



**Own motion investigation into the policies and
procedures of the planning department
at the City of Greater Geelong**

February 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong

February 2007
Ordered to be printed
Victorian government printer
Session 2006–07
P.P. no. 05



LETTER OF TRANSMITTAL

To

The Honourable the President of Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

I have the honour to present the report on the own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong.



G E Brouwer
OMBUDSMAN



CONTENTS

1	EXECUTIVE SUMMARY	7
2	INVESTIGATION	9
3	THE VICTORIAN PLANNING SYSTEM	11
4	PLANNING PROCESSES AT THE COUNCIL	12
5	OTHER INFLUENCES ON THE PLANNING PROCESS	21
6	TYPES OF DECISIONS AND RIGHTS OF REVIEW	24
7	DECISION-MAKING FORUMS	27
	ATTACHMENT A—CASE STUDIES	33
	ATTACHMENT B	41
	ATTACHMENT C	45
	ATTACHMENT D	46
	ATTACHMENT E	47
	ATTACHMENT F	48
	ATTACHMENT G	49
	ATTACHMENT H	51



1. EXECUTIVE SUMMARY

I conducted an own motion investigation into the processing of planning permit applications at the City of Greater Geelong (the Council) in response to a number of complaints I received about planning matters. My investigation focused on whether planning applications at the Council are being processed in accordance with the relevant legislation and whether there are adequate policies and procedures in place to ensure legal, fair and reasonable processing of planning applications.

My investigation included visits to the planning department at the Council and interviews with staff with planning experience within the organisation. I was approached at different times throughout my investigation by people wanting to contribute information to the study. A number of these witnesses were also interviewed.

My report examines the role and structure of the planning department at the Council and the processing of planning applications in the context of the wider Victorian planning system. It examines each stage of the planning permit process, from the time that an application is lodged through to a determination. It also identifies the pressures that are placed on the planning permit process and the effect that they have on planning outcomes.

In order to test the rigour of the processes in place at the Council and to review the planning department's adherence to the relevant legislation, I examined 10 planning application case studies. I found general compliance with the legislation but identified weaknesses in some areas of the planning process that could be improved or strengthened through policy development and implementation. These shortcomings have been addressed by recommendations throughout the report.

I also examined the different ways in which planning decisions are currently made at the Council including the existing delegation arrangements. I found that there are significant inadequacies with one of the decision-making forums that is currently used to determine planning applications and I consider that considerable reform should be made to that process. The deficiencies identified in relation to the Councillor Hearing Panel (CHP) highlighted the need for a more transparent decision-making process. I consider that the current structure and function of the CHP does not promote procedural fairness.

I have made a number of recommendations including that the Council:

- Review its delegations in relation to planning approvals
- Develop a procedure manual to provide guidance to planners
- Review the CHP with a view to greater transparency and accountability
- Review the Councillors Code of Conduct

In particular, I consider that it is important that the Council have in place a code of conduct that outlines the parameters for direct contact with staff and addresses the issues of good governance, transparency in decision-making and accountability.

I have also drawn the Council's attention to a number of issues which impact on the planning approval process, including the need to:

- Maintain the planning register in accordance with the provisions of the Planning and Environment Regulations (page 15)
- Ensure that delays in the planning assessment process are reduced by reviewing its internal referral processes (page 17)
- Develop and implement guidelines for advertising planning proposals (page 18)
- Introduce measures to create greater transparency in CHP processes (page 31)
- Manage risks associated with conflict of interest by developing an induction program for councillors (page 22).

I consider that identifying and managing conflict of interest is crucial in local government. It is essential that both councillors and employees take into account their private or personal relationships when identifying a conflict of interest.

The Council has welcomed my report and agreed with the recommendations.

2. INVESTIGATION

Under section 14 of the *Ombudsman Act 1973*, I may conduct an investigation on my own motion. On the 17 February 2006 I advised the Minister for Local Government and the CEO of the Council of my intention to conduct an investigation into the administrative actions of the Council with respect to the processing and approval of planning applications.

Between the 28 October 2005 and 30 March 2006 I received 13 complaints in relation to planning decisions made by the Council. The planning decisions brought to my attention ranged from a large scale commercial development in the heart of Geelong through to a decision regarding a residential subdivision in an outlying coastal suburb on the Bellarine Peninsula.

The then Minister for Local Government also received a number of letters of complaint regarding the Council from members of the Geelong community, many of which were copied to my office.

A number of the complaints were made under the *Whistleblowers Protection Act 2001* (the Act) and related to the alleged conduct of councillors. After initial enquiries, one of these matters was referred to another agency for investigation. One of the challenges the Act presents is the inability to report any detail in a report to Parliament that may identify the person about whom a complaint has been made.

All complaints were carefully examined. Some were anonymous and were clearly prepared from publicly available information. Others could not be pursued due to a lack of evidence. In each of these cases, my office made independent enquiries in relation to the information provided but was unable to make a determination in support of the allegations. Several had also been considered by the Victorian Civil and Administrative Tribunal (VCAT) and did not warrant further action. Others have been addressed by the recent investigation conducted by the Inspector of Municipal Administration.

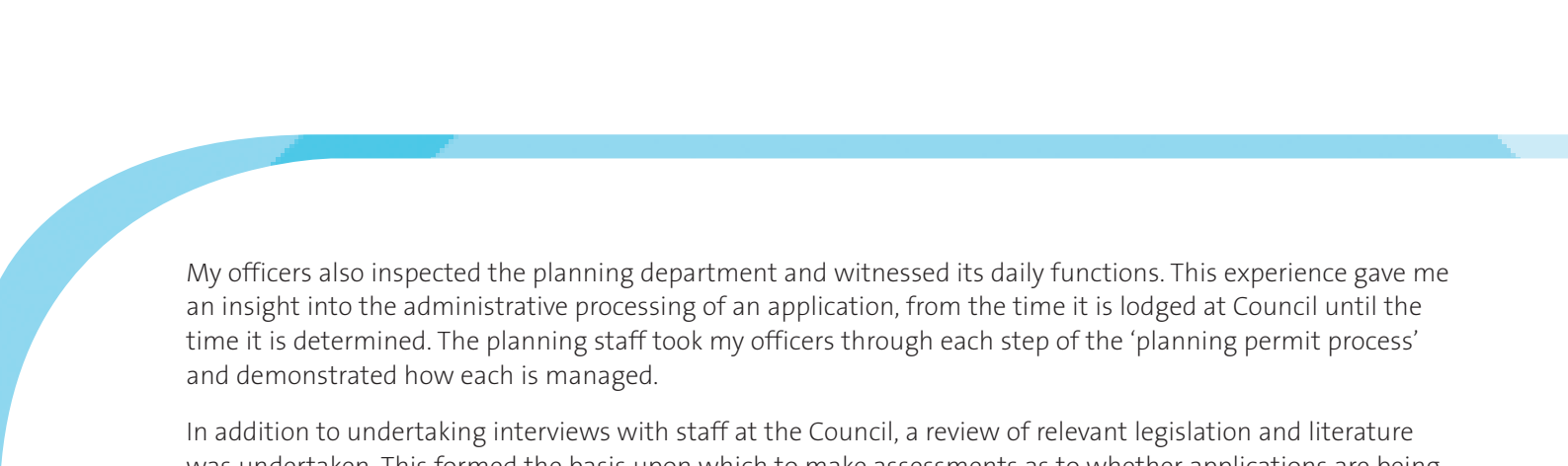
The objective of my investigation was to determine if the Council was carrying out its role and functions in accordance with the *Planning and Environment Act 1987* and if it had policies and procedures in place to manage planning outcomes in a fair and reasonable manner in accordance with good public administration.

The focus of my investigation was:

1. To assess whether the processing of applications at the Council is carried out in accordance with the statutory requirements of the *Planning and Environment Act 1987*, the *Local Government Act 1989* and the Greater Geelong Planning Scheme (GGPS); and
2. To assess whether the Statutory Planning Department at the Council has adequate policies and procedures in place to ensure that planning decisions and the other functions of the planning department are managed in a fair, reasonable and lawful manner.

Investigation methodology

My investigation officers undertook interviews with staff from the planning department with respect to their position and their experience working at the Council. The staff were questioned about their regulatory and legislative responsibilities and were also asked about any additional policies or procedures that were in place to ensure that all planning decisions and outcomes are managed in a fair and reasonable manner. The recent history of the council including the background and the current structure of the planning department is at Attachment B.



My officers also inspected the planning department and witnessed its daily functions. This experience gave me an insight into the administrative processing of an application, from the time it is lodged at Council until the time it is determined. The planning staff took my officers through each step of the 'planning permit process' and demonstrated how each is managed.

In addition to undertaking interviews with staff at the Council, a review of relevant legislation and literature was undertaken. This formed the basis upon which to make assessments as to whether applications are being processed in accordance with the statutory requirements. There were instances throughout my investigation when I was approached by various parties wishing to provide information which they believed would assist with this study. In a number of cases those people were also interviewed.

Ten planning applications were reviewed in detail. This analysis enabled me to assess how proposals are managed by the Council. These files provided examples of how a planning application is processed and how the legislation is applied to each case. These case studies are examined further at Attachment A.

