 9628 9777 or go to [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)
- VCAT Tribunal Decisions [www.austlii.edu.au/au/cases/vic/VCAT](http://www.austlii.edu.au/au/cases/vic/VCAT)

# PART NINE

## THE MINISTER FOR PLANNING

### THE MINISTER'S FOR PLANNING

#### Introduction

The Minister's primary role is to provide leadership and strategic direction for Victoria. This involves working co-operatively with local government to implement a shared vision for the future.

The Minister is responsible for developing the State Planning Policy Framework in the planning scheme. It is through this framework, that State Government initiatives such as the metropolitan strategy can be implemented.

The Minister has overall responsibility for the operation of the planning system in Victoria. The Minister has comprehensive powers under the Act to fulfil these responsibilities. The Minister can initiate changes to legislation and initiate and approve changes to all planning schemes in Victoria.

There can be tension between the State Government's strategic objectives and the expectations of the local community. This can influence the planning decisions that a council makes.

The Minister relies on the Department of Environment Land Water and Planning (DELWP)'s resources to achieve the State Government's programs, priorities and responsibilities within budget. DELWP operates offices throughout metropolitan and regional Victoria. The regional manager is an important locally based representative of the Department and the Minister for Planning.

The information that follows provides a summary of the main powers and responsibilities of the Minister in relation to:

- Deciding major planning permit applications, and
- Changing the planning scheme.

The Minister has other powers that may be applied in less common circumstances than permits and amendments.

#### Deciding Permit Applications

Most planning permit applications are processed and decided by the council rather than the Minister. However, there are some exceptions including, for example, applications for:

- All except relatively minor developments in the City of Melbourne,
- Development in the alpine resorts areas.

#### Call in Powers

The Minister can call in applications for planning permits that are the responsibility of a council but have not yet been decided by the council. This power is found in Section 97B of the Act. It can be used when the Minister considers that:

- The application raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives; or
- The decision on the application has been unreasonably delayed to the disadvantage of the applicant; or
- The use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral of the application to the Minister.

The Minister usually consults with the council before calling in an application for a planning permit. The council administration should inform councillors about the Minister's intervention.

The planning scheme identifies the planning permit applications that the Minister is responsible for processing and deciding. Where the Minister is responsible for processing and deciding an application, the application would normally be referred to the council for comment before a decision is made. Council administration should inform councillors about any referred applications and make sure comments are made to the Minister within the requested timeframe.

The Minister also has the power to call-in a matter that is before VCAT. That is, the Minister is able to decide the matter, not VCAT, even though an application for review had been lodged with VCAT.

There is a practice note that sets out the circumstances in which the Minister would be prepared to consider a request to call-in a planning permit application or otherwise intervene in planning and heritage matters. It describes the principles that will apply in considering a request so that the use of the Minister's call-in powers is transparent and accountable. The Minister reports to Parliament on applications that are called in.

For more information about the Minister's call in powers go to:

- 'Using Victoria's Planning System'
- The Ministerial Powers of Intervention in Planning and Heritage Matters, General Practice Note, November 2004, DELWP website

## Changing The Planning Scheme

The Minister can change any provision in the planning scheme and the Victoria Planning Provisions including the State Planning Policy Framework. Furthermore the Minister may do this and grant an exemption from the usual notice requirements. This is called a 20(4) amendment because this is the section of the Act that gives the Minister this power. In deciding to grant an exemption from notice, the Minister has to consider and decide that compliance with any of the notice requirements:

- Is not warranted, or
- That the interests of Victoria or any part of Victoria justify an exemption.

The Minister is unlikely to change the planning scheme without first consulting, at least informally, the council and any affected landowners. Councillors should be informed about all proposed changes to the planning scheme and make sure comments are made to the Minister within the requested timeframe.

## Authorising and Approving Amendments

The council can initiate, process and adopt an amendment to the planning scheme. However, the council requires the Minister's authorisation to prepare and approve all amendments. All amendments that are adopted by council require the Minister's approval before the amendment is gazetted and the planning scheme is changed, unless the Minister authorised the council to prepare and approve the amendment.

