



STATUTORY PLANNING PROTOCOLS

**ADOPTED
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INTRODUCTION

Protocols for the use of Statutory Planning delegated powers have been in operation at Moonee Valley City Council since January 1997. This document updates previous protocol documents and decisions of Council relating to Statutory Planning.

The document is broken up into three main parts.

The first part (sections 1-4) deals with processes and consultation protocols. This encompasses:

- Role of Councillors and Officers
- Consultation Meetings
- Notification
- Amended Plans and Permits.

The second part (sections 5-6) deals with delegation protocols and the Development Assessment Panel (DAP).

The third part (Appendix 1, 2 and 3) relates to meeting protocols for DAP and Consultation Meetings.

PROCESSES AND CONSULTATION PROTOCOLS FOR STATUTORY PLANNING

1. GENERAL

Moonee Valley City Council (Council) is committed to:

- Ensuring its planning processes are well-managed; and that
- The community is informed and consulted on land use changes and developments in their area.

1.1 Role of Councillors and Officers

Councillors and Officers work in partnership as different arms in the same organisation. The common goals are:

- Informing the community
- Resolving differences between objectors/submitters and applicants, where appropriate
- Achieving quality outcomes in planning decisions
- Ensuring transparency in the planning process
- Ensuring consistency in decision-making.

1.2 Role of Officers

Officers provide professional and technical advice to applicants, residents and Council on a range of issues. In respect to planning applications, the advice specifically relates to:

- Planning Scheme requirements
- State and Council policies
- Details of the application
- ResCode (where appropriate) and other Victorian Planning Provisions
- Details of the consultation
- Details of objections
- Details of any referrals
- A recommendation based on professional assessment.

The role of Officers is split into two distinct areas:

The first is prior to a Council decision. This area requires Officers to provide applicants with a clear picture of what the planning scheme requirements are and what Council policies exist. It also requires that the application process is explained properly to residents. Officers are obliged to ensure that the application and plans are in the best form to ensure the full concept is easily understood and available for consideration.

Residents often ask, *“Why is the applicant doing this?”* This naturally involves an explanation of the applicant’s rights in applying for a permit.

The other side of this equation is the applicants asking, *“What are the objections and what is their basis?”*

Council is obliged by law to consider all applications. Council cannot refuse to consider an application; even a prohibited use must be formally considered and refused. This allows appeal rights, which is an underlying principle in the Victorian planning system.

The second area is after Council makes a decision. This area involves more of an advocacy role in defence of the Council decision. Preference be given to the use of external parties to defend a decision that differed from the officer’s recommendation. Officers in their capacity will nonetheless rigorously represent and defend the decisions of Council.

1.3 Role of Councillors

The role of Councillors includes two areas, Ward Councillors and Council.

1.3.1 Ward Councillors

The role of the Ward Councillors (outside of Council meetings) has a very important liaison function with residents. Liaison with the Ward Councillors is important as they have a good understanding of the local issues and the community, and represent the interest of the local community.

1.3.2 Council

Council’s role in the planning process is to consider all factors relating to a planning permit application including the Officer recommendations and then to make a decision. The broad range of issues considered by Council includes:

- The purpose of the zone and/or overlay;
- Decision guidelines set out in the Planning Scheme;
- Objections lodged;
- The likely impacts on neighbouring land and the neighbourhood; and
- Any relevant State and/or local policies included in the Planning Scheme.

Where possible, Councillors and Officers will seek consensus between objectors/submitters and applicants to avoid unnecessary appeals to VCAT.

2. CONSULTATION MEETINGS

- 2.1 As part of the Council's meeting cycle, Consultation Meetings (formally known as 'Deputation meetings') are also arranged to allow objectors/submitters and applicants an opportunity to put their case to Councillors and Officers in person. Such a process is not a mandatory requirement under the *Planning and Environment Act 1987* (the Act). However, Consultation Meetings give Councillors an opportunity to get a better feel of objections and a better explanation of the application rather than relying on the written summary presented as part of a Council report.
- 2.2 Consultation Meeting protocols and procedures are outlined in Appendix 1.

3. NOTIFICATION

3.1 Notification

Council undertakes comprehensive advertising for applications in accordance with its obligations under the *Planning and Environment Act 1987*. The aim is to ensure openness and accountability throughout the planning application assessment process, and includes notice given to:

- Owners and occupiers of adjoining land;
- Any persons to whom the planning scheme requires notice to be given (Referral Authorities etc.); and
- Any other person to whom Council considers the grant of the permit may cause material detriment these might include circumstances such as major projects with potential for broader car parking, traffic and built form implications.

3.2 Early Notification

Councillors will be informed of any major applications at the earliest opportunity through the Councillor Weekly Status Report (refer clause 5.4.1). This notification will be prior to the application being advertised.

Early notification to Councillors (including of pre-application consultations where possible) seeks to allow issues to be clarified early in the process. Councillors being kept informed early also avoids confusion and allows the Councillors to deal with resident concerns in the first instance with some background knowledge.

4. AMENDED PLANS AND PERMITS

There are some key mechanisms available for the amendment of a planning permit including endorsed plans and endorsed documentation. The following sections are the mechanisms under the *Planning and Environment Act 1987*, and include:

- Section 72
- Section 73

- Section 87
- Informal Secondary Consent Provision (governed by the wording of a permit condition).

Officers will consider any amended plans or amended permit request against the relevant sections of the *Planning and Environment Act 1987* and case law principles.

Officer consideration of such requests will be subject to a delegate report reviewed in accordance with the relevant Instrument of Delegation prior to a decision being made on the request. In regards to Secondary Consent Amendment applications, the key principle governing the consideration of such requests is that a planning proposal cannot be transformed through a request for an amended plan.

5. DELEGATION PROTOCOLS

5.1 General

Protocols for the use of delegated authority is available to Officers of Council's Statutory Planning Department under the *Planning and Environment Act 1987* and the *Local Government Act 1989*.

The following protocols have been developed to ensure that Officers utilise authority available through the "Instrument of Delegation" in a manner that is consistent with Council's delegation of such powers.

Delegations to certain classes of Officers apply to all Officers more senior to that position.

Officers will generally have freedom to carry out duties and functions required to administer the Acts and Regulations listed within the Instrument of Delegation. The advertising of applications, issuing of documents and maintaining appropriate records are examples of duties and functions required to be undertaken.

Protocols for the use of delegated authority will be reviewed and presented to Council for consideration every five years unless Council decides otherwise, or as required by legislation.

5.2 Officer Delegation Levels

5.2.1 Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners

The Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners have delegated powers to facilitate the carrying out of administrative tasks and to determine applications for permits in accordance with these protocols.

In considering applications for town planning permits, the Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners may approve applications and other requests in accordance with the "Instrument of Delegation" (e.g. extensions of time, minor amendments, approval of amended plans required by conditions, consent requests, amended permits and plans, etc.) provided that:

- They are generally consistent with the relevant planning scheme provisions;
- They are generally consistent with any relevant Council policy;
- They are consistent with the delegation protocols, including DAP considerations where applicable, as outlined in this document; and
- The Consultation Meetings protocol (Appendix 1) is complied with, where applicable.