3. THE VICTORIAN PLANNING SYSTEM

All municipalities in Victoria are covered by land-use planning controls. State and local government authorities are responsible for the preparation and administration of these planning controls, in accordance with the Act.

Land-use planning is controlled by planning authorities and responsible authorities. Planning authorities, which may be the State Government or a municipal council, prepare planning schemes with appropriate land-use controls. The local council, which is also referred to as the responsible authority, administers the planning scheme. This involves:

- Considering proposals for use and development of land, and giving notices and issuing permits in accordance with the planning scheme.
- Ensuring that the land is not used or developed in conflict with the scheme's requirements. Those who do not obey the laws about the land and development can be prosecuted.
- Issuing planning certificates.

The Department of Sustainability and Environment (DSE) is responsible for providing both statutory and strategic guidance to planning in Victoria. The statutory guidance provides planning authorities with the framework for the rules and regulations that are incorporated into the planning schemes and the strategic guidance provides strategic direction and policy direction upon which the rules and regulations are based. DSE manages the regulatory framework for land-use planning, environment assessment and subdivisions of land and they provide advice on planning policy and urban design, strategic planning and information on land development and growth forecasting.

DSE is also involved with benchmarking best practice and professional standards within planning in Victoria. In association with the Municipal Association of Victoria (MAV) and the Planning Institute of Australia (PIA), DSE run a professional development program that aims to provide continuous improvement for planners working in both the public and private sectors.

The Victorian Planning Provisions (VPP), or 'new format planning schemes' were introduced in January 1997. Previously the planning system had been driven by rules and regulations based on zones. This overhaul of the planning system introduced a strategically based performance-driven system.

The VPP provide a set of standard planning provisions and a model format for all Victorian planning schemes. The planning authority or the responsible authority is responsible for providing the local planning policies including a municipal strategic statement (MSS) and for selecting zones from the suite of 32 standard zones and overlays that are appropriate for inclusion in their scheme.

The standard zones have been designed to be more flexible than the previous planning schemes. More land uses can now be considered for planning approval and fewer land uses are deemed to be prohibited.

In August 2003 the State Government released the *Better Decisions Faster* discussion paper. The paper outlined 31 complementary initiatives to streamline and improve the efficiency of the planning process. *Better Decisions Faster* was introduced to promote better prepared applications and to speed up decisions on planning permits. It also includes a number of initiatives to improve the processing of planning scheme amendments and to strengthen enforcement procedures.

The *Better Decisions Faster* program sets out a range of options to improve the planning system and reduce problems such as long timeframes, poor quality applications and policy confusion that cause frustration and add to development costs.

4. PLANNING PROCESSES AT THE COUNCIL

The *Planning and Environment Act 1987* provides the legislative framework within which planning applications are considered and processed. The purpose of the Act

*is to provide a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.*¹

The GGPS seeks to further the objectives of planning in Victoria. The scheme regulates or prohibits the use and development of land and includes guidelines relating to the use and development of land.

The purposes of the GGPS are:

- To provide a clear and consistent framework within which decisions about the use and development of land can be made
- To express state, regional, local and community expectations for areas and land uses
- To provide for the implementation of state, regional and local policies affecting land use and development.²

The flow chart at Attachment C illustrates the process followed at the Council from the time that a town-planning application is lodged. This process commences with the lodgement of the application at the Council or even pre-lodgement at a pre-lodgement discussion or meeting. The Council utilises the generic planning application flowchart developed by DSE as its own workflow chart.

In late 2003, the planning department commenced the move towards becoming a ‘paperless’ office. A small file containing the scaled plans is still retained so that planners can use working drawings. However all documents that accompany an application are now scanned and planners work by a workflow system that is incorporated into the *Dataworks* and *Pathways* computer programs.

I was advised that the staff at the Council have embraced the move towards a paperless office and those staff responsible for answering planning telephone enquiries provided a particularly favourable view of the *Dataworks* system as it alleviates the need for a planner to leave their desk to search for a file. It is also useful when staff are out on site with a file or if a file is misplaced.

The Statutory Planning Instrument of Delegation

The Council, by a resolution carried on 23 July 1996, determined to delegate its powers, duties and functions in accordance with the Act³ and the Local Government Act. This delegation allows committees of Council and officers of the Council to make decisions and sign documents on behalf of the Council. Decision-making powers in accordance with the Act generally lie with the planning officers, except in specific circumstances as outlined by the delegation, where the decision-making lies with some formal structure such as a committee of council or a full meeting of Council.

The current delegation arrangements require that reports and letters prepared by the less experienced planners (Band 5) are checked and signed off by the relevant team leader, providing that no objections have been received in respect of the application. The more experienced (Band 6) planners have their reports and correspondence checked and signed by their team leader until such time as there is an agreement between the planner and the team leader that the planner is confident in their knowledge of the legislation so that they can sign off their own permits and letters.

¹ The purpose of the *Planning and Environment Act 1987* – Page 1

² The Geelong Planning Scheme – Page 1

³ Section 188 of the *Planning and Environment Act 1987* provides regulations delegating powers to committees and staff

If one or more objections are lodged in respect of an application a report must be prepared and presented to the Development Hearings Panel (DHP). If objections are received in respect of an application there is a possibility that the matter will be called in to the CHP by a councillor. Any letters prepared by one of the administration team must be signed by a team leader or the planning coordinator. Councillors may often become involved in the decision-making process. This is reflected in the delegated powers in place at the Council, with councillors afforded the opportunity to 'call in' any applications that their constituents have raised concerns about.

A report prepared by the Auditor-General in 1999 into the state's planning system reviewed the delegation arrangements at eight different councils—the Council was not included in the study—and what effect these arrangements had on the statutory planning system in terms of transparency of decision-making.

The report found that of the eight councils involved in the study, the council with the lowest level of delegation required that all applications where there were objections, non-compliance with council policy, or where a refusal was recommended, be referred to the councillors. The very high proportion of applications that were referred to councillors for determination, compounded by the lack of delegation within the planning team, resulted in an increased workload for its statutory planning department in terms of servicing councillors involved in decision-making. In the case of the Council, the current delegation arrangements require that these matters be dealt with by the DHP, unless called in by a councillor. There are currently no parameters to determine which matter is called in by councillors, hence quite straight forward applications with one or two objections or planning applications that are clearly contrary to planning policy may be called in. I consider that council officers such as the planning coordinator or more senior staff have adequate knowledge and experience to be given the discretion to refer matters they deem necessary to be considered and determined by a panel with councillor representation.

In August 1996 the ministerial statement from the Minister for Planning and Local Government stated that councillors have to shift their focus from the minutiae of day-to-day involvement in administration of council policy, program and operation and put a greater emphasis on developing corporate policies and strategies. This statement lends weight to the practice employed by the Council that all strategic planning projects and strategies affecting the long term vision for the region such as planning scheme amendments, are decided at full meetings of council and very few planning permit applications are decided by a full meeting of council.

The decision-making forums currently in place at the Council are examined in more detail in Chapter 7 of this report.

Conclusion

In light of the Auditor-General's report and my own assessment of the exercise of delegations by the Council, I consider that a review of current delegations in relation to planning decisions is warranted.

Recommendation 1

I recommend that the Council review the instrument of delegation in respect of planning decisions in accordance with the Planning and Environment Act. Consideration should be given to increase delegations to the team leaders, coordinator and manager allowing them to make determinations on applications with up to five objections, unless at their discretion they refer it to a panel hearing.

Council's response:

The recommendation is supported.

Lodgement, receipting and registration of an application

Applications for planning permits are received both over the counter and by mail. When applications are received over the counter the planning fee is receipted into the *Pathways* system by the staff at customer service. This system is used across the Council for receipting money. Customer service officers register the application by entering the applicant's details and the subject site address into the *Pathways* system, which then automatically generates a planning permit application number. The application number becomes the reference number for the file.

Once the new application is registered and receipted it is date-stamped and placed in the incoming mail in the reception and administration area of the building. New applications that are placed in this tray are collected by planning staff during the day. When the new application reaches the planning department, the planning administration officers check that the application has been entered into the system correctly and complete the zone and overlay information. The planning administration officers also date stamp every sheet of the plans submitted. This ensures that there is a clear differentiation between the original lodged plans and any amended plans that may be submitted during the assessment process. I understand that this checking step in the process also allows for early detection of errors by applicants when filling in the application form and allows staff to check that those permit applicants that do not own the subject land have completed the required declaration.⁴

Applications that are to be advertised are also copied and kept available for public inspection at the relevant customer service counter of the Council. This allows for review of the proposal by the community, transparency in the application process and ensures compliance with section 51 of the Act.⁵ This provision requires the responsible authority to make a copy of every application available at its office for any person to inspect free of charge during office hours.

I consider that the Council's practice of registering each new application electronically is not only a progressive step in terms of electronic record management but it is also a reliable way of developing a register of planning applications in accordance with the legislative requirements.⁶

I note that section 49 of the Act requires that the responsible authority must keep a register *in the prescribed form* of all applications for planning permits and all decisions and determinations made in respect of those permits. The Planning and Environment Act also requires that the register be made available to the public to inspect free of charge during business hours.