The Minister has the power to:

- Authorise a council to prepare and approve an amendment
- Refuse to authorise a council to prepare and approve an amendment
- Approve, change or refuse to approve an adopted amendment.
- The Minister's decision in relation to amendments is final.

## Effective Relationships

The Minister has a vital role in the planning system in Victoria. Effective communication between the council administration and councillors is essential so that councillors are aware of the Minister's initiatives. Regular briefings with council management are recommended.

A council should take the initiative and develop an effective relationship with the Minister and the relevant regional manager at DELWP.

If there are planning issues of concern to the community, a council has a number of options for action. The options include:

- Discussing the issue with other councils who share the concern and develop an appropriate strategy
- Making a submission to the Minister suggesting how the problem could be addressed
- Participating in a working party to investigate the issue and evaluate solutions
- Involving a peak body such as the MAV to represent the council in negotiations with the Minister or the Department.

The appropriate action will depend on the issue.

# PART TEN

## GLOSSARY OF TERMS AND ACRONYMS

### GLOSSARY

**Adopted amendment** – Describes the status of an amendment to the planning scheme after the council has made the decision to approve it and forward it to the Minister for Planning for consideration and approval.

**Amended plans** – Plans are ‘amended’ if they are changed at any time during the planning permit application assessment process including VCAT.

**Amendment** – A change to the planning scheme or a change to plans submitted with a planning permit application.

**Amenity** – The features of a place such as access to sunlight, aspect, low levels of noise, car parking, privacy, vegetation and a sense of spaciousness as well as access to services that combine to create a pleasant living environment.

**Application for review** – The technical term used to describe an appeal to VCAT to review a planning decision made by a council or the Minister for Planning.

**Delegation** – Empowering a committee of council or an officer of council with the authority to make decisions on behalf of the council.

**Department of Environment Land Water and Planning (DELWP)** – Supports the Minister for Planning among others.

**Detriment** – The negative effects of a new use or development including but not limited to increased traffic on local streets, loss of car parking, loss of privacy and increased overshadowing of private open space.

**Development** – Includes the construction, alteration or demolition of a building or works and the subdivision or consolidation of land.

**Directions hearing** – Arranged by VCAT (for an application for review) or an independent panel (for an amendment to the planning scheme) a few weeks before the VCAT or panel hearing to address any preliminary matter that must be resolved before the hearing starts.

**Discretionary uses** – Uses that require a planning permit.

**Dwelling Density** – An arithmetic calculation of the number of dwellings per area of land.

**Exhibition** – Describes the period, usually one month, when an amendment to the planning scheme is available for public inspection and submissions can be received.

**Gazettal** – The publication of the Minister for Planning’s approval of a planning scheme amendment in the Government Gazette.

**Local Planning Policy Framework (LPPF)** – The LPPF is in the planning scheme and contains the Municipal Strategic Statement (MSS) and local policies.

**Local policies** – Local policies are part of the Local Planning Policy Framework (LPPF) and guide decision-making about planning permit applications.

**Melbourne 2030 (M2030)** – The Government’s strategy for the future growth of metropolitan Melbourne.

**Municipal Strategic Statement (MSS)** – A concise statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving the objectives.

**Neighbourhood character** – The qualities or features of a residential street or area that combine to produce an identifiable and distinctive character, for example, generous landscaped set backs from the street frontage, the dominance of mature canopy trees, roof forms, recessed or non-visible garages.

**Notice of Decision (NOD)** – Notice to approve or refuse a permit application when objections have been received.

**Objection** – A written statement describing how a person will be affected by a proposed use and development and requesting the council to refuse to grant a planning permit

**Overlay** – Planning scheme provision that indicates that the land has a special feature affecting how it can be developed, for example, a building with local heritage significance or an area with consistent neighbourhood character or subject to inundation

**Panel** – An independent panel appointed by the Minister for Planning to consider submissions made about an amendment to the planning scheme following exhibition.

