

## DRAFT STATUTORY PLANNING GOVERNANCE AND PROCEDURES CHARTER

### INTRODUCTION

Council's statutory planning department receives, processes, determines and advises on many thousands of applications each year under the Darebin Planning Scheme.

An application might be for as simple as a small extension to a house or as complex and potentially controversial as a multi-storey mixed use development. It might be for a new permit or to amend an existing permit or to endorse a plan under a permit.

Council is acutely aware that decisions made by Council and the statutory planning department have the potential to impact on large numbers of people and on the integrity of Council's planning scheme and that not all decisions will be popular.

The community has told Council that, regardless of the manner in which an application is ultimately determined, it is critical that the process and decision-making is clearly defined, transparent, inclusive, consistent, ethical and timely.

That is why Council has adopted this Statutory Planning Governance and Procedures Charter.

The Statutory Planning Governance and Procedures Charter is informed by and is consistent with Council's:

- Community Governance Charter,
- Customer Service Charter,
- Councillor Code of Conduct,
- Employee Code of Conduct, and
- Organisational values of collaboration, accountability, integrity and respect

Reflective of the Community Governance Charter, the processes adopted and the decisions made in the discharge of Council's statutory planning functions shall encompass:

- transparency,
- accountability,
- equity and inclusion,
- effectiveness and efficiency,
- community engagement,
- ethical decision making.

The Statutory Planning Governance and Procedures Charter will be understood and followed by all staff and committee members involved in processing, determining and giving advice on applications for:

- planning permit,
- approval and endorsement of plans under a planning permit,
- secondary consent under a planning permit,

- amendment of a planning permit,
- extension of time under a planning permit,
- approval of plans under a planning scheme.

It is to be read in conjunction with:

- Council's Instruments of Delegation to Members of Staff,
- Council's Instruments of Delegation to Council Committees,
- Council's Planning Committee Charter.

It applies to pre-application meetings with applicants and their consultants and representatives.

## TERMS USED IN THIS CHARTER

**Direct Manager** means the person to whom the staff member reports under Council's organisational structure or, if that person is unavailable, the person to whom the Direct Manager reports.

**Application** includes applications of the type described in the Introduction to this Charter.

**Chief Executive Officer** means Council's Chief Executive Officer.

**Conflict of Interest** has the meaning given to it by the *Local Government Act 1989* and Council's Employee Code of Conduct.

**Co-ordinator of Statutory Planning or CSP** means the person holding the position of Co-ordinator of Statutory Planning.

**Delegation** means a power, duty or function delegated to a member of staff, committee or committee member by the Chief Executive Officer or Council.

**Director** means the person holding the position of Director Corporate and Planning Services.

**Manager City Development or MCD** means the person holding the position of Manager City Development.

**Planner** means a member of staff undertaking a statutory planning function under delegation and, with respect to a particular Application, means the planner allocated the task of assessing that Application.

**P&E Act** means the *Planning and Environment Act 1987*.

**Scheme** means the Darebin Planning Scheme.

## APPLICATION MEETINGS

A planner will not attend or participate in an application meeting (including a pre-application meeting) with an applicant or an applicant's representative or consultant unless the planner:

- first ascertains the purpose and nature of the meeting,
- explains to the person requesting the meeting that the planner and any other member of staff attending such meeting does not and cannot profess to:

- speak on behalf of Council or the ultimate decision maker,
- express opinions that will influence or be binding on Council or the ultimate decision maker,
- be bound himself, herself or themselves by opinions expressed at the meeting.
- satisfies himself or herself that he or she has no Conflict of Interest in the Application,
- obtains the prior approval of the planner's Direct Manager (unless the planner concerned is the MCD, CSP or Director),
- makes a detailed written file note of the purpose and substance of the meeting at the conclusion of the meeting.

In the case of a pre-application meeting administration staff log the initial inquiry and then the CSP will allocate this meeting to a planner in Council's Pre-application Meeting Register.

Unless the MCD approves otherwise, meetings will be attended by at least 2 members of staff. This will be signed off by the CSP.