Conclusion

When my staff inspected the Council planning register they found that although certain details of applications are recorded the register is not kept in accordance with the prescribed form in Schedule 2 of the *Planning and Environment Regulations 2005*. The Council planning register did not provide details on amendments made to the application; if and when notice of the application was given; when a determination was made; whether any amendments to the permit had been made; and details of any involvement by VCAT.

I am of the opinion that the planning department should maintain its register in accordance with the form prescribed Schedule 2 of the *Planning and Environment Regulations 2005*, particularly in relation to details of amendments.

⁴ Section 48 of the *Planning and Environment Act 1987* requires a declaration on the application form to be filled out if the permit applicant does not own the subject land

⁵ Section 51 of the *Planning and Environment Act 1987* – Applications to be made available to the public

⁶ Regulation 17 of the *Planning and Environment Regulations 2005*

Recommendation 2

I recommend that the planning department at the Council maintain the planning register in accordance with the prescribed form.

Council's response:

The recommendation is supported.

Allocation to assessing officer and acknowledgment of application

When planning applications are received at the Council they are reviewed by the Planning Coordinator and one of the three team leaders. In allocating the application to a planning officer, allocation notes are provided to assist with the officer's assessment of the application. These notes may include details of the planning history of the subject site.

On examining 10 planning applications as case studies I found that, on average, the applications were acknowledged in writing within six days of the applications being received. I consider that this is a reasonable response time considering that when Supply Chain Diagnostics conducted its review in 2004, this stage in the process took between seven and eight days.

The planner assigned the application makes an assessment as to whether all of the necessary information has been supplied in accordance with the Regulations.⁷ The application must include sufficient supporting information such as plans, reports and photographs to fully describe the proposal. The Council has a checklist for permit applicants outlining what information is required to be submitted when lodging an application for a planning permit. This checklist has been developed to assist permit applicants in lodging all the necessary information at the beginning of the process and is available on the website and at the customer service centres.

Requests for further information

The Council can require the applicant to provide additional information about a proposal, either for itself or on behalf of a referral authority. The request for further information must be in writing setting out the information to be provided. If the request for further information is made within the prescribed time of 28 days of receiving the application,⁸ the request must also specify a date by which the information must be received. If the Council does make a request for further information it must allow the applicant no less than 30 days to provide that information and must specify in writing the date by which the information is to be provided. I understand that the Council generally imposes a 30-day time period, which may be longer for more detailed further information requests such as engineering reports and economic assessments.

If the permit applicant does not supply the requested information within the set timeframe the application will lapse in accordance with section 54 of the Act. The lapse date must not be less than 30 days after the date of the notice requesting the information. An application that has lapsed cannot be recommenced. The applicant can apply to the Council for an extension of time to provide information and these applications are dealt with on their merits. There is also provision to appeal to VCAT in relation to the time frame provided for the provision of further information.⁹

A request for more information within the prescribed period of 28 days means that the 'clock' is stopped. The 'clock' counts the 60 days until the applicant may apply for a review against the failure of the responsible authority to determine the application. The 'clock' starts again from zero when a satisfactory response to the responsible authority's request is received. The prescribed period also stops during the time that an application is being advertised or referred to referral agencies.

⁷ Regulation 15 of the *Planning and Environment Regulations 2005* – Application for permits

⁸ Regulation 20 of the *Planning and Environment Regulations 2005*

⁹ Changes to the *Planning and Environment Act 1987* were enacted on 23 May 2005

Of the 10 planning applications I reviewed during this investigation, four applications did not require further information to be submitted. The remaining six planning applications demonstrated compliance with the 28 day statutory period, with evidence that written requests for further information had been made well within the timeframe. When my officers enquired as to what factors made it difficult to adhere to the 28 day period the Council staff advised that reliance on internal referral responses can cause the 28 day period to 'blow out.'

I understand that planners sometimes have difficulty meeting the legislative timeframes in respect of further information requests. An example of this may be when there is doubt about the drainage potential of a development site and technical advice is sought from the engineering department before preparing a further information letter. If there are delays in obtaining that technical advice then time frames may be exceeded.

Referrals

A significant part of the planning permit process is the referral of planning applications. The key objective of referring an application is to provide authorities whose interest may be affected by the grant of a permit with the opportunity to ensure that a permit is not granted which will adversely affect that authority's responsibilities or assets, for example a water or electricity authority. An application may also need to be referred to another department within the Council such as the Engineering or Environmental Health Department.

Clause 66 of the GGPS sets out the types of applications which must be referred under section 55 of the Act or for which notice must be given under section 52(1)(c) of the Act. When a planning officer determines that referral of an application is required, they notify their administration officer electronically through the *Pathways* system. The planning officer will provide details of whom the application should be referred to in accordance with section 55 of the Planning and Environment Act.¹⁰ The referrals process is illustrated in a flow chart at Attachment D. Under section 55(1) of the Act:

A responsible authority must give a copy of an application to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the applicant satisfies the responsible authority that the referral authority has –

(a) considered the proposal for which the application is made within the past three months; and

(b) stated in writing that it does not object to the granting of the permit for the proposal.

A referral authority has a statutory period of 28 days¹¹ to respond to a referral from the receipt of the application to provide any comment or direction to the responsible authority. This includes the time it takes to transmit the response to the responsible authority.

While Clause 66 of the GGPS is specific about referrals to external authorities it does not specify which departments within the Council should also receive referral of an application, nor does the Act provide a statutory timeframe for internal referral responses. During my investigation it became apparent that there are delays in the planning assessment process when applications are referred to other departments within the Council.

During interviews with Council staff concern was raised about the pressure that the delay in referral responses places on the assessment process. While the planning staff acknowledge that timely referral responses are needed to ensure compliance with the statutory time frames, they also have an appreciation of the workload of their counterparts who are providing the referral advice. This situation has to be balanced against pressure from permit applicants who want a decision on their application.

¹⁰ Section 55 of the *Planning and Environment Act 1987* outlines the Responsible Authority's obligations with regard to planning referrals
¹¹ Regulation 20 of the *Planning and Environment Regulations 2005*

Conclusion

Given that referrals often contribute to delays in the assessment process, I consider that the Council should review its internal referrals process in order that measures to improve timelines might be identified and acted upon.

Recommendation 3

I recommend that the Council review its internal referrals process and identify and implement measures to streamline its practices.

Council's response:

The recommendation is supported. The Council has advised that work has been started on improving the response time for internal referrals from the City Services area. Work is about to commence with the Environment, Community Development and Recreation sections to receive referral information within the 10 day timeframe.

Advertising

The Victorian planning system allows people who may be affected by a planning decision to comment on the proposal prior to the responsible authority making a decision. The planning scheme may exempt any class or classes of application from some or all of the notice requirements that may otherwise apply under section 52(1) of the Act. In these cases, there is no opportunity for other people to make submissions or objections in relation to the application. Exemptions from notice most commonly arise where the permit is unlikely to have a significant planning impact or where the use or development generally complies with a policy or plan that has been previously subject to public scrutiny as part of its approval process. Otherwise it is the responsibility of the Council as part of the planning process to make a decision as to whether the proposal may cause material detriment, that is, a negative impact to any person in accordance with Section 52 of the Act.¹² The advertising process is outlined at Attachment E.

If there is a likelihood of material detriment then the application must be advertised. If a decision is made that a proposal should be advertised the permit applicant must be advised in writing. The process of advertising an application is also referred to as 'giving notice' of an application.

Section 52 (1) of the Act specifies that the responsible authority must give notice of an application in a prescribed form¹³ -

*(a) To the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of allotments or lots adjoining the land to which the application applies unless the responsible authority is satisfied that the grant of the permit would not cause material detriment to any person.*

The Act goes on to state-

(d) To any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them.

Planning staff at the Council explained that landowners and occupiers of properties neighbouring the subject site are notified by mail and a notice may be displayed on the subject site. Additionally, planning applications of a regional or state significance may be advertised in the local paper. This procedure is based on the minimum advertising requirements prescribed by the Act. In accordance with this legislation the Council applies the minimum advertising period of 14 days.

¹² Section 52 of the *Planning and Environment Act 1987* provides the framework for advertising planning applications

¹³ Regulation 18 of the *Planning and Environment Regulations 2005* specifies that a notice of an application for a permit under Section 52(1) of the *Planning and Environment Act* must be in the form of Form 2

There are four ways in which an application can be advertised:

- By placing a notice on the land concerned
- By publishing a notice in newspapers generally circulating in the area in which the land is situated
- By giving the notice personally or sending it by post
- Any other way the responsible authority considers appropriate.¹⁴

I found that planning team meetings are often used as a ‘sounding board’ for advice on the nature and extent of advertising to be given, but there appear to be inconsistencies with which applications are deemed to warrant advertising. Some planners referred to the ‘contentious’ applications which required advertising. However there is no definition of ‘contentious’ in the scheme or the Act and is merely defined by the individual planning officer or planning staff. Planning staff indicated that the Act sets out the minimum extent of advertising required for a planning application. Any decision to advertise beyond the requirements stipulated in the Act is made at the discretion of the planning officer.