The Manager Statutory Planning, Senior Coordinator and Coordinators:

- May approve planning applications which have received less than 10 objections (as per section 5.3.1), provided that the determination has been considered and formally minuted at a Development Assessment Panel (DAP) meeting (see section 6 below).
- Must refuse an application if a Statutory Authority does not give consent (only in accordance with the Authority's grounds).
- May refuse planning applications: where they are not considered major developments (as described in clause 5.3.2 below); or despite a Consultation Meeting having been held; or when the applicant has lodged an appeal against failure to determine the application, regardless of whether a proposal is a major development. (Application refusals must be considered and formally minuted at a DAP meeting.)
- May decide on the Council's position regarding amended plans tabled at VCAT for Major Project applications not deemed to be controversial (as per section 5.3.3) and having a high degree of compliance, if agreement and guidance of a majority of Ward Councillors has been obtained as described in 5.3.2.
- May determine the parameters within which Council's representatives can negotiate at VCAT mediations for Major Project applications not deemed to be controversial (as per section 5.3.3) and having a high degree of compliance, if agreement and guidance of a majority of Ward Councillors has been obtained as described in 5.3.2.

5.2.2 Senior Town Planners/Subdivision Planner

Senior Town Planners and Subdivision Planner may determine planning and subdivision applications where there are no objections and they relate to:

- New single dwellings and/or alterations and extensions to single dwellings;
- Advertising signs;
- Endorsed Condition 1 plans;
- Endorsed Landscape plans;
- Signing Planning Permits where a Notice of Decision to grant a permit has already been issued;

or other similar applications and tasks; and

- Other delegation functions as determined by the Manager Statutory Planning.

5.2.3 Statutory Planning Officers

Statutory Planning Officers may use delegated powers to carry out the following:

- Requesting further information pursuant to Section 54 of the Act;
- Public notification (advertising) of applications;
- Referring applications to Statutory Referral Authorities as specified in the Act or the Planning Scheme;
- Signing Planning Permits where a Notice of Decision to grant a permit has already been issued; and
- Other delegation functions as determined by the Manager Statutory Planning.

5.2.4 Probity Checks

All Planning Permits issued under delegated authority require a recommendation by an Officer to a more senior Officer for a decision. This process includes consideration and a formally minuted determination at Development Assessment Panel (DAP) meetings.

5.3 Other Delegation Parameters

5.3.1 Number of Objections

Planning applications which receive equal to or more than 10 objections will not be considered under delegation and must be referred to Council for determination, (subject to 5.3.2) subject to the following clarifications in calculating the number of objections to determine whether an application is considered under delegation:

- More than one objection received from the same property will be identified as a single objection;
- Exclusion of objections (as identified by the Manager Statutory Planning) that only relate to an as-of-right component or are clearly not based on planning grounds (like precedent, devaluation of property, construction noise etc.); and
- Exclusion of objections received from properties outside a radius of 500 metres from the centre of the application site, if the application is for residential purposes only.

All objections will still receive written notification of Council's decision as required under the *Planning and Environment Act 1987*.

5.3.2 Major Projects

Matters of a substantial nature (major developments, etc.) will not be approved under delegation.

Applications will be categorised as “major” if one or more of the following applies:

- a) Value exceeding \$10M;
- b) Number of dwellings is 20 or more; or
- c) Number of storeys is four or more above ground level.

Note: Applications that fit into the above ‘Major Projects’ definition may be considered and refused under delegation, after consideration by DAP.

Note: Planning Applications and/or determination of Council’s position for VCAT matters may be approved/receive direction under delegation when they have received 10 or more “eligible” objections as per 5.3.1 or fit into the above ‘Major Projects’ definition but are not deemed to be controversial (as per section 5.3.3 below) and have a high degree of compliance. These applications may, however, only be assessed at Council’s Development Assessment Panel (DAP) and then considered under delegation by agreement of a majority of Ward Councillors.

Note: Planning Applications and/or determination of Council’s position for VCAT in relation to applications over the Moonee Valley Racecourse may be assessed by officers, despite fitting into the above ‘Major Projects’ definition, or deemed to be controversial (as per section 5.3.3 below), at an open session of Council’s Development Assessment Panel (DAP) and determined under delegation. This provision will have effect until such time as there is a quorum of non-conflicted Councillors.

5.3.3 Unclear Policy Framework and/or Politically Sensitive Applications

There is no delegation to Officers where:

- Council policies, strategies, or planning scheme provisions do not provide clear parameters under which to operate (as identified by the Manager Statutory Planning); or
- An application is of major public interest, is potentially controversial or politically sensitive (as identified by the Manager Statutory Planning or Chief Executive Officer).

5.3.4 Councillor “Call-in” of Applications

A Ward Councillor may request the consideration of any planning application in their Ward be referred to Council. This request can be made at any time prior to the decision being made. The Councillor making the request must lodge a prescribed “call-in” form (with the Manager Statutory Planning), and include details of the request. All “call-in” forms completed by Councillors will be recorded on a Register of Councillor “Call-ins”.

5.3.5 Car Parking Waivers

Officers may waive car parking in accordance with 52.06 of the Planning Scheme.

5.3.6 Refusal of Planning Permit Applications

Officers may refuse planning permit applications in accordance with the Instrument of Delegations, provided the recommendation is considered and endorsed at the Development Assessment Panel.

5.4 Councillors' Status Report and Registers

5.4.1 Councillors' Weekly Status Report

Councillors shall be provided with a Weekly Status Report which will provide the following information:

- List of official pre-application meetings conducted in the past seven days;
- List of all permit applications received (by Ward) lodged in the past seven days, including indications about previous applications on the property;
- VCAT appeals to be heard in the next seven days;
- VCAT appeal decisions made in the past seven days;
- List of planning decisions made under delegation in the past seven days (including decisions considered at DAP); and
- List of town planning reports proposed to be presented to Council without a prior Councillor briefing.

Ward Councillors can request that any town planning report receive a Councillor briefing prior to being presented to Council. Councillors must make this request within 3 working days of receiving the Weekly Status Report.

Council will be advised of any applications which have been "called-in" by a Ward Councillor for consideration by Council. This reporting will be on an as required basis given the infrequency with which "call-ins" occur.

5.4.2 Registers

- A register is to be kept of all delegated decisions determined at DAP.
- A register is to be kept of all Councillors' "call-in" of applications (as per clause 5.3.4).

6. DEVELOPMENT ASSESSMENT PANEL (DAP)

The DAP is a key procedure in the Officers' delegated decision making process. The DAP process ensures:

- Accountability (all meeting agendas and minutes are formally recorded on Council's corporate filing system and a summary of decisions provided to Councillors on a weekly basis);
- Consistency (all considerations at this panel are in accordance with prescribed meeting procedures and in line with formal delegation protocols); and
- Quality assurance (via an on-going peer review).

DAP meeting protocols and procedures are outlined in Appendix 2.

