



Planning Delegations Policy

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1. Purpose

The objective of the Planning Delegations Policy (the Policy) is to achieve effective, efficient and transparent decision making on Planning matters. Delegations are the mechanisms by which Council enables its officers to act on behalf of the Council.

Delegations are important for decision-making for the planning responsibilities, duties, powers and functions of Council. Delegations underpin all actions and responsibilities associated with the *Planning and Environment Act 1987* (the Act) and associated decision-making as conferred by the Instrument of Delegation adopted by Council from time to time. The Instrument of Delegation may or may not contain conditions or limitations in the exercise of powers, duties or functions.

The purpose of this Policy is to establish a framework for delegation of planning responsibilities to facilitate efficiency, effectiveness, transparency and to ensure accountability for Planning decisions.

2. Scope

The scope of this Policy is in relation to all responsibilities under the Act and includes matters pertaining to statutory and strategic planning functions, responsibilities and actions. The responsibilities include planning scheme amendments, development plans and planning permit applications.

This Policy applies to all persons acting under delegated authority. A delegation cannot be exercised by a responsible officer who has a conflict of interest. A delegation is made to a position and not to a person.

This Policy is accompanied by operational procedures associated with decision-making. This Policy is to be referred to when exercising the power conferred by the Instrument of Delegation. The powers discretions, functions or authorities delegated shall be performed by the designated delegates in accordance with the policy and accompanying procedure.

3. Context

This Policy sets out how Council and Council Officers interact in relation to the roles and responsibilities conferred on Council under the Act and the East Gippsland Planning Scheme (the Planning Scheme).

Council's role in the planning process is divided into three categories: local governance, Planning Authority and Responsible Authority. These are clearly defined and separate functions of the Council and are detailed below.

As a democratically elected body, Council has an obligation to represent and meet the needs of the local community. This role is to be fulfilled in accordance with the legislative framework governing the power, duties and functions of Council, including the provisions of the Act. Good local governance dictates the need for clarity in terms of the roles and responsibilities of Council, Councillors and Council Officers in the decision-making process.

As the Planning Authority, Council is given the power to prepare a planning scheme or an amendment to a planning scheme. The Minister is a Planning Authority and may authorise any other Minister or public authority to prepare an amendment to a planning scheme.

As a Responsible Authority, the Council is charged with administering the Planning Scheme pursuant to the provisions of the Act. The Act specifically bestows upon Council all of the powers, functions and duties in relation to assessing and determining applications for planning permit approval and associated matters.

4. Statement

This Policy adopts the approach that all powers, duties and functions in relation to operational planning decisions are delegated to Planning Unit Officers, but exceptions to this are clearly stated. Council retains a number of powers under the Act in relation to the initiation and adoption of Planning Scheme Amendments.

The Policy, and its associated procedure, outlines the framework and protocols for assessing and deciding Planning matters under the Act.

In exercising a delegation, a delegate must comply with all conditions and limitations of a delegation, relevant legislation, resolutions of Council, industrial awards and agreements and Council policies and procedures. The delegate is responsible and accountable for any decisions made under a delegation and is required to be able to justify such decisions or actions.

A Planning Unit Officer must not exercise a delegation where a conflict of interest exists in accordance with the *Local Government Act 2020* and Council's Code of Conduct. All conflicts of interest must be disclosed in accordance with the relevant procedure as specified in the Governance Rules.

This Policy includes criteria about what constitutes a statutory planning matter of significance or broad community interest. These include matters that:

- Relate to Council owned (or Committee of Management) land where construction value exceeds \$5 million.
- Are matters that have attracted a significant number of written objections and submissions.
- Have major economic, employment or infrastructure implications.
- Raise significant issues in relation to implementation of local, regional or state planning policy.
- Involve material conflicts of interest of Planning Unit Officers or Councillors.

To efficiently facilitate the Victorian Civil and Administrative Tribunal (VCAT) review process, the Policy confers power to the relevant position, irrespective of whether the decision was made by Council or a delegate, to:

- make submissions to and submit information in response to Orders of VCAT; and
- negotiate and settle with all parties when attending a compulsory conference; and
- form a position on any amended plans or proposals filed with VCAT; and
- prepare, file and serve amended grounds, having formed a position on any amended plans or proposal filed for a review under sections 77, 79, or 82 of the Act.