**Planning authority** – The authority, usually the council, which prepares an amendment to the planning scheme.

**Planning Panels Victoria (PPV)** – The independent unit within the Department of Environment Land Water and Planning (DELWP) that manages the appointment of independent panels to consider amendments and submissions.

**Planning permit** – A legal document that gives permission to use or develop land including conditions and endorsed plans stamped by the council.

**Planning scheme** – State and local policies, zones and overlays, general and particular provisions, definitions, incorporated documents and maps controlling the use and development of land in a municipality.

**ResCode** – The provisions in Clause 54 and 55 of the planning scheme that set out the objectives and standards for new residential development are sometimes referred to as ResCode.

**Responsible authority** – The authority, usually the council, which administers the planning scheme and in particular processes and decides planning permit applications.

**State Planning Policy Framework (SPPF)** – The state level planning policies that a council must take into account and give effect to in planning for the local area.

**Statement of grounds** – Statement prepared by persons involved in an application for review to VCAT explaining the reasons for applying for the review and the matters the person will cover in their submission.

**Statutory planning** – The administrative functions of the planning system including processing of planning permit applications and the processing of planning scheme amendments etc.

**Submission** – A written statement describing a person's view about a planning scheme amendment that is 'on exhibition'. The submission may support the amendment, request changes or ask the council to reject the amendment.

**VicSmart** – A short permit process for minor matters.

**Victoria Planning Provisions (VPP)** – The standard set of planning controls used to construct planning schemes to ensure that there are consistent provisions for the same matters in planning schemes and that all planning schemes have the same structure.

**Victorian Civil and Administrative Tribunal (VCAT)** – A judicial tribunal that hears and decides applications for review in relation to planning permit applications among other matters.

**Victorian Planning Authority (VPA)** – The Victorian Planning Authority (VPA) is a State Government statutory authority that reports to the Minister for Planning. The VPA implements the initiatives the refreshed Plan Melbourne. The VPA focuses on land use and infrastructure planning for strategically important precincts.

**Zone** – A planning scheme provision that controls land use and development based on the primary character of the land, for example, residential or industrial.

# PART ELEVEN

## SOURCES OF FURTHER INFORMATION

### FURTHER INFORMATION

#### THE MUNICIPAL ASSOCIATION OF VICTORIA (MAV)

Level 12, 60 Collins Street, Melbourne 3000  
Telephone: (03) 9667 5555  
Facsimile: (03) 9667 5550

[www.mav.asn.au](http://www.mav.asn.au)

#### LEGISLATION

*Planning and Environment Act 1987*  
Planning and Environment Regulations 1998  
Planning and Environment (Fees) Regulations 2000  
*Victorian Civil and Administrative Tribunal Act 1998*  
*Building Act 1993*

[www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au)

#### THE DEPARTMENT OF ENVIRONMENT LAND WATER AND PLANNING

8 Nicholson Street, Melbourne 3000  
Telephone: (03) 9208 3333

[www.delwp.vic.gov.au/planning](http://www.delwp.vic.gov.au/planning)

Information includes:

- Using Victoria's Planning System, November 2001
- What is a Panel?
- Planning Practice Notes series
- Planning schemes online:

[www.delwp.vic.gov.au/planningschemes](http://www.delwp.vic.gov.au/planningschemes)

A current copy of the planning scheme can be viewed at the council planning department or online at ELWP [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au)

#### PLANET PROGRAM (Planning, Education and Training)

Provided by the Planning Institute of Victoria (Victoria Chapter)  
Telephone: (03) 9654 3777

[www.planning.org.au](http://www.planning.org.au)

#### PLANNING PANELS VICTORIA

Contact: DELWP

#### VICTORIAN BUILDING AUTHORITY

Goods Shed  
733 Bourke Street, Docklands 3008  
Telephone: 1300 815 127  
Facsimile: (03) 9618 9062

[www.vba.vic.gov.au](http://www.vba.vic.gov.au)

#### ENVIRONMENT PROTECTION AUTHORITY

200 Victoria Street, Carlton 3053

General inquiries:  
Telephone: 1300 372 842  
Facsimile: (03) 9695 2610

#### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

55 King Street, Melbourne 3000  
Telephone: (03) 9628 9777  
Facsimile: (03) 9628 9789

[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

VCAT information includes:

- Guidelines for applicants – brochure
- Submissions in the Planning List – information sheet
- Guidelines for waiving application fees
- Permit amendment and cancellation supplement.