APPENDIX 1: STATUTORY PLANNING CONSULTATION MEETINGS - PROTOCOLS AND PROCEDURES

i. CONSULTATION PRINCIPLES

In line with section 1 of this document (“General Principles”), the following principles inform Council’s planning consultation framework:

- The community will be advised and **consulted** on land use and development changes that may impact upon it;
- Parties to the application will be provided with an opportunity to discuss and resolve matters in dispute;
- Council will listen to the various parties involved in the application in order to seek a satisfactory solution for both applicant and objectors;
- All consultation forums will be conducted in a respectful and impartial manner; and
- Where a matter cannot be resolved to all parties’ satisfaction, Council, as the Responsible Planning Authority, will seek to find the best 'planning' outcome.

ii. OBJECTIVE

Overall Objectives

In light of the above principles, Consultation Meeting objectives are to:

- Provide information about the subject planning permit application and relevant planning scheme provisions and policy;
- Invite relevant stakeholders to meet and discuss the proposal;
- Provide an opportunity to see if compromises can be achieved between both applicant and objector/submitters, such as amendments to proposals or agreed permit conditions; and
- Educate and foster increased community understanding in regards to planning generally.

Meeting Focus

Prior to holding the Consultation Meeting, Council Officers will undertake an assessment to inform Consultation Meeting preparations. This assessment will identify whether there are:

- **Minor Issues**
 - The objections are **minor** and outstanding issues are clear and resolvable.
 - A meeting between the parties is likely to solve the differences of opinion.

- Regardless of the meeting's ability to problem solve, the information provided at the meeting will assist parties to more clearly understand the application and relevant planning scheme provisions and policy; or
- **Major Issues**
 - The objections are **major**.
 - Whilst a dispute exists it is likely that, with dialogue between parties, some compromises may be reached or the issues clarified for decision making purposes.
 - Regardless of the meeting's ability to problem solve, the information provided at the meeting will assist parties to more clearly understand the application and relevant planning scheme provisions and policy; or
- **Polarised and Entrenched**
 - The relevant stakeholder positions are so **polarised** that a meeting may inflame or entrench people's views.
 - Furthermore, information provided at the meeting is unlikely to assist parties to more clearly understand the application and relevant planning scheme provisions and policy.

A Consultation Meeting agenda template has been prepared (see below).

iii. MEETING ATTENDEES

Consultation Meetings do not have a formal membership. Typically a Consultation Meeting will be attended by:

- The Planning Officer assessing the application (must be present);
- All relevant Ward Councillors to be invited to attend;
- The applicant;
- Any objectors/submitters or key stakeholders; and
- Any other Councillors.

iv. ROLES

Role of Planning Officer

The role of the Planning Officer is to:

- Provide administrative support for the meeting (e.g. meeting invitations etc.).
- Undertake a pre Consultation Meeting assessment and identify whether the areas of concern are minor, major or polarised.

- Prepare the meeting agenda in line with the 'Consultation Meeting' agenda template below and distribute to all participants before the meeting.
- Provide the Ward Councillor who will chair the meeting with a verbal briefing.
- Assist the Councillor as needed in servicing the meeting (i.e. logistics).
- Display the development plans on a screen and provide information on the subject application during the meeting, and be the 'technical resource' for the meeting. (The Officer will not outline the proposal or plans but ensure the applicant does this).
- Provide a brief outline and advice on the relevant planning scheme controls and the statutory planning framework as it relates to the subject planning application prior to the discussion between the parties.
- Clarify planning policies as they relate to planning applications.
- Provide access to "*Planning: a Short Guide*" (*Department of Planning and Community Development, April 2008*) or similar documents, if required.
- Seek to better understand all points of view.
- Provide suggestions on how the matters could be resolved and generally seek to facilitate discussion to further the objective of the meeting in line with planning provisions. That is, ensure that any solutions put forward and agreed to, are 'good planning outcomes'.
- At the end of the meeting provide an outline of the way forward, and clearly identify the agreed meeting outcomes.
- Follow through on any required outcomes from the meeting.
- Prepare notes of the meeting for subject application's corporate planning file.
- Remain impartial and unbiased.

Role of Councillor/s

The role of the Councillor/s is to:

- Chair the meeting proceedings in line with the 'Consultation Meeting' agenda template below.
- Ward Councillors to decide who will chair the meeting.
- Clearly explain meeting purpose, structure and protocol at the outset of the meeting.
- The Chair to explain at the onset what matters can be discussed in the context of the Planning Scheme and *Planning and Environment Act 1987*.
- Act as a facilitator, including facilitation of possible mutually agreed solutions in line with planning provisions.
- Provide each party equal opportunity to be heard and remain impartial and unbiased.
- Seek to better understand all points of view.

Role of Applicant

The role of the applicant is to:

- Outline the proposal and plans.

- Provide technical input as expertise allows.
- Behave in a courteous and respectful manner to all meeting attendees (not interject or interrupt the meeting etc.).
- Participate in meeting discussion.

Role of Objectors/Submitters

The role of objector/submitters is to:

- Provide an outline of concerns and further explain their submission.
- Behave in a courteous and respectful manner to all meeting attendees (not interject or interrupt the meeting etc.).
- Participate in meeting discussion.

v. OPERATIONS

- A Consultation Meeting is not a decision making forum. That is, a Notice of Decision or Refusal shall not be made at Consultation Meetings.
- Consultation Meetings will, in general, be held for applications where there are equal to or more than 10 objections (as per section 5.3.1), or at the request of a Ward Councillor. An exception to this are where the application is clearly unacceptable and is being refused. In this scenario, a Consultation Meeting will not generally be held.
- Consultation Meetings will generally be held on a fortnightly or on an as needed basis.
- The applicant and all objectors will be sent an invite and clear directions to the venue in the mail (via email if details are known) and requested to accept the meeting invite. If no objectors confirm attendance, the Manager Statutory Planning can decide to cancel the proposed Consultation Meeting.
- The duration of Consultation Meetings will be generally limited to 1 hour.
- Only one Consultation Meeting shall occur per application.
- The Planning Officer coordinating the meeting must follow the “Staff Guidelines for Assemblies of Councillors” where applicable.
- Where a consultation Meeting has been cancelled for whatever reason, all potential attendees be notified in advance of its cancellation.
- Where a consultation Meeting has been cancelled or not arranged despite the application receiving 10 or more ‘eligible’ objections, the applicant and objectors be given advice about the procedure to submit a formal question to Councillors or to present their concerns to a public forum.

vi. MEETING AGENDA TEMPLATE

		<h2 style="text-align: center;">AGENDA- CONSULTATION MEETING</h2>	
Planning Application Number & Address:			
Meeting Date:			
Meeting Time:			
Meeting Venue:			
Meeting Purpose:			
<p>-Provide information about the above planning application.</p> <p>-Enable parties to discuss the proposal.</p> <p>-Consider whether areas of concern can be resolved.</p>			
Items			
1.	Welcome and apologies (Chairperson to remind attendees to sign the attendance register and provide an email address for further correspondence)	Chairperson	
2.	Declaration of Assembly of Councillors (Only required if 5 or more Councillors are present at meeting)	Planner (via the Chairperson)	
3.	Outline of meeting (including confirmation of attendees agreement with the procedure and process)	Planner (via the Chairperson)	
4.	Applicant outlines proposal	Applicant	
5.	Objector/s outline concerns (Objectors/submitters further explain their submissions)	Objector/s (via the Chairperson)	
6.	Meeting Summary (including, confirmation that further meetings will not be scheduled/agreed)	Planner	

	changes/permit conditions to application (if relevant) etc.)	
7.	'Process from here' and potential date of Council meeting (including an explanation that Council take the decision at an Ordinary Council meeting and that no further applicant or public input is made at the meeting but that persons could request to be heard at a public forum)	Chairperson
8.	Meeting Close	Chairperson