While I understand that it is the responsibility of the planner to exercise their professional judgement in determining when and how to advertise, I believe that the absence of guidelines is a deficiency in the process and may leave the Council vulnerable to criticism from the permit applicant, the community and VCAT.

The rates records at the Council are used as evidence that a person is an owner or occupier of land. In relation to public land, the owner or occupier to whom notice should be given will usually be the Minister or public authority that manages or controls the land. Because of the difficulty in identifying some owners or occupiers, the Act also allows for a notice to simply be sent by post to ‘the owner’ or ‘the occupier’ at an address. In situations where there are a number of units or apartments on one title it is important that all addresses are covered and that both owners and occupiers of the premises receive notice.

The applicant is required to return a statutory declaration declaring that they have displayed the sign on the subject site clearly visible to passers by and in good order for 14 days.

Conclusion

My investigation revealed that the Council has no advertising policy or procedure manual available to assist planning staff in deciding when, how and to whom notice should be given. A decision whether to give notice of an application is based on whether it is considered by the officer assessing the application that a proposal is likely to cause detriment. It would appear that there is no consistent approach to advertising. Some land-use and development applications are advertised in the local newspaper whereas others are not.

Recommendation 4

I recommend that the Council develop and implement advertising procedure guidelines.

Council's response:

The recommendation is supported. Work commenced on developing these guidelines in December 2006.

¹⁴ Section 52 (2)(a)(b) Planning and Environment Act 1987 provides guidelines on giving notice

Objections

During the 14-day advertising period, submissions can be lodged in respect of the application by any person who may be affected by the granting of the permit.¹⁵ These submissions are generally in the form of objections to a proposal. Section 57 of the Act sets the parameters within which objections must be received and considered by the responsible authority. Anyone who may be affected by the grant of a permit may submit an objection to the responsible authority. The objection must be in writing, must state the reasons for the objection and how the objector would be affected by the grant of the permit. The responsible authority may reject an objection it considers to have been made primarily to secure or maintain a direct or indirect commercial advantage for the objector. A group of people may make an objection but they should nominate one contact person. If no person is named, the responsible authority will normally send notices only to the first named individual who signed the objection. When the objections are received they are scanned and registered electronically. Objections are then acknowledged and attached to the relevant planning application file.

Mediation/consultation

Mediation/consultation is offered to parties in all instances where an objection is lodged in relation to an application at the Council. This meeting is usually chaired by the planning officer assessing the application, except in circumstances where the assessing officer is a new planner with little or no experience in mediation. In these circumstances a team leader or the planning coordinator would chair the meeting and the less experienced officer would attend.

The Council has a policy that provides staff with advice on when to undertake mediation/consultation meetings. This policy outlines the Council's commitment to mediation/consultation in respect of statutory planning applications and provides guidelines on how these meetings should be conducted.

The mediation/consultation process has a two-fold purpose:

1. To provide an opportunity for all parties to review the documentation that forms part of the application to ensure that everybody is working off the same information, to have the planning officer provide an explanation of the decision-making process that will follow in respect to an application and to further provide advice in relation to relevant planning issues such that people can represent themselves in a fully informed manner in future decision-making forums, appeals etc.
2. The second purpose is to try and see if there is middle ground to resolve the matter or at least isolate issues such that decisions on the matters are as informed as possible and obviously to minimise the angst between parties involved in the statutory planning application process.¹⁶

The policy does not provide guidelines for staff on how to manage difficult meeting participants; however I consider that the skills required for the management of these forums are best provided by training in mediation and conciliation skills. I understand that the planners at the Council are encouraged to attend planning mediation/ conciliation workshops.

Assessment of an application

The responsible authority may decide an application as soon as 14 days have elapsed after the last of any notices of application for permit have been given and all replies from referral authorities have been received or the prescribed period for replies has passed. If notice of the application was not given, and it did not need to be sent to any referral authority, the responsible authority may decide the application without delay.

If the responsible authority does not make a decision within the prescribed time, an applicant may apply for review to VCAT for failure to grant the permit. The prescribed time in accordance with Regulation 31(1)¹⁷ is 60 days. There are rules set out in the regulations about when the prescribed time starts and when it stops.

When making a recommendation about whether to support an application, the council planner must prepare a report describing the proposal, the relevant policies and planning scheme requirements, the assessment process, any objections and referral comments and the response to them. The report should include a recommendation about whether or not a planning permit should be granted. The planner has to judge how well a proposal meets policy objectives in the planning scheme and they may have to strike a balance between competing objectives. The decision-making process is outlined at Attachment F.

The process by which a decision is made on a planning application is determined by whether there are objections to the application. In circumstances where no objections are lodged in respect of an application the assessing officer will prepare a 'delegates report' which will make a recommendation to their team leader as to whether the application should be supported or not. Decisions will also be made in this process if objections are received but then withdrawn after successful mediation between parties.

In circumstances where objections are received and the issues cannot be resolved at mediation, the assessing officer will prepare a report for the DHP. The DHP consists of a panel of senior planners and a councillor who will make a decision on the application in an open forum attended by interested parties.

In some cases, a ward councillor may 'call in' an application to be determined by the CHP (a panel of councillors but not a full meeting of Council). When an application is 'called in' the assessing officer will prepare a report in the same format as that prepared for the DHP which will include a recommendation as to whether the application should be supported or refused. The hearings panel process is discussed in more detail in Chapter 7.

In some instances, where planning applications of a regional significance are lodged with the Council, an officer's report and recommendation is put before a full meeting of Council for a decision. This typically occurs when the advertising of the application has drawn a large number of objections, media attention or if it is a multi-million dollar project.

I consider that the administrative functions of the planning department at the Council are undertaken in accordance with the Act and the Local Government Act and the use of an electronic scanning, registration and storage system is a progressive way of processing applications. However I understand that the planning process is subject to various other pressures which may influence management of applications. These influences are discussed in Chapter 5.

5. OTHER INFLUENCES ON THE PLANNING PROCESS

Code of conduct

Council officers will generally have an expectation that the Council will make decisions based on policy in accordance with its role as the responsible authority. However the elected Council may prefer to act in accordance with their role as community representatives and make decisions which reflect views of their constituents. The conflict between these two roles can cause tension. In discussions with the planning staff I queried what other factors might influence or pressure the planning application process.

Planning staff indicated that planners are required to maintain an unbiased approach when assessing planning applications which can be difficult when they are dealing with both permit applicants and objectors. Planning staff are required to provide advice to members of the public who want to make representations on applications, however at the same time there is a responsibility to provide the permit applicant with advice on how to improve their application.

The role of the planner requires maintaining a professional and unbiased opinion on planning matters. However in addition to pressure from permit applicants and objectors, staff also reported experiencing pressure from councillors. Planning staff explained that although the councillors are advised to direct their planning queries to a team leader or more senior planning staff member, they also contact other planning staff direct either by telephone, e-mail or by coming to the office. Although the councillors have been asked to deal direct with senior staff and management there is no written charter outlining this.

The planning staff at the Council advised that at times difficult phone calls from councillors cause concern. The planning staff understand that a councillor may not agree with, or support their professional decision on a particular application within an appropriate decision forum, however felt that pressure from councillors during the assessment process was often challenging. It would appear that some councillors have specific 'issues' that are in their constituent's interests and so they drive particular agendas.

Another point of concern for the planning staff was councillors who 'shopped around' for different answers from different planners. I was advised that this involves seeking planning advice from one planner, but if the advice is contrary to the answer they seek, the councillor will seek the desired outcome from other planners.

The New South Wales (NSW) Independent Commission against Corruption (ICAC) has identified the potential for conflicts of interests where a councillor pursuing a resident's complaint becomes involved in the operational functions of the council to resolve the complaint.¹⁸

Conclusion

The planning staff advised that they felt supported by senior management in terms of pressure from councillors but consider that this needs to be formalised in some way, such as a charter or code of conduct. The *City of Melbourne Good Governance Charter* agreed to by that Council and the CEO on 11 November 2005, is a good model and acknowledges the importance of a good councillor/administration partnership. The charter was introduced to establish principles, protocols and practices which provide the foundation for effective, ethical and committed government. With regard to councillor contact with staff the charter states:

It is imperative that councillors requiring information in respect of a particular project or issue approach the executive with responsibility for that portfolio and not subordinate staff. Individual councillors will not seek preferential treatment from any Council officer. Councillors will not involve themselves, directly or indirectly, in any personal matter relating to a Council officer.¹⁹

Recommendation 5

I recommend that the Council review the Councillor Code of Conduct and ensure that it outlines the parameters for direct contact with staff and addresses the issues of good governance, transparency in decision-making and accountability.

Council's response:

The recommendation is supported.

Conclusion

Councillors new to local government have much to learn about disciplines in which they may have had little involvement previously. In their official capacity they are responsible for making merit decisions on applications, taking into account the relevant legislation and prescribed guidelines. The MAV has recognised this responsibility and has developed workshops and seminars that are designed to assist both experienced and newly elected councillors to improve their capacity in specific performance areas, and to develop necessary skills and knowledge.²⁰ Such courses are a useful means whereby new councillors can quickly learn 'the ropes.'

Recommendation 6

I recommend that the Council develop and implement an induction program for new and returning councillors that outline their roles and responsibilities as councillors and includes an explanation of the different legislation on which the Council staff base their recommendations to Council.