A planner will not attend or participate in a pre-application meeting if the planner considers himself or herself to have a Conflict of Interest in the Application. If the planner is uncertain as to whether he or she has a Conflict of Interest in the Application, he or she will confer with the planner's Direct Manager to determine the matter.

Before concluding a pre-application meeting, the planner with whom the meeting was arranged will send his or her file notes of the meeting to the applicant/representative via email within [7 days or as otherwise agreed at the meeting 24 hours](#) and invite the applicant/representative to confirm that the file notes are an accurate record of the matters discussed at the meeting.

If in the opinion of the planning officer with whom the meeting is organised, an applicant or the applicant's representative/consultant makes inappropriate offers to or overtures towards the planner or other members of staff, the planner will report this to his or her Direct Manager immediately after the meeting. Unless the Direct Manager is also the Director, the Direct Manager will prepare a report to the Director outlining the inappropriate offer or overture and recommend a course of action. The Director will then report the matter immediately to the Chief Executive Officer who will determine the appropriate course of action.

## **COUNCILLOR INPUT**

Councillors are bound by the conflict of interest provisions of the *Local Government Act 1989* and Council's Councillor Code of Conduct. Where a planner is concerned that a Councillor has not acted in accordance with the Local Government Act or the Code of Conduct, the planner will inform his or her Direct Manager or the Director who will then immediately report this to the Chief Executive Officer. The Chief Executive Officer will then determine the appropriate course of action.

Staff will ensure responsiveness to Councillors when complaints are raised via the Director in relation to planning processes. The key is to ensure the integrity of Councillors and the planning process whilst responding to the concerns of the community by engaging them in a timely and professional manner.

In this regard and in the best interest of Councillors and staff, matters relating to the statutory planning functions must be raised first through the Director. The Councillor's Code of Conduct prohibits Councillors from raising planning matters directly with staff. Councillors cannot direct a member of staff on any statutory planning matter. A record of all conversations between Councillors and staff on planning matters will be recorded in writing with a copy provided to the MCD.

## DELEGATION

### Overview

All Council staff with a role in Council's statutory planning function – ranging from the Chief Executive Officer to junior planner – appreciate that **all duties, powers and functions** that are vested or imposed by the P&E Act and the Scheme regarding those functions are vested or imposed **on Council** as the responsible authority for the Scheme.

Other than for purely administrative tasks, any duty, power or function that is to be discharged or exercised by a member of Council staff or committee must be **delegated** to that person or committee **by Council**.

Without delegated power, the staff member or committee may give advice and otherwise assist with purely administrative tasks, but **cannot** determine a matter.

### Understanding Council's delegations

To illustrate the extent of functions that need to be delegated, the following list (not exhaustive) are examples of such functions:

- the function of determining whether notice of an Application is required and the extent and form of such notice (s.52),
- the power to require further information about an Application (s.54),
- the duty to refer an Application to a referral authority (s.55),
- the power to issue a permit (s.60), impose permit conditions (s.62) or amend a permit (s.72),
- the power to extend a permit,
- the power to endorse a plan under a permit or the Scheme.

Every member of staff and committee engaged in Council's statutory planning function will understand, and operate within, the delegations under which Council operates.

If the planner is:

- unclear as to the nature or extent of his or her delegated authority, the planner will seek confirmation from his or her Direct Manager,
- concerned that he or she has exercised or discharged a duty, power or function without the necessary delegated authority, the planner will immediately advise the Direct Manager who, if the Direct Manager is not the Director, immediately inform the Director.

### Ascertaining the scope of delegation

Council's delegations to staff and committees engaged in Council's statutory planning functions are contained in the City of Darebin' Instrument of Delegation to Council Staff' and 'Instrument of Delegation to Committees of Council'.

The Delegations are reviewed regularly (at least after every Council election). It is therefore the responsibility of every planner and committee to acquaint himself, herself or itself with the relevant Delegation.

Where a delegated power is subject to conditions, it is the responsibility of the planner and committee to understand the nature of those conditions and exercise his, hers or its powers within and in accordance with those conditions.