APPENDIX 2: OFFICER DEVELOPMENT ASSESSMENT PANEL (DAP) - MEETING PROTOCOLS AND PROCEDURES

i. DAP PURPOSE

The purpose of the Development Assessment Panel (DAP) is to ensure that decisions made under delegation:

- Are well documented and have a high level of accountability;
- Are clear, rigorous and consistent;
- Involve a sufficient level of peer review; and
- Contribute towards the on-going professional development of planning staff generally, and junior planning staff in particular, through staff discussion and analysis of planning policy and provisions in relation to proposed planning decisions/recommendations.

ii. DAP MEMBERSHIP

DAP membership includes: the Manager Statutory Planning (Chair); a minimum of senior planners (such as the Senior Coordinator, Coordinator and Principal Planner); the Strategic Planning Manager (or Coordinator, or their nominee from the Strategic Planning Department); and the Manager Technical Services (or their nominee). A quorum of 3 Officers (including the Chair) is required to make a formal decision.

Where applications before DAP relate to the following matters or objections, the Strategic Planning and Technical Services Staff need not be present, but a quorum of three must still be achieved:

- ResCode matters (solely);
- Low risk applications (building works, signage etc.);
- Objections to as-of-right components; or
- Objections with no planning grounds (e.g. devaluation of properties, construction noise, dust etc.)

The DAP is chaired by the Manager Statutory Planning.

The relevant assessing Statutory Planning Officer will attend (ex officio) while their draft report is being considered, but are not a formal DAP member.

iii. DAP PROCEDURAL GUIDELINES

The DAP has delegated authority to determine applications in line with the protocols outlined in section 5 above including: authority to determine applications with less than 10 objections; refusals; extension of time applications; car parking

waivers (in accordance with section 52.06 of the Planning Scheme); and Development Plan applications where the Development Plan Overlay has been the subject of a planning scheme amendment.

The DAP shall convene weekly, but may convene more regularly as required.

Officers preparing reports for DAP must first liaise with their Coordinator. Once the Coordinator has checked and agrees with the recommendation, the Officer may lodge the report for inclusion in the DAP agenda.

All DAP meetings are formally minuted and recorded on Council's corporate filing system. The relevant Officer is then responsible for actioning recommendations from DAP, in accordance with the Instrument of Delegations and under the direction of their Coordinator or Manager Statutory Planning.

The DAP chair (Manager Statutory Planning) has a casting vote if required.

If there is no agreement at DAP, the application should be referred to Council for a decision.

APPENDIX 3: FORM FOR ASSEMBLY OF COUNCILLORS

RECORD OF ASSEMBLY OF COUNCILLORS



Meeting:

**Date and
time:**

Venue:

Present:

Councillors

Andrea Surace

Samantha Byrne

John Sipek

Richard Lawrence

Rebecca Gauci Maurici

Narelle Sharpe

Cam Nation

Jim Cusack

Nicole Marshall

Officers

Bryan Lancaster CEO

Steven Lambert DSC

Kendrea Pope DOP

Natalie Reiter DPD

Gil Richardson ADAPSP

Petrus Barry MSP

Allison Watt MGC

Conflict of interest disclosures: (Include type and nature of interest. See over for guidance)

Matter No.	Councillor/Officer making disclosure	Time left meeting

Matters considered:

- 1.
- 2.
- 3.

- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

11. Items of a general nature raised by Councillors and Officers.

Record completed by:	Name:	Date:
Received by Governance:	Name:	Date:

Legislative requirements and guidance

Local Government Act 1989

Section 3 – definition:

Assembly of Councillors (however titled) means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be—

- (a) the subject of a decision of the Council; or
- (b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee—

but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139, a club, association, peak body, political party or other organisation;

Section 80A and 80B:

Councillors and officers attending an Assembly of Councillors must disclose any Conflict of Interest.

Section 80A(3)

If a Councillor attending an Assembly of Councillors knows that a matter being considered by the Assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a Conflict of Interest under Section 79, the Councillor must disclose either:

- Immediately before the matter in relation to the Conflict of Interest is considered or
- If the Councillor realises that he/she has a Conflict of Interest after consideration of the matter has begun, as soon as the Councillor becomes aware of the Conflict of Interest, leave the assembly whilst the matter is being considered by the Assembly,”

Section 80B

A member of Council staff who has Conflict of Interest (direct or indirect) in a matter in which they have delegated power, duty of function must:

- Not exercise the power or discharge the duty or function
- Disclose the type of Interest and nature of interest in writing to the Chief Executive Officer as soon as he/she becomes aware of the Conflict of Interest. In the instance of the CEO having a Conflict of Interest, disclosure is made to the Mayor in writing as soon as he/she becomes aware of the Conflict of Interest and the Council by no later than the next ordinary meeting of the Council.

Conflicts of Interest:

The Local Government Act describes seven classes of interests. This includes **direct** interests and the six **indirect** interests.

A **direct** interest exists if there is a reasonable likelihood that a person's benefits, obligations, opportunities or circumstances will be directly altered if the matter is decided in a particular way.

A relevant person has an **indirect** interest in a matter if the relevant person has—

- (a) a close association as specified in section 78; or
- (b) an indirect financial interest as specified in section 78A; or
- (c) a conflicting duty as specified in section 78B; or
- (d) received an applicable gift as specified in section 78C; or
- (e) become an interested party as specified in section 78D; or
- (f) a residential amenity that may be altered as specified in section 78E.

For further information or advice contact Governance@mvcc.vic.gov.au

Source and Guidelines: Edna > Forms > Governance



STATUTORY PLANNING PROTOCOLS

ADOPTED MARCH 2011

(AMENDED July 2018, April 2019, March 2020)

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INTRODUCTION

Protocols for the use of Statutory Planning delegated powers have been in operation at Moonee Valley City Council since January 1997. This document updates previous protocol documents and decisions of Council relating to Statutory Planning.

The document is broken up into three main parts.

The first part (sections 1-4) deals with processes and consultation protocols. This encompasses:

- Role of Councillors and Officers
- Consultation Meetings
- Notification
- Amended Plans and Permits.

The second part (sections 5-6) deals with delegation protocols and the Development Assessment Panel (DAP).

The third part (Appendix 1, 2, 3 and 4) relates to meeting protocols for DAP, Consultation Meetings, Assembly of Councillors and Councillor contact with developers.

PROCESSES AND CONSULTATION PROTOCOLS FOR STATUTORY PLANNING

1. GENERAL

Moonee Valley City Council (Council) is committed to:

- Ensuring its planning processes are well-managed; and that
- The community is informed and consulted on land use changes and developments in their area.

1.1 Role of Councillors and Officers

Councillors and Officers work in partnership as different arms in the same organisation. The common goals are:

- Informing the community
- Resolving differences between objectors/submitters and applicants, where appropriate
- Achieving quality outcomes in planning decisions
- Ensuring transparency in the planning process
- Ensuring consistency in decision-making.

