

## Management report to Council

Agenda item 6.1

### Delegation Policy for Planning Applications

Council

Presenter: Julian Edwards, Director Planning and Building

28 March 2023

#### Purpose and background

1. The purpose of this report is to respond to the Council resolution from 25 May 2021 and provide Council with recommended changes to the planning delegations policy (the Policy).
2. At its meeting on 25 May 2021, Council passed the following resolution:

#### *7. That Council:*

- 7.1. Amends the Delegation Policy for Planning Applications by deleting clause 2.4.1.7 and replacing it with the following: 2.4.1.7 Proposes the demolition or substantial redevelopment of a heritage building graded 'significant' (or equivalent).*
- 7.2 Requests that management provide councillors with an opinion in future on whether any other changes to the Delegation Policy for Planning Applications may be warranted, considering the extent of triggers for automatic referrals and any gaps.*

#### Key issues

3. Informing the second part of the resolution above, a review was undertaken of all planning decisions by the Future Melbourne Committee (Committee) over an 18 month period against the Policy which highlighted opportunities to rationalise and clarify triggers as well as improve transparency.
4. Benchmarking comparisons were undertaken with seven adjoining municipalities which has assisted informing the review, however has not resulted in any recommended changes.
5. An assessment against the Department of Transport and Planning's guidance for delegating powers, duties and functions for planning permit applications was undertaken to inform alignment between current practice and suggested best practice.
6. The detailed analysis above has informed a recommended refresh of the Policy (refer attachment 2) that will not result in a reduction of matters being brought before the Committee for a decision and will provide greater clarity and transparency around current practices.
7. The key changes include removing criteria and redundant information that is not used or where captured under other triggers and processes, improving the language to be clearer, improving transparency of the call-in process, as well as clarifying the process when matters are before the Victorian Civil and Administrative Tribunal (VCAT) as part of a review proceeding.
8. The changes also propose greater transparency of decision making under delegation and provide more rigour to ongoing monitoring and review.

#### Recommendation from management

9. That Council adopts the amended Delegation Policy for Planning Applications (Attachment 2 of the report from management).

#### Attachments:

1. Supporting Attachment (Page 2 of 6)
2. Delegation Policy for Planning Applications (Page 3 of 6)

## Supporting Attachment

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### Legal

1. No direct legal issues arise from the recommendation from management.

### Finance

2. There are no anticipated financial implications as a result of the review and recommended changes to the Policy.

### Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

### Health and Safety

4. In preparing this report, no Occupational Health and Safety issues or opportunities have been identified.

### Stakeholder consultation

5. There has been external stakeholder consultation undertaken as part of the review. Benchmarking was undertaken with adjoining Councils.

### Relation to Council policy

6. The recommended updates to the Policy do not change the intent or number of matters being reported to Council. The changes improve clarity and transparency.

### Environmental sustainability

7. In preparing this report, no Environmental Sustainability issues or opportunities have been identified.



## DELEGATION POLICY FOR PLANNING APPLICATIONS

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### 2. TITLE OF POLICY

This policy shall be known as the **Delegation Policy for Planning Applications**. It is a Local policy.

#### 2.1 Background

Clarity around the decision making process and the ability for Officers and Councillors to refer planning applications to Future Melbourne Committee (FMC) or Council for decision making provides transparency whilst ensuring decision timeliness and quality.

#### 2.2 Purpose

The purpose of this policy is to provide clarity around the procedure to identify those planning application which may be suitable for consideration by FMC and Council. This policy will:

- 2.2.1 Enable Councillors to concentrate on strategic direction and policy development.
- 2.2.2 Ensure efficient, consistent decision making.
- 2.2.3 Provide transparency of process.
- 2.2.4 Ensure Councillors, applicants and objectors are kept regularly informed about the planning process including those applications against which objections are lodged.
- 2.2.5 Enable adequate involvement by all stakeholders in decision making.

#### 2.3 Scope

The policy applies to all planning applications [\(including any site-specific planning scheme amendments\)](#) within the City of Melbourne, [whether or not the City of Melbourne is the responsible authority](#).

## 2.4 Policy

It is the policy of the City of Melbourne that the criteria to select planning applications to be decided by FMC include any application:

2.4.1 That is recommended to be approved and which:

2.4.1.1 Raises an issue of significant public interest, concern or controversy or is likely to do so.

~~2.4.1.2 — Raises an issue of policy or process not covered by existing policy or practice.~~

~~2.4.1.3~~ 2.4.1.2 Has given rise to substantial public objection (denoted either by the qualitative strength of submission/s or there being a quantity of 16 or more non-identical submissions/objections), or appears likely to do so.

~~2.4.1.4 — Could set an undesirable precedent in terms of height, bulk, scale etc that could create an undesirable policy direction.~~

~~2.4.1.5 — Is innovative and raises the possibility of a new or unexpected desirable policy direction that Council wants to encourage.~~

~~2.4.1.6~~ 2.4.1.3 Provides for a development which is anticipated by, or contrary to, a proposed 'seriously entertained major amendment to the Melbourne Planning Scheme which is supported by Council.

~~2.4.1.7~~ 2.4.1.4 Proposes the substantial demolition or significant redevelopment of a heritage building graded 'significant' (or equivalent).

2.4.2 That is a Ministerial application (including any site-specific planning scheme amendments) related to development proposals with gross floor area exceeding 25,000 m<sup>2</sup>.