As an example of this, currently any application for planning permit that receives 5 or more objections can only be determined by Council's Planning Committee (in a meeting of that Committee). Such applications **must** be referred to Council and must **not** be determined by a member of staff or other type of committee.

If a member of staff or committee does not have the delegated power to make a decision, he or she will not:

- profess or imply to have that power in any conversation, report or correspondence engaged in or prepared by him or her,
- express an opinion as to when or how the decision maker will make a decision,
- bind the decision maker to a particular decision.

If the member of staff or committee expresses an opinion about a matter upon which he or she is not the decision maker, he or she will make it clear to the person(s) to whom the opinion is expressed, that it is his or her opinion only and that the opinion:

- is not necessarily that of the decision maker,
- cannot influence or bind the decision maker.

#### **Reporting of functions undertaken under delegation**

Each month, or more regularly if directed by the Chief Executive Officer or Director, each planner exercising a delegated power will prepare a report on [decisions made to issue a planning permit,, refuse a planning permit and issue a notice of decision to grant a planning permit.determinations in planning applications made by the planner under that power.](#)

#### **ALLOCATION OF APPLICATION**

That CSP is responsible for allocating all Applications received by Council. The CSP will allocate the Application to the planner who, in the CSP's opinion is best suited to process the Application. In determining which planner is best suited to process the Application, the CSP will take into account as appropriate:

- the nature and complexity of the Application,
- the qualifications, experience and skills of the planner,
- whether the planner has a familiarity with the Application, the subject site, the surrounding area and/or relevant planning scheme provisions,
- the planner's workload,
- whether the planner has a Conflict of Interest in the Application, and
- the planner's Delegations.

The overarching objective in allocating an Application is to ensure that the planner with the right balance of experience, skill and capacity to assess the Application is allocated the Application.

If upon being allocated an Application, the planner considers that he or she has or may have a Conflict of Interest in the Application, the planner will:

- not begin to process the Application (other than to the extent necessary to determine whether he or she has or may have a Conflict of interest), and
- advise the CSP of the Conflict of Interest and have this noted on the file.

## **GIVING PUBLIC NOTICE OF AN APPLICATION**

### **Objective**

One of the objectives of the planning framework according to the *Planning and Environment Act 1987* is to ensure that those affected by a proposal for the use, development or protection of land receive appropriate notice.

Giving notice of an Application is a fundamental component of community engagement, transparency and accountability.

Not all Applications are governed by the P&E Act or the Scheme. Neither the P&E Act nor the Scheme govern the giving of notice of requests for:

- secondary consent,
- approval and endorsement of plans under a planning permit,
- extension of time under a permit,
- approval of plans under a planning scheme.

Decisions as to this latter category of Application will be made having regard to:

- the objectives of the planning framework,
- the nature of the Application,
- this Statutory Planning Governance and Procedures Charter.

### **The legislative requirements**

Planners will familiarise themselves with the legislative framework governing the giving of public notice. Direct Managers are responsible to educate, mentor and supervise others on the notice provisions.

The legislative framework for the giving of public notice is found in the:

- P&E Act,
- Scheme.

The legislative framework specifies:

- the circumstances in which public notice of an Application must be given,
- the manner in which public notice must or may be given,
- where a decision as to whether to require public notice is determined by Council, the factors to consider in making that decision,

- the circumstances in which an Application is exempt from the giving of public notice.

Section 52 of the P&E Act contains the notice provisions and governs all applications for the grant or amendment of a permit unless the Scheme exempts an application from its requirements. It is the planner's responsibility to determine whether the Scheme exempts the Application from section 52 and will:

- make a ~~file~~ note of his or her determination, within the officers report considering the application.
- if the planner determines that the Application is exempt, set out the reasons for so determining (which must include specifying the relevant provisions of the Scheme).

If the planner is uncertain as to whether the Scheme exempts an Application, he or she will consult with his or her Direct Manager.

### **Mandatory notice to be given where Council is the permit applicant**

Whenever Council is the permit applicant, notice of the Application **must** be given to:

- the owners **and** occupiers of adjoining land; and
- the National Trust of Australia (Victoria), if the application relates to land on which there is a building classified by the Trust.