1.2 Role of Officers

Officers provide professional and technical advice to applicants, residents and Council on a range of issues. In respect to planning applications, the advice specifically relates to:

- Planning Scheme requirements
- State and Council policies
- Details of the application
- ResCode (where appropriate) and other Victorian Planning Provisions
- Details of the consultation
- Details of objections
- Details of any referrals
- A recommendation based on professional assessment.

The role of Officers is split into two distinct areas:

The first is prior to a Council decision. This area requires Officers to provide applicants with a clear picture of what the planning scheme requirements are and what Council policies exist. It also requires that the application process is explained properly to residents. Officers are obliged to ensure that the application and plans are in the best form to ensure the full concept is easily understood and available for consideration.

Residents often ask, *“Why is the applicant doing this?”* This naturally involves an explanation of the applicant’s rights in applying for a permit.

The other side of this equation is the applicants asking, “*What are the objections and what is their basis?*”

Council is obliged by law to consider all applications. Council cannot refuse to consider an application; even a prohibited use must be formally considered and refused. This allows appeal rights, which is an underlying principle in the Victorian planning system.

The second area is after Council makes a decision. This area involves more of an advocacy role in defence of the Council decision. Preference be given to the use of external parties to defend a decision that differed from the officer’s recommendation. Officers in their capacity will nonetheless rigorously represent and defend the decisions of Council.

1.3 Role of Councillors

The role of Councillors includes two areas, Ward Councillors and Council.

1.3.1 Ward Councillors

The role of the Ward Councillors (outside of Council meetings) has a very important liaison function with residents, including developers and submitters. Liaison with the Ward Councillors is important as they have a good understanding of the local issues and the community, and represent the interest of the local community.

Guidance to Councillors when in contact with developers and submitters is outlined in Appendix 4.

1.3.2 Council

Council’s role in the planning process is to consider all factors relating to a planning permit application including the Officer recommendations and then to make a decision. The broad range of issues considered by Council includes:

- The purpose of the zone and/or overlay;
- Decision guidelines set out in the Planning Scheme;
- Objections lodged;
- The likely impacts on neighbouring land and the neighbourhood; and
- Any relevant State and/or local policies included in the Planning Scheme.

Where possible, Councillors and Officers will seek consensus between objectors/submitters and applicants to avoid unnecessary appeals to VCAT.

2. CONSULTATION MEETINGS

- 2.1 As part of the Council’s meeting cycle, Consultation Meetings (formally known as ‘Deputation meetings’) are also arranged to allow objectors/submitters and applicants an opportunity to put their case to Councillors and Officers in person. Such a process is not a mandatory

requirement under the *Planning and Environment Act 1987* (the Act). However, Consultation Meetings give Councillors an opportunity to get a better feel of objections and a better explanation of the application rather than relying on the written summary presented as part of a Council report.

- 2.2 Consultation Meeting protocols and procedures are outlined in Appendix 1.

3. NOTIFICATION

3.1 Notification

Council undertakes comprehensive advertising for applications in accordance with its obligations under the *Planning and Environment Act 1987*. The aim is to ensure openness and accountability throughout the planning application assessment process, and includes notice given to:

- Owners and occupiers of adjoining land;
- Any persons to whom the planning scheme requires notice to be given (Referral Authorities etc.); and
- Any other person to whom Council considers the grant of the permit may cause material detriment these might include circumstances such as major projects with potential for broader car parking, traffic and built form implications.

3.2 Early Notification

Councillors will be informed of any major applications at the earliest opportunity through the Councillor Weekly Status Report (refer clause 5.4.1). This notification will be prior to the application being advertised.

Early notification to Councillors (including of pre-application consultations where possible) seeks to allow issues to be clarified early in the process. Councillors being kept informed early also avoids confusion and allows the Councillors to deal with resident concerns in the first instance with some background knowledge.

4. AMENDED PLANS AND PERMITS

There are some key mechanisms available for the amendment of a planning permit including endorsed plans and endorsed documentation. The following sections are the mechanisms under the *Planning and Environment Act 1987*, and include:

- Section 72
- Section 73
- Section 87
- Informal Secondary Consent Provision (governed by the wording of a permit condition).

Officers will consider any amended plans or amended permit request against the relevant sections of the *Planning and Environment Act 1987* and case law principles.

Officer consideration of such requests will be subject to a delegate report reviewed in accordance with the relevant Instrument of Delegation prior to a decision being made on the request. In regards to Secondary Consent Amendment applications, the key principle governing the consideration of such requests is that a planning proposal cannot be transformed through a request for an amended plan.

5. DELEGATION PROTOCOLS

5.1 General

Protocols for the use of delegated authority is available to Officers of Council's Statutory Planning Department under the *Planning and Environment Act 1987* and the *Local Government Act 1989*.

The following protocols have been developed to ensure that Officers utilise authority available through the "Instrument of Delegation" in a manner that is consistent with Council's delegation of such powers.

Delegations to certain classes of Officers apply to all Officers more senior to that position.

Officers will generally have freedom to carry out duties and functions required to administer the Acts and Regulations listed within the Instrument of Delegation. The advertising of applications, issuing of documents and maintaining appropriate records are examples of duties and functions required to be undertaken.

Protocols for the use of delegated authority will be reviewed and presented to Council for consideration every five years unless Council decides otherwise, or as required by legislation.

5.2 Officer Delegation Levels

5.2.1 Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners

The Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners have delegated powers to facilitate the carrying out of administrative tasks and to determine applications for permits in accordance with these protocols.

In considering applications for town planning permits, the Manager Statutory Planning, Senior Coordinator, Coordinators and Principal Planners may approve applications and other requests in accordance with the "Instrument of Delegation" (e.g. extensions of time, minor amendments, approval of amended plans required by conditions, consent requests, amended permits and plans, etc.) provided that:

- They are generally consistent with the relevant planning scheme provisions;
- They are generally consistent with any relevant Council policy;

- They are consistent with the delegation protocols, including DAP considerations where applicable, as outlined in this document; and
- The Consultation Meetings protocol (Appendix 1) is complied with, where applicable.

The Manager Statutory Planning, Senior Coordinator and Coordinators:

- May approve planning applications which have received less than 10 objections (as per section 5.3.1), provided that the determination has been considered and formally minuted at a Development Assessment Panel (DAP) meeting (see section 6 below).
- Must refuse an application if a Statutory Authority does not give consent (only in accordance with the Authority's grounds).
- May refuse planning applications: where they are not considered major developments (as described in clause 5.3.2 below); or despite a Consultation Meeting having been held; or when the applicant has lodged an appeal against failure to determine the application, regardless of whether a proposal is a major development. (Application refusals must be considered and formally minuted at a DAP meeting.)
- May decide on the Council's position regarding amended plans tabled at VCAT for Major Project applications not deemed to be controversial (as per section 5.3.3) and having a high degree of compliance, if agreement and guidance of a majority of Ward Councillors has been obtained as described in 5.3.2.
- May determine the parameters within which Council's representatives can negotiate at VCAT mediations for Major Project applications not deemed to be controversial (as per section 5.3.3) and having a high degree of compliance, if agreement and guidance of a majority of Ward Councillors has been obtained as described in 5.3.2.