The Instrument of Delegation and this Policy are publicly available documents.

Delegates must keep appropriate records of all actions taken under delegation.

5. Exercise of Delegated Authority

In exercising a power, function or duty, the delegate must have regard for all statutory requirements, relevant legislation and any guidelines or policy, which the Council may from time to time adopt. All decisions will be made consistent with the objectives of planning in Victoria as set out in the Act and the Planning Scheme.

Prior to a decision being made under delegation, a Delegate Report must be prepared and approved by a Delegate of equal or higher office and a copy retained on the relevant file. The Delegate Report must be prepared in accordance with the Planning Delegations Procedure.

A delegation cannot be exercised by a person who has a conflict of interest. If any conflict of interest occurs, it must be disclosed and dealt with in accordance with the relevant procedure as specified in the Governance Rules.

5.1 Notification of Planning applications to Councillors

Councillors will be notified weekly in writing of all planning permit applications lodged in the previous week, highlighting applications that are considered by Planning Unit Officers to be of potential significance.

Councillors will also be notified from time to time as required of any planning permit application under assessment that has received 10 or more objections and it is proposed to decide the application under delegation.

Councillors will also be advised of any application where it is proposed to refuse the application, unless the refusal relates to an application where further information has not been provided within a reasonable time frame to allow approval.

Planning Unit Officers will refer any planning permit application with less than 10 objections for Council determination, where Planning Unit Officers consider the application to meet the requirements of Section 6.2.

5.2 Call-up of Planning Permit Applications

This Policy implements the principle that call-ups for Council determination are not common practice. A call up is where three or more Councillors or the Chief Executive Officer request in writing that a delegate not exercise delegation and the matter is to be determined by Council. The call up can be made at any time until a determination is made by a Delegate.

After seven days of the receipt of a notification of a Delegate's Intent to Determine a Planning Permit application, the Delegate will make such determination, unless:

- a Councillor makes a request in writing to the Chief Executive Officer, supported in writing by at least two other Councillors, for the planning permit application to be determined by formal Council resolution, where it is not already required by this Policy; or
- the Chief Executive Officer requests the planning permit application to be determined by Council.

In either case above, the Councillor requesting the call-up or the Chief Executive Officer, as the case may be, shall provide the reason/s for the request.

In making such a request, a Councillor and the Chief Executive Officer must have regard to the principles listed below:

- The planning permit application raises issues of genuine municipality wide significance that would have a substantial impact on the achievement of Local Planning Policy.
- The planning permit application will have a significant impact beyond the immediate locality, including an impact across municipal boundaries.
- The planning permit application raises an issue that is not adequately provided for under existing Local Planning Policy.
- The planning permit application raises significant issues of public interest.
- The planning permit application will result in a use or development which is contrary to a proposed planning scheme amendment which is supported by Council.

Where a call-up occurs, the matter shall be included in a future Council agenda for Council determination.

6. Determination of Planning Permit Applications

In exercising a power, function or duty, the Delegate must have regard for all statutory requirements, relevant legislation and any guidelines or policy, which the Council may from time to time adopt. All decisions will be made consistent with the objectives of planning in Victoria as set out in the Act and the provisions of the Planning Scheme.

6.1 Planning Consultation Meetings

A Planning Consultation Meeting (PCM) will be conducted for all planning permit applications which have been subject to public notice and have received 10 or more written objections.

The PCM shall be arranged and conducted in accordance with the Planning Delegations Procedure.

After a PCM the Delegate Report will be finalised and a notice of intent in accordance with Section 5.1 will be provided to all Councillors, unless the call-up or referral requirements of 5.2 and 6.2 respectively have been invoked.

Where a planning permit application has been the subject of a Planning Consultation Meeting and is called-up for Councillor determination, applicants and third parties will not have the opportunity to request to speak to the item at the Council meeting.

In the first instance, any public questions or comments regarding an application that has been considered at a PCM should be directed to Planning Unit Officers outside of the Council meeting.

If neither the applicant nor any objector responds to the invitation by the close of business the day before the PCM is scheduled, this will be taken as an indication that no interest has been shown in participating. In these circumstances, the PCM will be cancelled, and the Delegate will proceed to finalise the application without convening the meeting.