This means by **direct** notice (by mail) to those owners, occupiers and Trust.

This is the case **even** if the Scheme otherwise exempts the Application from the notice requirements.

The only exemptions to this mandatory obligation are if the Application is:

- for a sign or advertisement,
- to remove, destroy or lop native vegetation under clause 52.17 of the Scheme (in which case notice must be given to the Secretary to the Department administering the Flora and Fauna Guarantee Act 1988), or
- only required under the Salinity Management Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or Bushfire Management Overlay.

### **Material detriment**

There are two references to 'material detriment' in section 52(1). They are:

- in section 52(1)(a) which requires notice of an application to be given to the owners and occupiers of allotments or lots adjoining the land to which the Application applies **unless** Council is satisfied that 'the grant of the permit will **not cause** material detriment to **any person**', and
- section 52(1)(d) which requires notice of an Application to be given to persons **if** Council 'considers that the grant of the permit **may cause** material detriment **to them**'.

There are two important differences between paragraphs (a) and (d) of section 52(1).

Paragraph (a) is expressed as an exemption. Notice **must** be given (to owners and occupiers of adjoining allotments and lots) **unless** Council is satisfied that the grant of the permit will not cause detriment. Whereas paragraph (d) is expressed as a condition. Notice **is to** be given to other persons **if** Council considers the grant of the permit will cause material detriment.

The second difference is that paragraph (d) applies where Council considers the grant of a permit may cause material detriment **to the person or persons** to whom Council considers should be given notice. Whereas paragraph (a) (ie notice to owners and occupiers of adjoining properties) applies where the grant of a permit may cause material detriment to **any** person. Paragraph (a) applies even if Council does not consider the grant of a permit will cause material detriment to the adjoining owners and occupiers provided it considers the grant of a permit may cause detriment to **any** person.

### **What is material detriment?**

The planner is responsible for determining whether the grant of a permit may cause material detriment.

The following list is not exhaustive but, as a minimum, the planner will take into account the following:

- section 52(1) says 'may cause', it does not say 'will cause' or 'likely to cause'. It is enough if the planner considers that there is a **realistic possibility** that the grant of a permit or the amendment of a permit will result in material detriment to other persons,
- section 52(1) says 'material detriment', it does not say 'any detriment' or even 'detriment'. While there is no rule to determine when a detriment becomes 'material', there is a difference between 'material detriment' and:
  - trifling or insignificant detriment,
  - fanciful detriment,
- neither the quality nor the merits of the Application are relevant to the question of whether notice must or should be given. The task of determining whether notice must or should be given is confined to an assessment of the impact of the grant of a permit, not on whether the Application is of a high quality or is likely to be granted,
- section 52(1) refers to 'detriment', not 'net detriment' or 'detriment on balance'. Provided the grant of a permit may cause 'material detriment' to persons other than the permit applicant, it is not relevant that some aspects of the proposed use or development will convey benefits to those persons,
- the fact that the Applicant may have obtained the written consent of the adjoining owners and occupiers is **not relevant** to the question of whether the grant of a permit may cause material detriment. The written consent of adjoining owners or occupiers does not relieve the planner of the obligation to consider whether notice must or should be given,
- the planner will consider the nature of the Application and the authorisations being sought. If, for example, the only reason a planning permit is required is to waive the carparking requirements associated with a proposal to construct a building which is otherwise exempt from the notice requirements, the planner will confine himself or herself to matters relating to the waiver of carparking, not whether the otherwise exempt building may cause detriment,
- detriment is not limited to physical detriment. A person or persons may suffer material detriment from the grant of a permit even if they do not directly abut the land in question or are not directly affected by the proposed use or development. A person may be materially detrimentally affected if, for example, a proposal is to demolish a building governed by a heritage overlay and that person owns or lives in a property in the same overlay.
- the planner will not embark on a pre-emptive assessment of the potential controversy of an Application. The planner will confine himself or herself to matters that are relevant to determining detrimental impact.