Practice Note Planning List:

- #1) General procedures
- #2) Information to be provided by a Responsible Authority
- #3) Cancellation and Amendment of Permits and Stop Orders
- #4) Enforcement Orders and Interim Enforcement Orders
- #5) Representation of Parties

## DISPUTE SETTLEMENT CENTRE OF VICTORIA, DEPARTMENT OF JUSTICE

Level 3, 235 Queen Street, Melbourne 3000  
Telephone: (03) 9603 8370  
Facsimile: (03) 9603 8355  
Free call 1800 658 528

### PLANNING PERMIT APPLICATIONS

For more information go to::

- Part 4 of the *Planning and Environment Act 1987*
- 'Using Victoria's Planning System' – Chapter 3
- Council's planning department:
  - The register of all planning permit applications
  - Current planning permit applications (plans, submissions, referral comments etc)
  - Objections and other submissions
  - The council planner's report
  - The council's decision.

### PLANNING SCHEME AMENDMENTS

For more information go to::

- Part 3 of the *Planning and Environment Act 1987*
- 'Using Victoria's Planning System' – Chapter 2
- The list of amendments at the back of the planning scheme
- Council's planning department:
  - The exhibited version of the amendment (maps, text, explanatory report etc)
  - All supporting documentation
  - Submissions
  - The independent panel's report (28 days after it was received by the council)
  - The council planner's report
  - The Council's decision.

### COMPLIANCE WITH THE PLANNING SCHEME

For more information go to:

- Part 6 of the *Planning and Environment Act 1987*
- 'Using Victoria's Planning System' – Chapter 7

# APPENDIX ONE

## PLANNING ENQUIRY CHECKLIST

### PLANNING ENQUIRY CHECKLIST

This checklist is designed to help councillors ask the right questions when receiving telephone inquiries about planning matters.

Often, upon receipt of notice about a planning permit application, a neighbour may contact a councillor. There are three suggested steps to effectively respond to such an enquiry.

1. Understand the concerns – find out as much information as you can about the concerns.
2. Understand the application – find out more about the status of the planning application from the council planner.
3. Ask the planner to call the constituent or advise them directly about the status of the application, and the next steps in the process. Give them the name and contact details of the planner for direct follow-up.

Do not expect to know everything about every planning matter before the council. The staff are there to help you.

The following procedure is suggested for each step:

1. Understanding the concerns
  - Find out as much information as you can about the application from the constituent.
  - Find out if there was pre-application consultation between the applicant and the constituent, and ask whether this addressed any issues of concern.
  - Find out if the constituent has received notice of the application.
  - If notice has been received, ask for the application reference number and the address of the property. Discuss their concerns and note contact details for future reference.
  - If you are uncomfortable responding to the enquiry, advise the constituent that you will find out more from the council planner and arrange for follow-up.
2. Understanding the planning permit application
  - Find out more details from the council planner to help you respond to planning enquiries.
  - Verify the information that you have been given from the constituent.
  - Find out if there is to be further consultation with the applicant and objectors, and arrangements for the consultation.

- Find out if the application will be decided by the council planner, a council committee or at a full council meeting (this may not always be clear at the early stage in the process).
- Find out which council policies are relevant to the application.
- Find out whether an assessment of the application against the policies and other planning scheme provisions has been completed. If so, what was the council planner's conclusion and recommendation.
- Find out if there have been other objections and ask what matters were raised in the objections.
- Find out when the application is likely to be ready for a decision to be made.