Council's response:

The recommendation is supported. The Council has advised that this did occur after the Council election of 2004, but can continually be improved. The Council intends to review its induction program with feedback from incoming councillors and be provided in conjunction with the programs being offered by the MAV and VLGA.

Recommendation 7

I recommend that the Council actively encourage and promote the learning and development programs for councillors administered by the Municipal Association of Victoria, particularly those workshops and seminars devoted to planning.

Council's response:

The recommendation is supported.

Conflicts of interest

It is likely that, at some point, a local government councillor or employee will experience a situation involving a material personal interest in a council transaction. Nearly one-third of the allegations received by the Queensland Crime and Misconduct Commission against councillors or council employees in 2002–03 were allegations of corruption and favouritism, including failure to disclose material personal interests.²¹

The *Local Government Act 1989* is the main legislative instrument for Victoria's 79 councils. It defines the purposes and functions of local government as well as providing the legislative framework for the establishment and administration of councils. Under the *Local Government Act 1989* there were difficulties associated with prosecuting councillors for failing to declare direct or indirect pecuniary interest. On 9 December 2003 the *Local Government (Democratic Reform) Act 2003* was introduced amending many sections of the Local Government Act.

²⁰ Councillor Fundamentals – The MAV learning & development program for new councillors

²¹ Crime & Misconduct Commission Queensland – Managing material personal interests

One of the main reforms was in regard to conflicts of interest. Under the reforms councillors are now required to disclose any interest they have in a matter for decision in a council meeting. Where their interest is financial or where the councillor considers that their interest may be in conflict with their public duty, they must declare a 'conflict of interest' and leave the meeting while the vote is being taken. The MAV has guidelines for disclosing interests and conflicts of interest to assist councillors and members of special committees in understanding when they have an 'interest' under section 77A of the Local Government Act or a conflict of interest.²²

While one of the purposes of the Local Government (Democratic Reform) Act was to clarify these issues surrounding conflict of interest, it is a complex piece of legislation especially for those members of the public who have no legal training.

The differing provisions of sections 77A and 77B as to pecuniary and non-pecuniary conflicts add to the complexity. Under section 79 a councillor is required to declare any direct or indirect pecuniary interest in any contract with the council. On the other hand, in the case of any interest which is not a direct or indirect pecuniary interest, any such declaration is subject to the opinion of the councillor as to whether or not that interest may conflict with the proper performance of his or her public duties.

While the onus is on councillors to declare any conflict or potential conflict where the councillor is of the opinion that he or she may have a conflict, the Act is silent as to the meaning of the words 'of the opinion'. It cannot be said that these words refer merely to the subjective opinion of the councillor. Although section 77B does not use the word 'reasonable' to qualify the word 'opinion', any councillor would be well advised that any such opinion that is formed should be formed on a reasonable basis. In coming to such a decision a councillor should consider the perception of members of the public as to whether or not there is or there may be a conflict. Councillors should also be mindful of the fact that any suggestion that there may be a reasonable expectation that a conflict of interest may arise requires more than a mere possibility and there should be some objective grounds for believing that a conflict is likely to happen.

In dealing with any question of potential conflict it is prudent for councillors to err on the side of caution and use a broad rather than a narrow approach to the problem. There is a clear need for the establishment of appropriate guidelines as to the provisions of the Act as well as the provision of training for councillors as to their responsibilities in not only conflict situations but also potential conflict situations.

I consider that identifying and managing conflict of interest is crucial in local government. It is essential that both councillors and employees take into account their private or personal relationships when identifying a conflict of interest.

I understand staff at many councils, including the Council, have regular planning permit applicants who are developers or land surveyors. As ICAC found:

*Over familiarity between these two groups can lead to perceptions of conflicts of interest and regulatory capture.*²³

The complaints I received prior to the commencement of this investigation identified one incident alleging impropriety on the part of planning officers at the Council. This is discussed further at Case study 10. However several related to influence being exerted by various stakeholders involved with the process of deciding on an application. Case studies 5 and 7 relate.

Council staff must exercise caution in the conduct of council business given that they are subject to constant public scrutiny. In Case study 10 I discuss the community's reaction to staff travelling to Sydney as part of the assessment of a large and controversial planning application. Although all air travel was funded by the Council this trip gave some members of the community the perception that council staff were being 'bought' by the developer and that the final determination on this application would be unduly influenced by free air travel, wining and dining.

²² MAV – Guidelines on disclosing interests and conflicts of interest under sections 77A and 77B of the Local Government Act 1989

²³ Independent Commission Against Corruption – Corruption risks in NSW development approval processes – December 2005 (Page 23)

6. TYPES OF DECISIONS AND RIGHTS OF REVIEW

Issuing a permit

If notice of an application was not required under section 52(1) or 57B of the Planning and Environment Act,²⁴ or notice is given and no objections are received, the Council can issue a permit immediately. A copy of the permit should also be sent to any referral authorities that made comment on the application. A permit must be set out as in Form 4 of the regulations.²⁵

Notice of decision to grant a permit

If objections have been received the Council must give a notice of decision to grant a permit (NOD) to the applicant, in addition to any referral authority and each objector who made a submission in respect of the application. The NOD sets out conditions the responsible authority intends to apply to the permit. The NOD must be set out in accordance with Form 5 of the regulations. Once the NOD has been issued, the responsible authority cannot issue the permit until the end of the 21 day period in which an objector may lodge an application for review, or if an application for review is made, until VCAT directs that a permit should be issued.

A copy of the application for review must be given to the responsible authority. In the case of a review against an NOD, an application for review must be lodged within 21 days from when the notice of decision was given.²⁶ It is important for the responsible authority to take care in calculating the time after which a permit can be issued. Under section 64 of the Planning and Environment Act, the time begins from when the responsible authority issued the NOD which, if the notice was sent by post, is the time the notice would have been received, not the date it was sent.

Planning departments in some municipalities have an administrative system in place for sending a fax to VCAT enquiring as to whether any applications for review²⁷ have been lodged and VCAT returns a confirmation fax. My staff established that a similar administrative system is in place at the planning department at the Council to ensure that an application for review is not overlooked prior to the issue of a planning permit. A senior planning staff member advised that within 21 days of issuing the NOD a standard form is faxed to VCAT seeking written confirmation as to whether any applications for review have been lodged. I was informed that there have not been any instances where a planning permit has been issued prior to an application for review being received.

Notice of refusal

A notice of refusal must be set out as in Form 7 of the regulations. The notice must state the grounds on which the application was refused and indicate whether the grounds were those of the responsible authority or a referral authority. It is important that the notice of refusal be quite specific and therefore broad generalisations about loss of amenity should be avoided or at least made reasonably specific as to how 'loss of amenity' is expected to arise. The grounds of refusal may be tested at a review hearing at VCAT. A notice of refusal can be issued immediately the decision is made. A copy must be sent to the applicant, referral authority and all objectors. The responsible authority must refuse to grant a permit if a referral authority objects to the permit. If a refusal is issued because the use or development proposed is prohibited by the scheme, the notice should make this clear.

I am satisfied that the planning department at the Council issues its decisions on forms that are in accordance with the regulations.

²⁴ Section 52(1) sets out the requirements for giving notice of a planning permit application. Section 57B sets out the requirements for giving notice of an amended planning permit application

²⁵ *Planning and Environment Regulations 2005*

²⁶ Regulation 34 *Planning and Environment Regulations 2005* - applications for review under section 82

²⁷ Application for review under section 82 of the *Planning and Environment Act 1987* – Appeals where objectors

The role of VCAT

The Planning and Environment List is part of VCAT, an independent tribunal, which hears and decides applications by permit applicants, objectors and others in an informal and expeditious manner and upon their merits. It permits a broad range of people whose interests are affected by a decision to participate in a hearing.

The Planning and Environment List hears and determines:

- Applications to review decisions made by municipal councils and other authorities under a number of Acts of Parliament
- Applications for enforcement orders, applications to cancel or amend permits and applications for declarations relating to the use and/or development of land under the *Planning and Environment Act 1987*.

Applications can be made to VCAT for the review of different planning decisions made by the Council. The right to an independent review of specified decisions is set out in the Planning and Environment Act.²⁸ The Planning and Environment Act provides opportunities for VCAT to independently review decisions made by the responsible authority administering the planning scheme. VCAT makes its own assessment of the issues involved with the application and assesses the application on its planning merits.

The process of reviewing a decision made by the Council commences when the application for review is made to the Principal Registrar at VCAT. The registrar may arrange mediation, a directions hearing or a compulsory conference in an attempt to settle the matter or clarify an aspect of the dispute. Most cases proceed to a hearing before the planning list, who is a member appointed by VCAT to decide the application. Hearings give parties the opportunity to call or give evidence, ask questions of witnesses and make submissions. At the end of the hearing, the VCAT member either gives a decision on-the-spot, or writes a decision after the hearing and delivers the decision as soon as possible. Decisions of VCAT can be appealed to the Supreme Court but only on questions of law.

The following types of applications for review are dealt with by VCAT.