6.2 Referral of Applications to Council by Delegate

A Delegate shall refer to Council any planning permit application without prior decision by the Delegate when:

- the proposal raises an issue of significant public interest, concern or controversy, or is likely to do so;
- the proposal raises an issue of policy or process not covered by existing policy or practice;
- the proposal has given rise to substantial public objections or appears likely to do so;
- the proposal is for a capital project with construction value of \$5 million or more on Council owned land or under Committee of Management arrangements;
- the Delegate recommends approval of the proposal, but such approval would be or could reasonably appear to be inconsistent with a previous decision by or on behalf of Council;
- a Delegated Planning Unit Officer pursuant to the Instrument of Delegation S6 or any currently serving Councillor has declared a material conflict of interest in the matter;
- implementation of the proposal would require expenditure of Council funds, and such funds have not been specifically provided for in the budget;
- the Delegate or the Chief Executive Officer is not satisfied that the proposal is one that is appropriate for determination under delegation; or
- a request in writing is made by three or more Councillors to call-up the matter for Council decision and the reasons provided in accordance with Section 5.2.

6.3 Council Owned Land and Capital Projects

The following planning permit applications will be determined under delegation unless called up by Councillors:

- All buildings and works applications on Council owned or managed land up to a value of \$5million.
- All applications requesting removal of native vegetation on Council owned land.

Assessment of any planning application for Council owned or controlled land may be subject to external peer review at the discretion of the General Manager or Chief Executive Officer.

6.4 Significant or Broad Community Interest Matters

The Act stipulates that the Responsible Authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

Any social effects of a proposal must be balanced with other significant effects of the proposal having regards for the following:

- The objectives of the Act
- The provisions of the planning scheme
- Relevant policies and decision guidelines in the scheme
- Other considerations in sections 60 and 84B of the Act

7. Authority to Determine an Application with Conditions

Delegated Planning Unit Officers have authority to issue a notice of decision to grant a permit, a permit, or an amended permit with conditions having regard to the decision guidelines of the Planning Scheme and any relevant policy or procedure of Council:

- Where an application is lodged in general compliance with the Planning Scheme (including incorporated documents) and Council's adopted policies and procedures, and no objections are received.
- Where an application substantially complies with any relevant Council policy or procedure and nine or less objections are received, following the issue of a notice of decision.
- Where Council have determined an application and the resolution is for the issue of a permit with conditions.

7.1 Authority to Issue a Notice of Decision to Grant a Permit with Conditions

Delegated Planning Unit Officers shall have authority to issue a Notice of Decision to grant a permit or amended permit with conditions having regard to this Policy and decision guidelines of the Planning Scheme and any relevant policy or procedure of Council where:

- An application is lodged in general compliance with the Planning Scheme (including incorporated documents) and Council's adopted policies and procedures and nine or less objections are received.
- An application has been determined by Council, and the resolution is for a Notice of Decision to grant a permit with conditions.
- 10 or more written objections have been received, and a Planning Consultation Meeting has been conducted, and the call-up or Council referral provision of Section 5.2 or 6.2 has not been enacted.
- Up to 10 objections have been received and the call-up or Council referral provision of Section 5.2 or 6.2 has not been enacted.

7.2 Authority to Issue a Notice of Decision to Refuse to Grant a Permit

Decisions to issue a Notice of Decision to Refuse to Grant a Permit will be exercised under delegation and in accordance with the Planning Delegations Procedure.

A Delegate will issue a Notice of Decision to Refuse to Grant a Permit in the following circumstances. In these cases, a Notice to Refuse to Grant a Permit will be issued by the Delegate in consultation with the Manager Planning and Development.

- Where an applicant has not provided sufficient information for an informed decision to be made.
- A determining referral authority lodges an objection to a planning permit application.
- Where the grant of a planning permit would authorise a breach of a registered restrictive covenant, and such matter is not subject to the application. Before a decision is made, the applicant must be given reasonable opportunity to amend the application.
- Where the application proposes to use Coastal Crown Land without Minister's consent or where the Minister has refused or is deemed to have refused to give consent under the *Marine and Coastal Act 2018*.
- Where a PCM has been conducted, Councillors have been advised of the Planning Unit Officer recommendation to issue a Notice of Decision to Refuse to Grant a Permit and the call-up provision has not been enacted.