If the planner is in **any doubt** as to whether the grant of the permit may cause material detriment of the type referred to in section 52(1) the **planner** will confer with his or her Direct Manager.

A planner **will not** determine that the grant of a permit will not cause material detriment without:

- first conferring with his or her Direct Manager,
- obtaining the Direct Manager's written approval, and
- making a detailed file note setting out his or her reasons for making the determination within the officers report considering the application.

~~Each month the Director will be given a report listing all decisions made by Council staff not to require the giving of notice. The list will include those decisions which were based on:~~

- ~~▪ the Application being exempt by the Scheme, and~~
- ~~▪ those made on the basis that the grant of the permit may not cause material detriment.~~

### **Applications to remove or vary a registered restrictive covenant**

Paragraphs (ca) and (cb) of section 52(1) govern the giving of notice of applications for a permit:

- to remove or vary a registered restrictive covenant, and
- which authorises something that would breach a registered restrictive covenant.

Notice of such Application, **must** be given to the owners **and** occupiers of land benefitted by the covenant. This is direct notice (by mail), not simply notice by signage or newspaper advertisement.

While the P&E Act requires the applicant in such Application to identify each allotment or lot benefitted by the covenant, it is the responsibility of the planner to satisfy himself or herself that the information is accurate. If the planner is:

- dissatisfied with the quantity or quality of the information submitted by the applicant, or
- has any concern as to the accuracy of the information,

the planner will consult with his or her Direct Manager who will determine whether the applicant will be directed to provide further or better information or verify the accuracy of the information.

Paragraphs (ca) and (cb) are **in addition to, not** in substitution for, the other paragraphs in section 52(1). An application of the type described by paragraphs (ca) and (cb) needs to be assessed against paragraph (a) (notice to adjoining owners and occupiers) and paragraph (d) (notice to other persons). The removal or amendment of a registered restrictive covenant may materially detrimentally affect persons who are not beneficiaries of the covenant.

### **Notice to persons to whom the Scheme requires notice to be given**

Paragraph (c) of section 52(1) provides that notice of an application is to be given to any person to whom the planning scheme requires it to be given.

This requirement is **in addition** to the other notice requirements of section 52(1).

The planner will carefully review the Scheme to ascertain whether it requires notice to be given to any person. If notice is required to be given, the planner will ensure that notice is given.

### **Matters of interest or concern to the community**

Section 52(3) of the P&E Act gives Council the ability to:

... give any further notice that it considers appropriate of an application for a use or development which is likely to be of interest or concern to the community

Section 53(3) is **in addition** to section 52(1) and , unlike section 52(1), is not determined by whether the grant of the permit may cause material detriment to any person. It is utilised where Council believes the application is likely to be of interest or concern to the community.

There is however, a **critical distinction** between section 52(1) and section 52(3). Section 52(1) gives Council **the power to require** notice to be given (either by the applicant or Council itself). This is to be compared with section 52(3) which gives Council **the right** to itself give **further notice** of an application in cases of community interest or concern.

In practice, this means that:

- Council **cannot require** the applicant to give further notice under section 52(3) or require the applicant to reimburse Council for the cost of doing so,
- the 'clock' does not stop on the processing of the permit application while Council gives the further notice.

If Council determines to give further notice under section 52(3) it does so at its own volition, in its own time and at its own cost.

Only the MCD or Council can determine whether Council should give further notice of an Application pursuant to section 52(3). In deciding whether to give such notice the MCD and Council will consider:

- the nature of the Application,
- what community interest or concern is sought to be ascertained in giving further notice,
- the financial cost to Council of undertaking the further notice,
- why notice of the type required by section 52(1) is not sufficient to elicit the views of the community to the Application,
- whether the cost to Council is justified having regard to the benefits to Council,
- the imposition on Council's resources (eg diverting staff time from other matters, use of IT staff etc).

If the planner is of the opinion that an Application warrants a consideration of section 52(3), the planner will:

- consult with his or her Direct Manager, and
- if the Direct Manager agrees with the planner, prepare a report to the MCD or Council outlining his or her reasons for forming that opinion. The report will address the matters that the MCD and Council is required to consider.