Appeals against conditions on a permit

An applicant for a planning permit may apply to VCAT for a review of the requirements or conditions imposed on a planning permit by the responsible authority. This type of application for review is made under section 78 of the Planning and Environment Act.

Appeals where objectors

Under section 82 of the Planning and Environment Act an objector may apply to VCAT for a review of the responsible authority's decision to grant a permit.

Appeals against refusal

Under section 77 of the Planning and Environment Act an applicant for a permit may apply to VCAT for a review of the responsible authority's decision to refuse to grant a permit.

Appeals against failure to grant a permit

An applicant for a permit may apply to VCAT for review of the failure of the responsible authority to grant a permit within the 60 day time frame prescribed under regulation 31 of the regulations and in accordance with section 79 of the Act.²⁹

Applications are not always determined within the 60 days as set out in the regulations. I note that at a council meeting on 25 January 2005 a constituent raised a question about non-compliance with the 60 day timeframe during question time. The following explanation was provided in writing:

*In relation to the 60 days rule under the Planning and Environment Act the City is experiencing a number of appeals due to this constraint within the Act. The Planning and Environment Act was originally adopted in 1987, and it is considered that given the complexity of the planning process which has become commonplace since this time that it is not always appropriate for responsible authorities to be restricted to a maximum period of 60 days in order to deal with an application. To this end the City has written to the Municipal Association Victoria and requested that they liaise with other local government authorities to gauge support for an amendment to the legislation to give responsible authorities flexibility for extended timeframes where applications are of a complex or detailed nature.*³⁰

The correspondence provided by the Council in relation to time delays in issuing permits identified that the 60 day timeframe for making a determination is often unrealistic given the complex nature of some planning applications. The Council has taken a pro-active approach to addressing this issue by pursuing possible legislative changes. The MAV advised that this concern is not unique to the planning department at the Council and they are aware that many councils favour aligning the complexity of planning applications with a more realistic timeframe. This and other shortcomings of the Victorian planning system have been examined as part of the *Better Decisions Faster* document.

I consider that the 60 day timeframe for making a determination on planning permit applications is a state-wide issue which has been brought to the attention of the Minister for Planning and is being addressed through an appropriate planning reform process.

²⁹ Under section 79 of the Planning and Environment Act an applicant for a permit may apply to the Tribunal for review of the failure of the responsible authority to grant the permit within the prescribed time.

³⁰ Extract of a letter from Council to a resident who raised questions at the Council meeting

7. DECISION-MAKING FORUMS

There are three decision-making forums in operation at the Council. All decisions that are not made under delegation are made by the DHP, CHP or a full meeting of Council.

The Council has conducted two reviews of its planning processes, in 2004 and 2006. See Attachment G.

The Development Hearings Panel

When a planning officer recommends that an application be refused or when objections to a planning application are received and mediation fails to achieve a negotiated outcome, the application is put before the DHP for determination. The permit applicant and objectors are invited to attend the DHP which is usually held on the first and third Tuesday of the month.

The DHP is comprised of council officers including the Statutory Planning Coordinator and the Strategic Planning Coordinator and the panel is chaired by the Manager City Development. In the absence of the Manager City Development, the Statutory Planning Coordinator chairs the meeting. Prior to the restructure of the subdivisions area the Subdivisions Coordinator also sat on this panel. Senior staff members such as team leaders may be required to sit on the panel when coordinators are unable to attend. I understand that councillors are invited to sit on the DHP and there is a rotating roster that schedules councillor attendance, but their presence is not necessary to form a quorum. I was advised that councillors rarely take the opportunity to sit on the DHP but they do sometimes attend and speak from the gallery as an interested party.

The DHP meetings are open to the public and decisions are made in a public forum. The DHP's delegation is not limited to the value of applications or the number of objections that have been received.

Prior to the commencement of proceedings, panel members are required to declare any interests that they have in respect of any applications that are to be heard in accordance with Part 4.7(5) of Local Law No. 12 – Council Meeting Procedures. My officers were advised that occasionally they may know an individual personally who is likely to be affected by a particular proposal. Planning staff at the Council demonstrated a general awareness of 'conflict of interest' policies and the procedures in place to ensure that these conflicts do not occur at the DHP.

Planning staff explained that at the commencement of the meeting of the DHP normal committee proceedings are followed in terms of apologies, an introduction of the panel and declarations of interest. Staff reported that occasionally a panel member may live close to a proposed development or may know the permit applicant in a personal capacity, in which case a conflict of interest is declared.

I understand that there may be up to 16 items on the agenda for a DHP and they are generally heard in order of most contentious through to the least complicated. This generally correlates with the applications with the greatest number of objections through to the applications with the least number of objections. Prior to the panel hearing the members of the panel will receive a briefing on the application from the assessing officer and they may conduct an inspection of some of the subject sites listed for hearing. The assessing officer's report and recommendation is available from each of the service centres on the morning of the meeting for applicants and objectors to peruse.

The DHP hearing follows a standard procedure for each application—the assessing officer presents the report, the permit applicant makes a submission to the panel and then objectors make their submission. The Council Local Law No.12 – Council Meeting Procedures allows submitters three minutes to present their submission, however my staff were advised that this time limit is not enforced. Once each party has presented their case the matter is open for debate. The assessing officer presenting the proposal and recommendation is often questioned or 'cross examined' by the panel in front of the gallery.

A decision on an application needs to be moved and seconded. The mover and the seconder generally provide reasons for their decision, giving consideration to both the applicant's and the objector's submissions. All decisions made by the DHP are debated and concluded in front of the gallery. There is often debate over interpretation of legislation and the merits of the proposal. At the conclusion of the hearing appeal rights are explained to the audience so that they can make an informed decision about how to proceed if they are dissatisfied with a decision.

Reports from council staff suggest that the community is reasonably satisfied with the DHP process and the fact that all of the debate and decision-making is done in front of the public makes the process transparent.

Conclusion

I consider the DHP is a fair approach to determining planning applications. The debating and decision-making of the panel is done before the public gallery which promotes a transparent decision-making process. I understand that parties can be notified prior to the meeting where their matter is listed on the agenda, but not at what time it may be heard. This can be frustrating for parties attending these meetings as some matters can take hours to resolve. The duration of meetings is an issue that may be addressed by reviewing the delegation as recommended in Chapter 4. An increased delegation to planning staff would reduce the number of applications that would be heard by the DHP. I understand that where there are objections to an application the Council seek to involve the community in the decision-making process and invite them to attend the panel hearing.

On the available evidence I consider that the knowledge, experience and discretion of senior staff qualify them to make informed decisions or refer the matter to a panel for decision. My only concern in relation to the panel is that there is no reporting mechanism back to the full meeting of Council. I consider that there should be a mechanism by which the full meeting of Council is kept informed of decisions made by the DHP.

Recommendation 8

I recommend that a formal reporting mechanism be established for providing the full meeting of Council with an update of decisions made by the DHP.

Council's response:

The recommendation is supported. The information is currently provided to councillors via a weekly Councillor Bulletin, however providing this information to a full meeting of Council will allow it to be more readily available to the community.

The Councillor Hearing Panel

The Chair of CHP is the councillor who holds the portfolio for Infrastructure and Planning and the panel is constituted by two other councillors. A minimum of three councillors is required to form a quorum. There is no roster for the CHP with councillors attending at their discretion. The CHP meetings are scheduled on an 'as required' basis which is based on councillors 'calling in' applications. There is no guidance provided in the terms of reference (TOR) as to what can or should be called in. Although the CHP was initially established to consider applications of 'regional significance,' this phrase is not defined in the TOR and it would appear that many of the applications called in to the CHP involve small scale local matters.

When a councillor has direct involvement with a particular issue that is subject to a planning application they may call in the application. The TOR states that councillors are to advise the Chair of the CHP of the call in. My investigation found that there is a concern among staff that some applications get called in to the CHP that should not. Staff advised that councillors may react to community pressure and call in applications that could be dealt with by the DHP. Some of the planning staff expressed concern that many of the applications that were called in involved small scale local matters, rather than matters that might be described as having regional significance.

Either the Manager of City Development or the Coordinator Statutory Planning is required to attend the CHP in addition to the officers assessing those applications going before the CHP. The role of these officers is not to sit on the CHP but to be in attendance to provide planning expertise and advice to the councillors. The CHP follows a similar format to that of the DHP in that the planning officer assessing the application will present first, then the applicant and then the objectors.

However, once the planning officer, applicant and objectors have presented their cases, the councillors often retire beyond the hearing room, away from the public, taking one of the planning staff with them to provide advice if they have questions in the course of their decision-making. Although the TOR state that decisions shall be made in the public forum, often the debating and decision-making is done in camera with the councillors returning to the public gallery to announce their decision. 'In camera' in local government is usually understood to mean in closed session of council or committee. That is, closed to the public—for legal or commercial-in-confidence reasons, or because a personnel or privacy matter is being considered.

In order for the CHP to properly discuss the application in a closed session the CHP must first resolve that the meeting be closed to members of the public for one or more of the reasons specified in section 89(2) of the *Local Government Act 1989* and the reason must be recorded in the minutes of the meeting.