If the matter is simple, or has very local limited strategic implications, you may decide to have no further involvement in the matter.

#### 3. Response to the constituent

Once you have discussed the permit application with the council planner, you may need to phone back the constituent to provide further information, or ask the planner to do this for you.

- Advise the constituent of the status of the application, and of any additional information.
- Advise the constituent, in general terms, which council policies apply to the application, and advise that a thorough assessment of the application against relevant policies will occur once all information is received. If you are unsure about this, refer the constituent to the council planner.
- If a consultation meeting is arranged between the applicant and objectors, provide meeting details.
- If they are not satisfied, suggest that the constituent lodge an objection with the council following the instructions that they have received on the Notice of Application, thereby formalising any issues they may have with the application.
- Advise the constituent when and how the application is likely to be decided, but do not commit to a decision date unless the application is on the council agenda.
- Ensure that concerns are passed on to the council planner.

# APPENDIX TWO

## FREQUENTLY ASKED QUESTIONS

### FREQUENTLY ASKED QUESTIONS

#### WHAT IS PLANNING?

Planning is about decisions that change places and affect everyday life. Planning decisions can be about new schools, transport, the size of a new shopping centre, the location of parks, bike paths, a new road or a new house or an extension to an existing use or building. Councillors develop policy (which guides decisions) and also make decisions on planning applications. Planning decisions affect where and how people live.

#### HOW DOES PLANNING WORK?

All land in Victoria is zoned. Zones (such as farming, residential, industrial) affect what uses can happen on the land. Some land also has overlays (heritage, environmental significance) which further refine how the uses and development can occur. The zone and overlay controls determine whether a permit is required for a use or a development. All this information is in the planning scheme. Every municipality has a planning scheme.

#### WHAT ARE THE VPPS AND LOCAL POLICIES?

The Victorian Planning Provisions are a standard set of planning controls used to construct planning schemes. In addition the SPPF (State Planning Policy Framework) is in the planning scheme which is made up of state level policies that the council must take into account and give effect to in planning for the local area. Local policies that council develops must be consistent with the SPPF.

#### WHAT IF I DON'T AGREE WITH STATE POLICY?

This is where councils advocacy role is important. State policy is rarely developed without significant opportunities for input and comment. It is worth remembering that State policy is a broad, high level document, and there is significant opportunity for councils to interpret and apply it locally through developing local policies. This takes time and effort.

#### HOW DO I RECONCILE STATE AND LOCAL POLICY?

Local policy must support and give effect to State policy. The application of policy when deciding planning applications often requires judgment or on-balance decisions to be made. It is really important that you build trust and understanding with colleagues and staff so that a consistent and clear application of policy occurs. This is important, particularly when decisions are reviewed at VCAT.

#### WHAT DO I DO IF I DON'T AGREE WITH A PLANNING OFFICERS REPORT?

This will happen. Talk to the planner and understand the basis on which they have made that recommendation. This will help you understand what discretion you have. Sometimes conditions can be suggested to address concerns. If you want to approve or refuse an application when the planner is recommending the opposite make sure that you are properly advised on clear grounds for doing so. Remember to keep an open mind and comply with the conflict of interest requirements.

#### WHAT DO I DO WHEN I AM BEING LOBBIED?

Listen, inform yourself of the issues and ensure that concerns are being referred to the council planner. Sometimes when matters are really controversial, it is helpful for the residents to have a spokesperson or convenor so that you are more effective with your time. Encourage the applicant to talk through issues with the affected residents. Often common ground can be found. Encourage pre-application discussion with neighbours and council planners.

#### WHAT HAPPENS IF OTHER COUNCILLORS DON'T AGREE WITH MY POSITION?

When judgements are made, different values and perspectives are applied. Often ward councillor may have stronger views than their colleagues about a planning matter. Take the time to explain your position, get them out to the site, listen to their perspective and build an argument based on sound planning principles.





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