The MCD or Council may:

- determine to give notice in accordance with section 52(3) whether or not a report is given to the MCD or Council by the planner;
- determine the extent and manner in which the further notice is to be given.

### **The form of notice**

Where notice is given to the owners and occupiers of property which adjoins the land to which the Application relates – whether as required by section 52(1)(a) or because Council is the permit applicant – notice will be **given directly** by letter addressed to the owners and occupiers.

Notice to the owners and occupiers of land benefited by a covenant which is to be removed or varied by the permit or where the permit would authorise a breach, will likewise be given direct notice by letter addressed to the owners and occupiers.

Beyond those persons to whom direct notice must be given, it is the responsibility of the planner to determine how notice is to be given to other persons. According to section 52(2), such notice may be given:

- in all or any of the following ways –
  - by placing a sign on the land concerned,
  - by publishing a notice in newspapers generally circulating in the area in which the land is situated,
  - by giving notice personally or sending it by post, or
- in any other way that Council considers appropriate.

In deciding how notice should be given, the planner will act reasonably, recognising that the applicant can seek a review of the decision by the Tribunal if the applicant considers the requirement to be unreasonable.

The following list is not exhaustive but, as a minimum, the planner will take into account the following:

- the nature of the Application,
- the size, configuration and geographic location of the subject land,
- the nature of the area surrounding the subject land (types and proximity of surrounding uses and development etc),
- the number of properties or people who may be affected by the grant of the permit,
- the relevant Scheme provisions (including the reasons why authorisation is required),
- whether a sign or signs on the subject land would adequately convey the nature of the application,
- the cost to the Applicant,
- the time of the year that notice is being given (eg, is notice being given during the Christmas period or school holidays). Note that advertising periods are extended to 4 weeks over Christmas school holidays.

### **Evidence of notice being given**

Section 52(1) allows Council to either:

- direct the applicant to give notice of the Application, or

- itself give notice of the Application.

Where the planner directs the applicant to give notice of the Application, it is the responsibility of the planner to satisfy himself or herself that notice has been given in accordance with:

- the P&E Act,
- the Scheme,
- the prescribed form,
- in the manner directed by Council.

The planner will not proceed to consider an Application unless the applicant provides the planner with satisfactory evidence that notice has been properly given. This will, at the very least, include a statutory declaration signed by the applicant or the applicant's representative attesting to the giving of notice.

If the planner is concerned that notice has not been given in accordance with the Act, Scheme, prescribed form or Council direction, or as to the sufficiency of the applicant's evidence, the planner will:

- raise the matter with the applicant or the applicant's representative and give that person a reasonable opportunity to address the planner's concern,
- if the applicant or representative fails to address or sufficiently address the planner's concern, [the application will be refused for failing to fulfil the required notice procedures, discuss the matter with the Direct Manager,](#)
- if the Direct Manager shares the planner's concerns, the Direct Manager will prepare a letter for the MCD to send to the Applicant which:
  - outlines Council's concerns,
  - advises the applicant that the Application will not proceed until the concerns are addressed.

### **Applications where the giving of notice is not regulated by the P&E Act or Scheme**

The notice provision so far considered in this part of the Charter do not apply to every Application which will be made to Council's statutory planning department for determination.

Neither the P&E Act nor the Scheme govern the giving of notice of requests for:

- secondary consent,
- approval and endorsement of plans under a permit,
- extension of time under a permit,
- approval of plans under a planning scheme.

There is therefore **no obligation** on applicants for such Applications to give notice of such Application and no power given to Council to require notice.

This is so regardless of:

- how controversial the original grant of permit may have been,

- whether the permit was granted by Council or at the direction of the Tribunal,
- the nature of the Application.

That does not mean that Council cannot, of its own volition, seek to ascertain the views of affected persons or the community.

It is the responsibility of the planner to determine whether he or she would be assisted in considering such Applications by the views of affected persons or the community. Such decision will be made by the MCD after considering a report from the planner which report will:

- be prepared in consultation with the planner's Direct Manager and with the Direct Manager's agreement,
- set out why the planner considers that the assessment would be assisted by the views of the community,
- describe the nature, extent and scope of the notice proposed to be given,
- detail the cost to Council (both financial and in staff resources) in giving notice of the Application.