7.3 Authority to Determine to End or Amend Section 173 Agreements

All written requests made pursuant to the Act to end or amend a Section 173 Agreement will be determined under delegation, except in circumstances where the matter has been referred for Council resolution in accordance with this Policy.

In determining whether to end or amend an Agreement, the Delegate must consider all matters under section 178B of the Act.

A Delegate may determine to give in principle approval to ending or amending a Section 173 Agreement.

Where a request is made pursuant to the Act to end or amend a Section 173 Agreement, and the agreement of all those bound by any covenant in the agreement pursuant to section 177(2) or section 178 is received, the Delegate may determine to end or amend the Agreement.

Where a request is made pursuant to the Act to end or amend a Section 173 Agreement and objections are received the Delegate may determine to end or amend the Agreement in accordance with the requirements of Section 7.1.

7.4 Authority to Provide Representation and Form a Position in VCAT Matters

Where an applicant has appealed to the VCAT pursuant to section 79 of the Act, and the Delegate in consultation with the Manager Planning and Development forms the opinion that the application could have been determined under delegation in accordance with this Policy, then the Delegate may represent the interests of Council at VCAT and recommend conditions suitable to the proposal, as if a delegated determination was made.

Where the Delegate in consultation with the Manager Planning and Development forms the opinion that the application would have been referred to a Council Meeting for determination, a report shall be prepared for a Council Meeting to enable Council to form a position on the application.

Planning Unit Officers will also exercise delegation in relation to any VCAT matters under sections 77, 78, 79, 81, 82, 82AAA, 82AA, or 82B of the Act, as follows:

- represent Council at a mediation conference and approve a mediated outcome;
- make submissions to and submit information in response to Orders of VCAT;
- negotiate and settle with all parties when attending a compulsory conference;
- form a position on any amended plans or proposal filed with VCAT; and
- prepare, file and serve amended grounds, having formed a position on any amended plans or proposal.

8. Planning Scheme Amendments

The following matters will be reported to Council for formal resolution:

1. Request to seek authorisation and give public notice of a planning scheme amendment.
2. Consideration of written submissions and request for Ministerial Appointment of a Planning Panel.
3. Consideration of Panel Report – adopting or abandoning of an amendment.

The exceptions to a formal Council resolution for planning scheme amendment matters, where delegation may be exercised, are:

- Policy neutral planning scheme amendments.
- Corrections of anomalies and updates processed under sections 19, 20, 21 and 22 (inclusive) of the Act.
- State-wide planning scheme amendments administered and executed by the Minister for Planning.

9. Development Plan Overlay Requests

A Delegate will consider and process all new development plan overlay requests in accordance with the Development Plan Policy provisions and procedures. This will include community consultation and engagement.

A Delegate will bring the matter before Council for the final recommendation to refuse or approve the development plan, with or without conditions.

Council accepts that modifications and amendments may need to be made to approved development plans over time. Such modifications and amendments will be determined under delegation in accordance with the Instrument of Delegation.

10. Other Powers, Functions and Duties Delegated

The Instrument of Delegation sets out other powers, functions and duties delegated from Council to specific Council officers in relation to the operation of the planning process. These powers, functions, and duties include where the Act requires something to be done:

- In relation to any planning scheme or permit, to consent or to refuse consent to any matter which requires consent or approval of Council.
- Where the Scheme, a planning permit, or a Section 173 Agreement requires or provides that a matter can be considered to the satisfaction of the Responsible Authority.
- Power to approve any plan or any amendment to a plan or other document in accordance with a provision of a planning scheme or condition in a permit.
- Power to decide, in relation to any planning scheme or permit, that a specified thing has or has not been done to the satisfaction of Council.
- Power to give written authorisation in accordance with a provision of a planning scheme.

11. Roles and Responsibilities

The following teams or positions have direct and/or supporting responsibilities associated with this Policy:

Position	Roles and Responsibilities
Councillors	To facilitate community awareness of this Policy, to be properly informed to enable appropriate decision making, and to adhere to call-up provisions and conflict of interest obligations.
Chief Executive Officer	To ensure staff and community awareness of and adherence to this Policy.

Position	Roles and Responsibilities
General Manager Place and Community (General Manager Projects and Planning)	To ensure community awareness of this Policy and oversee its implementation.
Manager Planning and Development	To ensure community awareness of and staff adherence to this Policy.
Planning Unit Officers	To implement and adhere to this Policy.