5.2.2 Senior Town Planners/Subdivision Planner

Senior Town Planners and Subdivision Planner may determine planning and subdivision applications where there are no objections and they relate to:

- New single dwellings and/or alterations and extensions to single dwellings;
- Advertising signs;
- Endorsed Condition 1 plans;
- Endorsed Landscape plans;
- Signing Planning Permits where a Notice of Decision to grant a permit has already been issued;

or other similar applications and tasks; and

- Other delegation functions as determined by the Manager Statutory Planning.

5.2.3 Statutory Planning Officers

Statutory Planning Officers may use delegated powers to carry out the following:

- Requesting further information pursuant to Section 54 of the Act;
- Public notification (advertising) of applications;
- Referring applications to Statutory Referral Authorities as specified in the Act or the Planning Scheme;
- Signing Planning Permits where a Notice of Decision to grant a permit has already been issued; and
- Other delegation functions as determined by the Manager Statutory Planning.

5.2.4 Probity Checks

All Planning Permits issued under delegated authority require a recommendation by an Officer to a more senior Officer for a decision. This process includes consideration and a formally minuted determination at Development Assessment Panel (DAP) meetings.

5.3 Other Delegation Parameters

5.3.1 Number of Objections

Planning applications which receive equal to or more than 10 objections will not be considered under delegation and must be referred to Council for determination, (subject to 5.3.2) subject to the following clarifications in calculating the number of objections to determine whether an application is considered under delegation:

- More than one objection received from the same property will be identified as a single objection;
- Exclusion of objections (as identified by the Manager Statutory Planning) that only relate to an as-of-right component or are clearly not based on planning grounds (like precedent, devaluation of property, construction noise etc.); and
- Exclusion of objections received from properties outside a radius of 500 metres from the centre of the application site, if the application is for residential purposes only.

All objections will still receive written notification of Council's decision as required under the *Planning and Environment Act 1987*.

5.3.2 Major Projects

Matters of a substantial nature (major developments, etc.) will not be approved under delegation.

Applications will be categorised as "major" if one or more of the following applies:

- a) Value exceeding \$10M;

- b) Number of dwellings is 20 or more; or
- c) Number of storeys is four or more above ground level.

Note: Applications that fit into the above 'Major Projects' definition may be considered and refused under delegation, after consideration by DAP.

Note: Planning Applications and/or determination of Council's position for VCAT matters may be approved/receive direction under delegation when they have received 10 or more "eligible" objections as per 5.3.1 or fit into the above 'Major Projects' definition but are not deemed to be controversial (as per section 5.3.3 below) and have a high degree of compliance. These applications may, however, only be assessed at Council's Development Assessment Panel (DAP) and then considered under delegation by agreement of a majority of Ward Councillors.

Note: Planning Applications and/or determination of Council's position for VCAT in relation to applications over the Moonee Valley Racecourse may be assessed by officers, despite fitting into the above 'Major Projects' definition, or deemed to be controversial (as per section 5.3.3 below), at an open session of Council's Development Assessment Panel (DAP) and determined under delegation. This provision will have effect until such time as there is a quorum of non-conflicted Councillors.

5.3.3 Unclear Policy Framework and/or Politically Sensitive Applications

There is no delegation to Officers where:

- Council policies, strategies, or planning scheme provisions do not provide clear parameters under which to operate (as identified by the Manager Statutory Planning); or
- An application is of major public interest, is potentially controversial or politically sensitive (as identified by the Manager Statutory Planning or Chief Executive Officer).

5.3.4 Councillor "Call-in" of Applications

A Councillor may request the consideration of any planning application be referred to Council. This request can be made at any time prior to the decision being made. The Councillor making the request must lodge a prescribed "call-in" form (with the Manager Statutory Planning), and include adequate reasons for the request. The form must be signed by at least three Councillors. All "call-in" forms completed by Councillors will be recorded on a Register of Councillor "Call-ins".

5.3.5 Car Parking Waivers

Officers may waive car parking in accordance with 52.06 of the Planning Scheme.

5.3.6 Refusal of Planning Permit Applications

Officers may refuse planning permit applications in accordance with the Instrument of Delegations, provided the recommendation is considered and endorsed at the Development Assessment Panel.

5.4 Councillors' Status Report and Registers

5.4.1 Councillors' Weekly Status Report

Councillors shall be provided with a Weekly Status Report which will provide the following information:

- List of official pre-application meetings conducted in the past seven days;
- List of all permit applications received (by Ward) lodged in the past seven days, including indications about previous applications on the property;
- VCAT appeals to be heard in the next seven days;
- VCAT appeal decisions made in the past seven days;
- List of planning decisions made under delegation in the past seven days (including decisions considered at DAP); and
- List of town planning reports proposed to be presented to Council without a prior Councillor briefing.

Ward Councillors can request that any town planning report receive a Councillor briefing prior to being presented to Council. Councillors must make this request within 3 working days of receiving the Weekly Status Report.

Council will be advised of any applications which have been "called-in" by a Councillor for consideration by Council. This reporting will be on an as required basis given the infrequency with which "call-ins" occur.

5.4.2 Registers

- A register is to be kept of all delegated decisions determined at DAP.
- A register is to be kept of all Councillors' "call-in" of applications (as per clause 5.3.4).

6. DEVELOPMENT ASSESSMENT PANEL (DAP)

The DAP is a key procedure in the Officers' delegated decision making process. The DAP process ensures:

- Accountability (all meeting agendas and minutes are formally recorded on Council's corporate filing system and a summary of decisions provided to Councillors on a weekly basis);
- Consistency (all considerations at this panel are in accordance with prescribed meeting procedures and in line with formal delegation protocols); and

- Quality assurance (via an on-going peer review).

DAP meeting protocols and procedures are outlined in Appendix 2.

APPENDIX 1: STATUTORY PLANNING CONSULTATION MEETINGS - PROTOCOLS AND PROCEDURES

I. CONSULTATION PRINCIPLES

In line with section 1 of this document (“General Principles”), the following principles inform Council’s planning consultation framework:

- The community will be advised and **consulted** on land use and development changes that may impact upon it;
- Parties to the application will be provided with an opportunity to discuss and resolve matters in dispute;
- Council will listen to the various parties involved in the application in order to seek a satisfactory solution for both applicant and objectors;
- All consultation forums will be conducted in a respectful and impartial manner; and
- Where a matter cannot be resolved to all parties’ satisfaction, Council, as the Responsible Planning Authority, will seek to find the best ‘planning’ outcome.

II. OBJECTIVE

Overall Objectives

In light of the above principles, Consultation Meeting objectives are to:

- Provide information about the subject planning permit application and relevant planning scheme provisions and policy;
- Invite relevant stakeholders to meet and discuss the proposal;
- Provide an opportunity to see if compromises can be achieved between both applicant and objector/submitters, such as amendments to proposals or agreed permit conditions; and
- Educate and foster increased community understanding in regards to planning generally.