In deciding whether to authorise the giving of notice of such Application, the MCD will, in addition to considering the planner's report, consider the fact that:

- the notice will be required to clearly identify that it is not notice which the applicant was required to give by the P&E Act or Scheme,
- the persons to whom notice is given are given no right to seek a review of Council's decision,
- Council is under no legal obligation to consider any submissions that the person receiving the notice may make,
- the decision to give notice does not 'stop the clock' in the processing of the Application.

## **PEER REVIEW OF APPLICATIONS**

Every application that is received by Council's statutory planning department will be subject to a peer review.

Peer review is essential in delivering:

- transparency and accountability,
- consistency of decision-making and advice giving, and
- sound decision-making

and to reduce the prospect of unidentified or inadvertent Conflict of Interest and the perception of Conflict of Interest.

When the CSP allocates an Application, the CSP will identify the person or persons who will undertake the peer review of the Application. That person may include the CSP.

The CSP, MCD or Director may at any time during the processing of the Application replace the person undertaking the peer review with another person or may appoint another person to undertake **additional** peer review.

The planner and the peer reviewer will work together in assessing and determining the Application.

If the Application is one which can only be determined by Council or Council's Planning Committee or a delegate of Council other than the planner to whom the Application has been allocated, all reports, recommendations and advice given to the decision-maker will be counter-signed by the peer reviewer.

## **THE PLANNING ASSESSMENT PANEL**

### **Constitution and role of the Planning Assessment Panel**

The Planning Assessment Panel (**PAP**) shall be comprised of:

- the Manager City Development (who will be chair of the PAP),
- all Co-ordinators of Statutory Planning,
- such further person as the MCD may appoint to the Panel from time to time.

The role of the PAP is to:

- act as a sounding board,
- be a forum for Applications and planning scheme amendments to be considered by senior personnel in an open and frank manner, and
- offer advice to Council, Council's Planning Committee and delegates in the exercise of their decision-making functions.

The MCD **will** refer any Application or planning scheme amendment to the PAP which the MCD considers appropriate. The following Applications **will** be referred to PAP for its consideration:

- Applications which are to be determined by Council or Council's Planning Committee,
- Applications which in the opinion of the MCD or a CSP raise a significant planning policy issue,
- where the planner and the planner's Direct Manager or peer reviewer have a difference of view as to the merits of an Application,
- requests to amend the Scheme,
- requests to approve a plan under the Scheme,
- reports from planners on pre-application meetings where the planner and the planner's Direct Manager deem appropriate.

The PAP is **not** a decision-making body. It has an advisory function only and, whilst the Council, the Planning Committee and Council delegates are entitled to have regard to PAP's advice, the advice cannot bind the decision-maker.

### **Conflict of Interest within PAP**

If a PAP member considers himself or herself to have a Conflict of Interest in any matter considered by PAP, the member will:

- advise the MCD immediately upon forming such opinion,

- if the opinion is formed prior to a meeting of PAP, advise the other PAP members of the conflict at the beginning of the meeting and excuse himself or herself from the meeting when the item upon which the conflict exists is considered,
- if the opinion is formed during the course of the meeting, including after consideration of the item upon which the conflict exists, immediately inform the meeting and leave the meeting,
- if the opinion is formed after the meeting, immediately inform the MCD who must immediately inform the Director. It shall fall upon the MCD in consultation with the Director to determine what to do about the Conflict of Interest and of the PAP member's failure to identify the conflict.

The MCD will arrange for a record of all declared Conflicts of Interest to be made and prepare a report monthly to the Director.

### **The Planning Assessment Panel procedure**

The PAP will be responsible for setting its own procedure and rules. The overarching aim should be to discharge its advisory role in as transparent, fair, efficient and effective manner as possible, with a minimum of technicality and formality.

PAP members will be encouraged to express their views frankly and without repercussion or judgement.

The PAP may invite the planner considering the Application to meet with PAP to discuss the Application.