All staff have an obligation to report occurrences of non-compliance with Council policy. Incidents of non-compliance should be reported immediately to the Manager Planning and Development or General Manager responsible for this Policy.

12. Definitions

Term	Meaning
Application	Any application made to Council pursuant to the Planning and Environment Act 1987, including a Planning Permit application, an application to amend a Planning Permit, an application to end or amend a Section 173 Agreement or any other application for consent made pursuant to the Act.
Delegate	A member of Council staff holding, acting in or performing the duties of office or position as described within the Instrument of Delegation.
Determining Referral Authority	An authority as specified in clause 66 of the Planning Scheme as a determining referral authority.
Manager Planning and Development	Council officer responsible for the management of the Planning Unit
Material Conflict of Interest	As defined by Section 128 of the <i>Local Government Act 2020</i>
Planning Permit Application	Any application made to Council pursuant to the Sections 47 or 72 of the <i>Planning and Environment Act 1987</i> .
Permit	A planning permit or other consent issued under the <i>Planning and Environment Act 1987</i> .
Planning Consultation Meeting (PCM)	A meeting conducted by Councillors and attended by Planning Officers, permit applicants, objectors, and other parties who make submissions, with the primary purpose of informing Councillors of the matters at issue in advance of the application being determined either under delegation or at a Council Meeting.
Planning Unit Officer	Member of East Gippsland Shire Council planning team.
Community	People who live in East Gippsland; People and organisations who are ratepayers in East Gippsland; and People and organisations who conduct activities in East Gippsland.
Council	East Gippsland Shire Council.

Term	Meaning
Councillor	A person who has been elected to the office of “Councillor” of East Gippsland Shire Council.
Council Officer	A current member of East Gippsland Shire Council staff with the authority to engage in activities on behalf of Council.
Responsible Officer	The staff member of East Gippsland Shire Council who has responsibility for the general area/subject matter to which a record pertains.
Shire	The geographic area of East Gippsland Shire Council.
Staff	All staff engaged by East Gippsland Shire Council, including all full-time, part-time, and casual employees, labour hire agency staff and contractors.

13. Human Rights

Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). This Policy has been assessed as compliant with the obligations and objectives of the Charter.

14. Gender Equality

This Policy has considered the *Gender Equality Act 2020* in its preparation and has been assessed as not requiring an Equity Impact Assessment (EIA).

15. Risk Reference

This Policy is implemented as a control to mitigate risks in the following categories:

Risk Category	✓	Risk Category	✓
Community	✓	Governance and Reputation	✓
Financial		Environment	
People and Property	✓	Service Delivery and Projects	✓

16. References and Supporting Documents

16.1 Applicable Legislation

- *Local Government Act 1989, Local Government Act 2020*
- *Planning and Environment Act 1987*
- *Aboriginal Heritage Act 2006*
- *Building Act 1993*
- *Environmental Protection Act 1970*
- *Heritage Act 2017*
- *Housing Act 1983*
- *Liquor Control Reform Act 1998*
- *Privacy and Data Protection Act 2014*
- *Marine and Coastal Act 2018*
- *Subdivision Act 1988*
- *Planning and Environment Regulations 2015*
- *Planning and Environment (Fees) Regulations 2016*

16.2 Applicable Policy and Procedure

- Planning Delegations Procedure
- Development Plan Policy

16.3 Supporting Documents:

- S6 Instrument of Delegation from Council to Members of Staff
- East Gippsland Planning Scheme
- Planning Delegations Procedure

17. Review and Revision History

Version Number	Date Approved	Approved By	Review Summary
1	3 April 2018	Council	New Policy
2	26 September 2022	Council	New format. Expanded criteria for consideration of matters other than permit applications. Additional delegations.
3	14 November 2023	Council	Amendments to notice of intent requirements. Other administrative changes.
4	3 June 2026	Chief Executive Officer	Administrative updates including to the template and clarity of roles. Addition of process relating to PCMs.

17.1 Administrative Updates

Minor amendments to this document may be required from time to time. Where amendments do not materially alter the intent of a document, they will be made administratively and approved by the Document Owner.

17.2 Document Control Disclaimer

Printed copies of this document are considered uncontrolled. Please refer to the Corporate Document Register on Council's intranet to access the most current version of this document.