It also appears that the members of the CHP adjourn so they can privately discuss issues relating to an application. I understand that the only meetings at which decisions can be made are council and special committee meetings and these meetings must comply with the requirements of the *Local Government Act 1989*. If the adjournment provides the means by which the members of the CHP agree to a decision and the subsequent resolution of the panel is simply a rubber stamping of the earlier decision then it is possible that the decisions made could be challenged on the basis of having failed to comply with the fundamental requirements of the *Local Government Act*.

The MAV considers that making decisions while adjourned is not legal:

Another way of putting this is that the decision reached at the 'adjournment meeting' in failing to comply with the procedural requirements relevant to meetings, has no standing and that the subsequent resolution of the committee is fundamentally flawed in that it relies upon a decision of an informal meeting that has no standing.

The LGA (S92) validates proceedings of Council or committee where there are certain defects, including failure to comply with S89, however this section does not apply to the 'adjournment meetings' which are neither meetings of Council or committee.

The prime focus of the procedural requirements relating to meetings is to provide open and accountable decision-making except in the specific circumstances detailed in S89.³¹

In addition to the concerns about the legality of making decisions at 'adjournment meetings,' during interviews at the Council it became clear that there was a level of discomfort among the planners at being called 'out the back' with councillors to discuss planning applications in camera. Staff expressed concern at the impression that this practice gives the public and in many instances felt that this practice threatened the professional rapport that the planners had developed with their applicants and objectors.

³¹ Advice provided by Municipal Association of Victoria

My investigation found that there does not need to be any agreement among the councillors on the panel as to which applications get called in. Matters that are heard by the DHP are assessed and debated on their merits in respect of the current legislation, whereas matters that are called in to the CHP are generally based on pressure from constituents, who are neither applicants or objectors. Whereas the DHP is influenced by constituents lodging objections to an application, the CHP process is influenced by constituents lobbying their ward councillors directly to express their concern.

An example of inappropriate decision-making involving councillors, as identified by the ICAC, is where one councillor votes for a development favouring another councillor who has a pecuniary interest in the matter, in return for a similar treatment on another occasion. The ICAC goes on to state:

This conduct is difficult to detect and prove. Nonetheless, consideration should be given to how this risk can be managed. Possible options might involve delegating the development approval function in matters involving pecuniary conflicts of interest for councillors (and in some cases staff) to independent bodies.³²

In the period 23 January 2004 to 23 January 2006, of the 52 matters considered by the CHP, 36 recommendations by the planning officers were overturned with the panel resolving to support the recommendations in 14 matters, while two matters were deferred. During this period there were 19 matters that were not advertised, either on the basis that they were exempt from advertising, or they were recommended for refusal. In all but one of these matters, the CHP resolved to grant a planning permit.³³ This highlights a potential problem for the Council. In cases where these applications were not exempt from notice in accordance with the GGPS, the CHP may have approved planning applications without following the notice requirements and giving the community the opportunity to become involved.

Conclusions

The CHP is essentially a special committee of Council however there is no reporting mechanism on the determinations of the CHP to the full meeting of Council. I consider this to be an unsatisfactory practice when decisions that are binding on Council are made with such a small representation of councillors, in a process that is not transparent.

Under the TOR the membership of the CHP currently consists of the portfolio holder of Infrastructure/Planning as chair or a proxy and two other councillors. A minimum of three members is required to form a quorum with the chair and one other councillor required to make a vote. I consider that this is a poor representation of Council and leaves the process open to allegations of corruption and vulnerable to political decision-making which could interfere with the integrity of the planning system and the decisions made by planning officers.

Section 89 (5) of the *Local Government Act 1989* requires that the chair of the special committee meeting provide reasonable notice to the public of meetings of the special committee. My officers were advised that meetings of the CHP are held on Monday evenings, on an 'as needs basis.' The agendas for these meetings are usually provided on the Thursday or Friday before the meeting. I do not consider that this is reasonable notice to the public, as it does not allow notices to be posted at customer service centres or in the local papers. If the meetings of the CHP were scheduled, a list of meeting dates and times could be published. If there were no items on the agenda for a particular meeting it could be cancelled.

I also consider that the structure and operation of the CHP does not promote procedural fairness. Those parties involved with the planning permit process, both applicants and objectors, are entitled to the proper consideration of a matter, the right of affected parties to be heard and the right to be provided with reasons for decisions. I believe that the current structure and operation of the CHP prevent the rules of procedural fairness from being applied.

³² CAC Discussion Paper – *Corruption risks in NSW development approval processes* (Page 13)

³³ *City of Greater Geelong Review of Decision Making Processes for Planning Permits 2006 – Glossop Town Planning*

The minutes of a meeting of a special committee, in accordance with section 93 (6) of the Local Government Act must:

- Contain details of the proceedings and the resolutions made
- Be clearly expressed
- Be self-explanatory
- In relation to resolutions recorded in the minutes, incorporate relevant reports or a summary of the relevant reports considered in the decision making process.

It is important to retain a forum for decision-making which has publicly elected representation other than the full meeting of council which should serve as an arena for discussing strategic and policy issues. This forum also allows the opportunity for members of the community to present their case in a less formal or intimidating forum than a full meeting of council.

If the current forum is to be retained, I am of the view that reforms will be required to ensure that the process is transparent and that inappropriate influence does not undermine the integrity of the planning process and that it follows the procedural requirements of the *Local Government Act 1989*. This should include renaming the committee.

Recommendation 9

I recommend that:

1. The CHP be renamed the Special Planning Committee (SPC).
2. The TOR for the SPC be amended to reflect the following changes to its structure and operation:
 - A meeting of the SPC will be scheduled for once a month and notice of the meeting dates will be published in accordance with S89 (5) of the *Local Government Act 1989*
 - Five councillors should form a quorum for the monthly meeting of the SPC, including the councillor holding the planning portfolio
 - The five councillors who form the SPC will be appointed by the Council
 - Written guidelines be developed and implemented regarding applications that can be 'called-in' and written justification and support provided and recorded in the minutes for those 'call-ins'
 - All discussions and decision-making of the SPC will be carried out before the public gallery in accordance with S89 of the *Local Government Act 1989*
 - Any adjournments of the SPC will be reflected in the meeting minutes
 - The minutes of the SPC will be kept in accordance with section 93 (6) of the *Local Government Act 1989*
 - Members of the SPC shall receive a copy of the officer's report a week before the meeting.

Council's response:

All of the recommendations are supported although the name change for the CHP was not considered to be a significant issue.

Full meeting of Council

Planning applications are also determined at meetings of Council. A quorum for an ordinary meeting of Council is formed when a majority of councillors are present. The agenda for the meeting is distributed to the councillors by the CEO at least 48 hours prior to the meeting. Unlike the current CHP all debating and voting of the Council is done in front of the public.

My officers were advised that planning permit applications are rarely dealt with at Council meetings. Only applications that are considered to be very contentious and have drawn a lot of community and media attention are decided in that forum. Only three planning applications for the 2005 calendar year were determined by the full meeting of Council. All strategic planning projects such as planning scheme amendments and applications for rezoning are put to Council for a decision before proceeding to the Minister for Planning for final approval.

Given the larger number of councillors required to form a quorum and the fact that all decision-making is done in front of the public, I consider that this process provides for transparency in decision-making and there is less likelihood of councillors coming under suspicion and accusation of improper conduct.

To provide an overview of the frequency of use and the nature of the planning permit decision making process at the Council, the following statistics are provided:

Year	Total applications	DHP	CHP	Council meeting
2003	1703	251	32	1
2004	1787	355	22	1
2005	1828	385	27	3

34

Information provided in the review undertaken by Glossop Town Planning indicates that only five applications were considered by the full meeting of Council over the 2003-05 period.

Conclusion

The role of the full Council with regard to planning is to focus on developing planning policy. This is done by delegating the administration of the planning scheme to officers of the Council. I consider that this is a reasonable approach as the full meeting of Council is best used as a forum to decide on matters that affect the wider community rather than one or two objectors.

ATTACHMENT A—CASE STUDIES

In the course of my investigation I examined a sample of applications that had been processed by the Council's planning department. This was an opportunity to review whether they had been assessed in accordance with the Planning and Environment Act and what sort of issues the assessing officers experienced throughout the course of processing applications.

The sample included 10 applications for various land use and development proposals. Some of these applications did not require advertising or objections and were therefore decided under delegation, while others were decided by the DHP, CHP and a full meeting of Council.

Applications resolved under delegation

Case study 1—Delay in processing

The Council received an application in January 2005 for two double storey dwellings. The proposal was referred internally to the subdivisions area on 12 January 2005 and a response was not received until 11 March 2005, 58 days later. Given that the time frame for external agencies to respond to referrals is 28 days, in accordance with the Planning and Environment Act, I consider a two month wait for an internal referral was unsatisfactory.

Case study 2—What appears complex may be straight forward

The following case study illustrates the successful processing of an application at the lowest level of delegation, despite being a potentially complex issue.

After an initial pre-application meeting an application for a planning permit was lodged in August 2005. The application sought approval for the use and development of a light business site and associated signage.

After requesting and receiving further information from the permit applicant the application was referred to the relevant referral agencies and departments within Council in accordance with section 55 of the Planning and Environment Act. All of the referral authorities consented to the issue of a planning permit subject to conditions being imposed on the permit. It was determined that notice of the application was not required under section 52 of the Planning and Environment Act. A delegate report was prepared in November and the permit was issued with conditions.