The PAP will endeavour to reach a consensus on its advice and recommendations. If consensus cannot be reached, the MCD will arrange for the division to be recorded and reported to the Director but, otherwise, PAP's advice or recommendations will be determined by the majority view.

### **COUNCIL'S PLANNING COMMITTEE**

Council's Planning Committee is a special committee of Council comprised of all Councillors. Council has delegated to the Committee the power to consider and determine:

- planning applications which receive five or more objections,
- planning applications which fail to meet the objectives of adopted Council policy,
- planning applications which, in the opinion of the Director in consultation with the Chairperson of the Planning Committee, raise major policy implications and ought to be referred to the Committee for determination.
- any other applications for major developments or changes of use which, in the opinion of the Director in consultation with the Chairperson of the Planning Committee, ought to be referred to the Committee for determination,
- minor amendments to Development Plans which in the opinion of the Director in consultation with the Chairperson of the Planning Committee, can be determined by the Committee.

It is the planner's responsibility to satisfy himself or herself as to whether the Application is required to be determined by the Planning Committee or has been referred to the Planning Committee for assessment and decision.

The planner will not determine an Application that is, by Council's instruments of delegation required, to be determined by the Planning Committee.

## **VCAT MATTERS**

To maintain the professionalism of Council and best representation of decisions made by either the Planning Committee or Council delegates, Council will endeavour to maintain a legally qualified solicitor to manage Council's representation at VCAT.

Where Council's VCAT obligations exceed the capacity of Council's planning appeals advocate or to otherwise assist in the presentation of Council's cases to VCAT, there will be support from suitably qualified and experienced external professionals. In addition there may be support from Council's internal planning staff during peak case loads.

To maintain Council's general independence and to support the perception of fairness to the community in situations where a planner's recommendation is not supported by the Planning Committee, the planner will not represent Council in VCAT. Staff will however, through their support of external consultants or Council's planning appeals advocate, provide assistance to ensure the strongest possible representation is provided of Council's decision. This will include assisting objectors and members of the community with information and advice to support their submissions to VCAT, but not extend to Council acting as the representative of individuals.

Where VCAT directs that an appeal be submitted to mediation, Council's advocate or representative will discuss the Application with his or her Direct Manager or the MCD to determine the scope and ambit of the advocate's/representative's authority to settle the appeal.

In determining the advocate's/representative's authority to settle the appeal, the Direct Manager and MCD will consider:

- the nature of the Application and appeal,
- Council's grounds of refusal (if it is an appeal against refusal) or grounds of appeal (if it is an appeal against the grant of a permit or permit conditions),
- the extent to which the parties to the appeal have or are prepared to compromise or settle the appeal,
- whether the decision was a Planning Committee decision or delegate's decision,
- the extent to which the Application raises important question of principle, policy or precedent.

## **ONGOING COMMITMENT TO TRAINING, EDUCATION AND IMPROVEMENT**

Council is committed to providing the resources to ensure the ongoing training, education and improvement for and of the statutory planning department, **councillors and the community**.

It is vital that the Chief Executive Officer, planners and councillors be kept abreast of:

- changes to State and Federal government planning laws and policies that bear upon Darebin's community,
- Scheme changes,
- decisions of the Tribunal, Planning Panels, the VCGLR and other bodies that impact upon the use and development of land,

- initiatives embarked upon by other councils towards making decision-making more efficient, consistent, transparent etc,
- lessons learned by Council in handling past Applications.

The MCD is responsible for ensuring that a regular, ongoing training and education program is developed and implemented and for securing attendance by councillors and members of staff.

Such program should include, but is not limited to:

- appointing staff to undertake a review on recent Tribunal "Red Dot" decisions and Panel reports and to report on those decisions/reports to the department and councillors,
- enrolling members of staff in DTPLI 'Planet' workshops, VPELA seminars, MAV workshops etc and having them report to the department,
- providing regular reports to councillors on changes to Federal and State government laws and/or policy.

**Endorsed by Council:** xx xxxxxxxx 2014

**To be Reviewed:** By 30 June each year