2.4.3 Which would be or could reasonably appear to be inconsistent with a previous decision or decisions by the Council.

2.4.4 Where the City of Melbourne is the applicant, with the exception of applications by the City of Melbourne for permits for subdivision or the creation, variation or removal of an easement(s) on Council owned land.

2.4.5 ~~Where any two Councillors have indicated in writing, before the deadline set out in weekly notifications referred to in section 2.5, that the proposal has been called in for decision~~ Where any Councillor has indicated a desire to call in the proposal for decision.

Where a delegate deems that an application falls within criteria 2.4.1 – 2.4.4 above, the delegate will refer it to FMC without a requirement for a Councillor to call the application in.

~~For matters before the Victorian Civil and Administrative Tribunal (VCAT), delegates are empowered to negotiate and settle with all parties; or prepare, file and serve amended grounds in any proceeding after forming a position on any formally amended application; or change a position of refusal to one of support on any amended plans or proposal filed with VCAT. However, all such decisions should be reported in accordance with the procedure at 2.5, and in the case of changing a position of refusal to one of support, such a decision may be referred to FMC on the judgment of the delegate, or may be called-in by two Councillors. In circumstances where such a matter is referred to FMC and there is insufficient time before the listed hearing for FMC to consider the matter, it will be deemed that no settlement or change in position can be formed and Council's original position remains.~~

## 2.5 Procedure

~~This process is subject to~~ Delegates will ensure that:

2.5.1 All Councillors are being notified on a weekly basis of the following: ~~of the number of objections to any application where the Council officer is recommending approval and of all recommended refusals, on a weekly basis.~~

2.5.1.1 Matters which are able to be called in, being:

2.5.1.1.1 All recommended refusals which are not proposed to be referred to the FMC by the delegate;

2.5.1.1.2 All recommended approvals on applications that received at least one objection and which are not proposed to be referred to FMC by the delegate;

2.5.1.1.3 VCAT related matters described in 2.4 that are able to be called in;

2.5.1.1.4 All recommended proposals to name a road or place;

2.5.1.2 Matters which are for information only, being:

2.5.1.2.1 Positions on development proposals that fall outside the planning permit framework (e.g. social housing, education and transport development facilitated by the Particular Provisions);

2.5.1.2.2 All refusals and support positions for late night trading on liquor licence referrals;

2.5.1.2.3 VCAT related matters described in 2.4 that are not able to be called in;

2.5.1.2.4 Decisions made by the Minister or by VCAT on matters previously considered by FMC or Council;

2.5.1.2.5 A list of 'applications of interest' (being any application that the delegate considers is likely to fall within criteria 2.4.1 – 2.4.4 or where there have been requests from Councillors to track progress) and an indication of which stage each of these applications is at in the statutory process and how many objections have been received to date.

2.5.2 Delegates will put in place a A-structured monitoring process to: ensure -check that the purpose of this Policy is being met; monitor, -to record the implications of this Policy on the decision timeframe for applications; track; the number of planning related items items- on the FMC Committee agendas; and -record the duration of Committee meetings, the reason for items being referred and called-in to FMC. -referral etc. Delegates will undertake this analysis at least annually and report relevant findings to Council as required.

## **2.6 — ~~Emergency and/or extraordinary circumstances~~**

~~As identified from time to time by resolution of Council, compliance with sections 2.2 to 2.5 of this policy will be suspended where emergency and/or extraordinary circumstances arise (such as a state emergency being declared).~~

~~Where notice of such a proposed resolution has been given but quorum is unable to be achieved to consider the proposal, then suspension will be by agreement of both the Lord Mayor and Chief Executive Officer, with such an agreement required to be notified to all councillors and published on the corporate website forthwith.~~

~~All decisions that would normally have been dealt with by Council or special committee in open session, but which are made under delegation due to an emergency and/or extraordinary circumstances under this section, will be published on the corporate website as soon as practicable.~~

### **2.7.2.6 Governance**

Policy Owner: Director Planning and Building

Docs Number: 7792353

Last Revised Date: 25 May 2024 TBC

Next Review Date: 25 May 2022 TBC

**2.82.7 Document Approvals**

<b>Name</b>	<b>Title</b>	<b>Version</b>	<b>Date</b>	<b>Signature</b>
NA	NA	NA	NA	NA

**2.8 Version Control and Change History**

<b>Version No.</b>	<b>Approval Date</b>	<b>Approved by</b>	<b>Amendment</b>
2	30 April 2013	Council resolution	Section 2.6: replaced 'and' with 'or' at end of criteria 7 and added new paragraph under criteria 8.
3	25 March 2014	Council resolution	Section 2.6: additions to criterion 3, insertion of two new criteria (8 and 9) and various editorial amendments made so policy complies with style guide.
4	28 February 2017	Council resolution	Bullet points changed to numbering under paragraph 2.2. Removal of paragraphs 2.4 (Definitions), 2.5 (Legislative context) and 2.8 (Supporting material). Additions/deletions to criteria in 2.4 and 2.5 (Procedure).
5	29 October 2019	Council resolution	Policy owner changed to Director Planning and Building
6	17 March 2020	Council resolution	Amended delegation policies to respond to emergencies and/or extraordinary circumstances.
7	25 May 2021	Council resolution	Amended clause 2.4.1.7
<a href="#">8</a>	<a href="#">XX</a>	<a href="#">Council Resolution</a>	<a href="#">XX</a>