Meeting Focus

Prior to holding the Consultation Meeting, Council Officers will undertake an assessment to inform Consultation Meeting preparations. This assessment will identify whether there are:

- **Minor Issues**
 - The objections are **minor** and outstanding issues are clear and resolvable.
 - A meeting between the parties is likely to solve the differences of opinion.
 - Regardless of the meeting’s ability to problem solve, the information provided at the meeting will assist parties to more clearly understand the application and relevant planning scheme provisions and policy; or
- **Major Issues**

- The objections are **major**.
- Whilst a dispute exists it is likely that, with dialogue between parties, some compromises may be reached or the issues clarified for decision making purposes.
- Regardless of the meeting's ability to problem solve, the information provided at the meeting will assist parties to more clearly understand the application and relevant planning scheme provisions and policy; or
- **Polarised and Entrenched**
 - The relevant stakeholder positions are so **polarised** that a meeting may inflame or entrench people's views.
 - Furthermore, information provided at the meeting is unlikely to assist parties to more clearly understand the application and relevant planning scheme provisions and policy.

A Consultation Meeting agenda template has been prepared (see below).

III. MEETING ATTENDEES

Consultation Meetings do not have a formal membership. Typically, a Consultation Meeting will be attended by:

- The Planning Officer assessing the application (must be present);
- All relevant Ward Councillors to be invited to attend;
- The applicant;
- Any objectors/submitters or key stakeholders; and
- Any other Councillors.

IV. ROLES

Role of Planning Officer

The role of the Planning Officer is to:

- Provide administrative support for the meeting (e.g. meeting invitations etc.).
- Undertake a pre-Consultation Meeting assessment and identify whether the areas of concern are minor, major or polarised.
- Prepare the meeting agenda in line with the 'Consultation Meeting' agenda template below and distribute to all participants before the meeting.
- Provide the Ward Councillor who will chair the meeting with a verbal briefing.
- Assist the Councillor as needed in servicing the meeting (i.e. logistics).
- Display the development plans on a screen and provide information on the subject application during the meeting, and be the 'technical resource' for the meeting. (The Officer will not outline the proposal or plans but ensure the applicant does this).

- Provide a brief outline and advice on the relevant planning scheme controls and the statutory planning framework as it relates to the subject planning application prior to the discussion between the parties.
- Clarify planning policies as they relate to planning applications.
- Provide access to “Planning: a Short Guide” (Department of Planning and Community Development, April 2008) or similar documents, if required.
- Seek to better understand all points of view.
- Provide suggestions on how the matters could be resolved and generally seek to facilitate discussion to further the objective of the meeting in line with planning provisions. That is, ensure that any solutions put forward and agreed to, are ‘good planning outcomes’.
- At the end of the meeting provide an outline of the way forward, and clearly identify the agreed meeting outcomes.
- Follow through on any required outcomes from the meeting.
- Prepare notes of the meeting for subject application’s corporate planning file.
- Remain impartial and unbiased.

Role of Councillor/s

The role of the Councillor/s is to:

- Chair the meeting proceedings in line with the ‘Consultation Meeting’ agenda template below.
- Ward Councillors to decide who will chair the meeting.
- Clearly explain meeting purpose, structure and protocol at the outset of the meeting.
- The Chair to explain at the onset what matters can be discussed in the context of the Planning Scheme and Planning and Environment Act 1987.
- Act as a facilitator, including facilitation of possible mutually agreed solutions in line with planning provisions.
- Provide each party equal opportunity to be heard and remain impartial and unbiased.
- Seek to better understand all points of view.

Role of Applicant

The role of the applicant is to:

- Outline the proposal and plans.
- Provide technical input as expertise allows.
- Behave in a courteous and respectful manner to all meeting attendees (not interject or interrupt the meeting etc.).
- Participate in meeting discussion.

Role of Objectors/Submitters

The role of objector/submitters is to:

- Provide an outline of concerns and further explain their submission.
- Behave in a courteous and respectful manner to all meeting attendees (not interject or interrupt the meeting etc.).
- Participate in meeting discussion.

V. OPERATIONS

- A Consultation Meeting is not a decision making forum. That is, a Notice of Decision or Refusal shall not be made at Consultation Meetings.
- Consultation Meetings will, in general, be held for applications where there are equal to or more than 10 objections (as per section 5.3.1), or at the request of a Ward Councillor. An exception to this is where the application is clearly unacceptable and is likely to be refused. In this scenario, a Consultation Meeting will not generally be held. Officers must be clear in their discussions with the applicant that the application is clearly unacceptable.
- Consultation Meetings will generally be held on a fortnightly or on an as needed basis.
- The applicant and all objectors will be sent an invite and clear directions to the venue in the mail (via email if details are known) and requested to accept the meeting invite. If no objectors confirm attendance, the Manager Statutory Planning can decide to cancel the proposed Consultation Meeting.
- The duration of Consultation Meetings will be generally limited to 1 hour.
- Only one Consultation Meeting shall occur per application.
- The Planning Officer coordinating the meeting must follow the “Staff Guidelines for Assemblies of Councillors” where applicable.
- Where a consultation Meeting has been cancelled for whatever reason, all potential attendees must be notified in advance of its cancellation.
- Where a Consultation Meeting has been cancelled or not arranged despite the application receiving 10 or more ‘eligible’ objections, the applicant and objectors be given advice about: requesting an alternative form of consultation, the procedure to submit a formal question to Councillors, or to present their concerns to a public forum.

VI. MEETING AGENDA TEMPLATE

		<h1>AGENDA- CONSULTATION MEETING</h1>	
Planning Application Number & Address:			
Meeting Date:			
Meeting Time:			
Meeting Venue:			
Meeting Purpose:			
<p>-Provide information about the above planning application.</p> <p>-Enable parties to discuss the proposal.</p> <p>-Consider whether areas of concern can be resolved.</p>			
Items			
1.	Welcome and apologies (Chairperson to remind attendees to sign the attendance register and provide an email address for further correspondence)	Chairperson	
2.	Declaration of Assembly of Councillors (Only required if 5 or more Councillors are present at meeting)	Planner (via the Chairperson)	
3.	Outline of meeting (including confirmation of attendee's agreement with the procedure and process)	Planner (via the Chairperson)	
4.	Applicant outlines proposal	Applicant	
5.	Objector/s outline concerns (Objectors/submitters further explain their submissions)	Objector/s (via the Chairperson)	
6.	Meeting Summary (including, confirmation that further meetings will not be scheduled/agreed changes/permit conditions to application (if relevant) etc.)	Planner	
7.	'Process from here' and potential date of Council meeting	Chairperson	

	(including an explanation that Council take the decision at an Ordinary Council meeting and that no further applicant or public input is made at the meeting but that persons could request to be heard at a public forum)	
8.	Meeting Close	Chairperson

APPENDIX 2: DEVELOPMENT ASSESSMENT PANEL (DAP) - MEETING PROTOCOLS AND PROCEDURES

I. DAP PURPOSE

The purpose of the Development Assessment Panel (DAP) is to ensure that decisions made under delegation:

- Are well documented and have a high level of accountability;
- Are clear, rigorous and consistent;
- Involve a sufficient level of peer review; and
- Contribute towards the on-going professional development of planning staff generally, and junior planning staff in particular, through staff discussion and analysis of planning policy and provisions in relation to proposed planning decisions/recommendations.

II. DAP MEMBERSHIP

DAP membership includes: the Manager Statutory Planning (Chair); a minimum of senior planners (such as the Senior Coordinator, Coordinator and Principal Planner); Strategic Planning (Coordinator, or similar senior nominee); and Engineering Services (senior Traffic and Development Engineering nominees). A quorum of 3 Officers (including the Chair) is required to make a formal decision.

Where applications before DAP relate to the following matters or objections, the Strategic Planning and Technical Services Staff need not be present, but a quorum of three must still be achieved:

- ResCode matters (solely);
- Low risk applications (building works, signage etc.);
- Objections to as-of-right components; or
- Objections with no planning grounds (e.g. devaluation of properties, construction noise, dust etc.)

The DAP is chaired by the Manager Statutory Planning.

The relevant assessing Statutory Planning Officer will attend (ex officio) while their draft report is being considered, but are not a formal DAP member.

III. DAP PROCEDURAL GUIDELINES

The DAP has delegated authority to determine applications in line with the protocols outlined in section 5 above including: authority to determine applications with less than 10 objections; refusals; extension of time applications; car parking waivers (in accordance with section 52.06 of the Planning Scheme); consideration whether Existing use rights apply (application for a Certificate of Compliance) and Development Plan applications where the Development Plan Overlay has been the subject of a planning scheme amendment.

The DAP shall convene weekly, but may convene more regularly as required.

Officers preparing reports for DAP must first liaise with their Coordinator. Once the Coordinator has checked and agrees with the recommendation, the Officer may lodge the report for inclusion in the DAP agenda.

All DAP meetings are formally minuted and recorded on Council's corporate filing system. The relevant Officer is then responsible for actioning recommendations from DAP, in accordance with the Instrument of Delegations and under the direction of their Coordinator or Manager Statutory Planning.

The DAP chair (Manager Statutory Planning) has a casting vote if required.

If there is no agreement at DAP, the application should be referred to Council for a decision.

9.

10.

11. Items of a general nature raised by Councillors and Officers.

Record completed by:	Name:	Date:
Received by Governance:	Name:	Date:

Legislative requirements and guidance

Local Government Act 1989

Section 3 – definition:

Assembly of Councillors (however titled) means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be—

- (a) the subject of a decision of the Council; or
- (b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee—

but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139, a club, association, peak body, political party or other organisation;

Section 80A and 80B:

Councillors and officers attending an Assembly of Councillors must disclose any Conflict of Interest.

Section 80A(3)

If a Councillor attending an Assembly of Councillors knows that a matter being considered by the Assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a Conflict of Interest under Section 79, the Councillor must disclose either:

- Immediately before the matter in relation to the Conflict of Interest is considered or
- If the Councillor realises that he/she has a Conflict of Interest after consideration of the matter has begun, as soon as the Councillor becomes aware of the Conflict of Interest, leave the assembly whilst the matter is being considered by the Assembly,”

Section 80B

A member of Council staff who has Conflict of Interest (direct or indirect) in a matter in which they have delegated power, duty of function must:

- Not exercise the power or discharge the duty or function
- Disclose the type of Interest and nature of interest in writing to the Chief Executive Officer as soon as he/she becomes aware of the Conflict of Interest. In the instance of the CEO having a Conflict of Interest, disclosure is made to the Mayor in writing as soon as he/she becomes aware of the Conflict of Interest and the Council by no later than the next ordinary meeting of the Council.

Conflicts of Interest:

The Local Government Act describes seven classes of interests. This includes **direct** interests and the six **indirect** interests.

A **direct** interest exists if there is a reasonable likelihood that a person’s benefits, obligations, opportunities or circumstances will be directly altered if the matter is decided in a particular way.

A relevant person has an **indirect** interest in a matter if the relevant person has—

- (a) a close association as specified in section 78; or

- (b) an indirect financial interest as specified in section 78A; or
- (c) a conflicting duty as specified in section 78B; or
- (d) received an applicable gift as specified in section 78C; or
- (e) become an interested party as specified in section 78D; or
- (f) a residential amenity that may be altered as specified in section 78E.

For further information or advice contact Governance@mvcc.vic.gov.au

Source and Guidelines: Edna > Forms > Governance

APPENDIX 4: GUIDANCE TO COUNCILLORS WHEN IN CONTACT WITH DEVELOPERS AND SUBMITTERS

Document type	Supporting document – xx (i.e. Guideline, fact sheet, form, checklist etc)
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Author	General Manager - Operations.
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Last reviewed	Risk and Corporate Information will update this section once the document has been approved.
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1 Document control disclaimer

Minor amendments to this document may be required from time to time. Where amendments don't materially alter a document, they will be made administratively, without a requirement for formal approval.

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2 Purpose

Moonee Valley City Council is committed to transparency and accountability and seeks to be recognised by the community for its professionalism and integrity.

3 Scope

Councillors regularly have contact with developers, applicants and submitters in the normal course of their work in statutory planning.

4 Objective

This document provides guidance for Councillors when dealing with potential developers or developers who have made a planning application and other submitters to the planning process.

It supports the Councillor conduct principles in the *Local Government Act 1989*, the Councillor Code of Conduct and CEO, Councillor Staff Interaction Protocol.

5 Guidance

It is important that Councillors encourage responsible and appropriate development in Moonee Valley. Councillors should not feel inhibited in communications with developers/planning applicants for a potential development in promoting the benefits of developing in Moonee Valley.

The following points are highlighted to reduce the risk to Councillors in the course of their planning work:

- Councillors should make it clear to potential developers and submitters that they can provide general information on the application process but cannot give definitive advice about the chance of success of any application, share confidential information or discuss unpublished Council agenda items.
- Councillors can refer applicants to Council's website or to the Planning Department for further information.
- If applicable, Councillors may encourage potential planning applicants to seek preliminary advice on their proposal by using the established process for pre-application (lodgement) meetings with Council officers.
- Councillors may explain that any opinions expressed by the Councillor are personal to the Councillor and do not in any way represent the Council's possible attitude to the planning application and; in relation to Council's possible decision on the application, that the Councillor's principal obligation is to serve the public interest by ensuring that his/her decision is:

- Consistent with the planning legislation, Council's planning scheme and policies and;
 - Made after having appropriate regard to any officer's (or Council-appointed consultant's advice) and;
 - Not influenced by any other considerations.
- Councillors are advised to keep a written record summarising the matters discussed at any such meeting or during discussions in the attached form which they can store for their own use.

Councillor contact with developers and submitters

Property Address:	
Attendees:	
Date, time and location of meeting or discussion:	
Disclaimer:	<p>The following disclaimers have been verbalized to the attendees at the commencement of the meeting:</p> <ul style="list-style-type: none"> • The purpose of this meeting is to identify some key issues and explain the application process. • No decision is made at the meeting. • No written advice specific to the development is provided to the applicant or submitters at or following the meeting. • The comments made are based on the current policy as per the date of the meeting. Policy could change in the future which may impact upon discussion items. • The attendee/s are expected to make their own notes based on the meeting discussion. • Applicants/submitters are encouraged to seek independent professional advice. • Any opinions expressed by the Councillor are personal to the Councillor and do not represent the Council's possible attitude to the potential application.
Proposal:	
Matters considered:	
Actions/outcomes:	
Record completed by:	