Applications resolved at mediation, objections withdrawn and a decision made under delegation

Case study 3—Talk to your neighbour

Two pre-application meetings were held between a permit applicant, the Council heritage advisor and planning staff in June 2005.

The subsequent planning application was lodged in July 2005. The permit applicant was required to submit further information and amended plans. When this information was received by the Council the planning officer determined that advertising was required as the plans incorporated a second storey extension with potential for overlooking neighbours. The advertising was prepared and notice of the application was given by means of a notice on the site and notices to neighbouring land owners and occupiers.

During the advertising period two objections to the application were received. The planning officer encouraged the objectors to speak to the permit applicant, their neighbour, about the proposed extension to see if they could come to an agreement about the way in which the development would proceed. No formal mediation meeting was held at the council. The two objections were withdrawn after discussions with their neighbour about possible window treatments to prevent overlooking.

This case study highlights the importance of the mediation/consultation process. The professional development programs facilitated by *PLANET* provide training in mediation and consultation specifically for planning staff. These programs aim to upgrade the skills of planners and build on their current skills and competencies.

This case study lends weight to the current practice of the Council to send planners to mediation/consultation training be continued and enhanced where possible.

Case study 4—To mediate or not to mediate

An application was received in June 2005 for the construction of a second dwelling on a property, a two lot subdivision and the removal of native vegetation. The applicant was promptly advised that further information was required in order to make an assessment of the application. On receipt of the additional information the advertising was prepared and notice of the application was given. I consider that an application for a second dwelling on one title could cause some loss of amenity to neighbouring land owners or occupiers, or at least a perceived loss of amenity, so the planning officer acted reasonably in giving notice of the application.

On receipt of the requested additional information the advertising material was prepared and the advertising period commenced. During the course of the advertising period three objections to the proposal were received. At the completion of the advertising period the applicant returned a statutory declaration declaring that a notice had been displayed on the site for the required time period in accordance with the requirements of the Planning and Environment Act.

In response to the objections received the applicant initiated an on site mediation with those people who lodged submissions in respect of the application. As a result of this meeting and the concerns raised by the objectors, the applicant reassessed the proposal and prepared amended plans. These amended plans were recirculated to the objectors and as a result all three objections were withdrawn. The planning officer assigned to this file prepared a delegate report recommending that the application be supported and a permit issued subject to conditions.

Although a formal mediation meeting was not chaired by the planning officer, this case illustrates that mediation can be a useful tool in the planning process.

Applications determined at Development Hearings Panel

Case study 5—A case involving a councillor

The Council received a planning application in March 2005 for an industrial land use. Given the potential amenity issues involved with this proposal, notice of the application was given in accordance with section 52 of the Planning and Environment Act by displaying a copy of a notice on the site, sending notices by mail to neighbouring land owners and occupiers and a notice in the *Geelong Advertiser*. The application was referred to external referral agencies in accordance with section 55 of the Planning and Environment Act³⁵ and to other departments within the Council for comment.

In response to the 14-day advertising period 51 objections were received. The applicant and objectors were invited to attend a mediation/consultation meeting. The main concerns of the objectors were noise, dust and the potential presence of a chemical on the site.

As a result of the mediation/consultation meeting, the applicant submitted an amended application addressing the issues identified in the objections. The proposed amendments were circulated to objectors for their review and as a result four of the objections were withdrawn. When reviewing this file my officers noted that each of the objections had been withdrawn in writing, consistent with section 57 of the Planning and Environment Act. During this period the internal and external referral responses were returned to the planning department for consideration. None of the referral agencies objected to the proposal, subject to conditions being included on any permit issued.

As a result of the objections received a report was presented to the DHP and the permit applicant and objectors were invited to attend and make submissions. The DHP deferred making a decision on the application until a report had been prepared by a suitably qualified professional investigating the risks associated with the potential use of chemicals on the site and the levels of chemicals already present on the site. When the final consultant's report was prepared it was circulated to the objectors and the matter was scheduled for another hearing of the DHP. The DHP resolved to support the application but because the applicant had lodged an appeal under section 79 of the Planning and Environment Act, a decision could not be issued.³⁶ Formal notification of this was sent to all objectors.

The application for review was heard before VCAT on 14 and 15 November 2005. In January 2006 the Council received a decision from VCAT that a planning permit be issued subject to conditions.

When my officers were examining this file they found e-mails from a councillor to various planning staff, including the director, planning coordinator and the planning officer assessing the application. The nature of the e-mails included a request to planning staff to find a quick resolution to the application and indicating that the permit applicant was going to lodge an appeal at VCAT. The e-mail also requested that the planning staff reconsider the validity of the objector's concerns about chemicals on the site. In another e-mail the same councillor asked that the speed limit be reduced on the subject road, prior to the matter being heard at VCAT. These e-mails reflect accounts from staff members of direct contact with councillors throughout an assessment process. The thrust of the e-mails examined as part of this case study suggested that the planning officer should expedite a decision on the application in order to avoid the matter going to appeal.

While these approaches were not in themselves inappropriate, contact by councillors can create a perception that a councillor is attempting to influence the decision making process. The councillor has explained that *'Many, if not all of (his) colleagues on Council, provide their views to planning officers in a similar manner and...do so believing it to be a proper input into the planning process.'*

³⁵ Section 55 *Planning and Environment Act 1987* – Application to go to referral authorities

³⁶ An appeal against the Council's failure to grant a permit within the time prescribed under section 70 of the Planning and Environment Act

My office received a complaint about the administrative handling of the application of this case study in July 2005. The complainant raised two main issues. The first was that not all of the objectors had been invited to attend the meeting of the DHP to discuss this application. On making enquiries the Council advised that this occurred because mail was sent to property addresses rather than postal addresses. I understand that the planning department has updated its database accordingly to avoid this happening again.

The second issue raised by the complainant was that the report requested by the DHP on the potential effects of chemicals on neighbouring properties was prepared by a consultant chosen by the permit applicant. The complainant considered that this report would be biased given that the statement was commissioned and paid for by the applicant. I agree with the Council's position on this matter, in that the report was prepared by an independent expert and the expert evidence provided could be tested at any potential hearing of the matter by VCAT. I consider that the decision of the Council to defer the decision of the DHP pending the expert report was reasonable, given the level of community concern surrounding the subject.

This case study highlights the need for the Council to review its councillor code of conduct to ensure that it outlines the parameters for contact with staff and involvement in the planning permit process. I am advised that the councillor code of conduct is currently the subject of a review by the MAV.

Case study 6—Decision upheld by VCAT

A planning application was lodged with the Council on 8 July 2004 seeking approval for the use and development of the land for a small subdivision and a number of dwellings. The application was referred internally to obtain advice in respect of drainage, parking and the significance of existing vegetation on the site. The application was also referred to external referral authorities in respect of servicing issues for the subdivision in accordance with section 55 of the Planning and Environment Act.

The applicant submitted further information in response to a request made by the Council. The planner assessing the application informed the applicant that the changes that were made to the plans were not sufficient to warrant officer support. Despite this, the applicant requested that the application proceed to advertising. Notice of the application was given by means of notices being sent to 10 neighbouring landowners and occupiers. The applicant was required to display two notices on the site as it had two street frontages.

During the course of the assessment the applicant was advised in writing that the proposed development did not meet the requirements of clause 55 of the GGPS³⁷ which outline the relevant guidelines developed by the State Government for assessing multi-dwelling developments.

During the advertising period 17 objections to the application were received. In response to these objections the matter was scheduled for hearing before the DHP on 4 November 2004. Letters inviting the applicant and objectors to attend the DHP were prepared and sent out. Prior to the DHP hearing this matter the Council was served with notice from VCAT that the applicant had lodged an application for review. The DHP resolved that the application should be refused, had an appeal against failure to make a determination on the application not been issued.

The matter was heard before VCAT on the 11 February 2005. VCAT upheld the Council's decision to refuse the application.

Applications determined at Councillor Hearings Panel

Case study 7—Calling in by a councillor

An application was lodged with the Council on 24 February 2005. The application sought approval for a residential development and a concurrent subdivision. The application was referred to the relevant departments with Council, including the engineering and subdivisions referral area.

A letter was sent to the applicant on 18 March 2005 requesting that a 'streetscape elevation plan' be provided in addition to the photos that had been supplied depicting the streetscape. On receipt of the additional information the advertising for the application was prepared. The applicant was required to give notice of the application by displaying a notice on the site for 14 days and notices were sent by mail to eight neighbouring land owners and occupiers. As a result of the 14-day advertising period two objections were received. In response to these objections the planning officer assessing the application invited the applicant and objectors to attend a consultation meeting. The consultation meeting failed to reach a negotiated outcome.

The application was first scheduled to be heard by the DHP on 4 August 2005. This did not occur as the application was called in by the ward councillor and subsequently went before the CHP on 5 September 2005. It was considered by the councillors at this hearing that some changes to the layout of the proposal may have resulted in a better outcome in terms of amenity and may in fact gain their support. Amendments were made to the proposal and submitted to Council on 20 October 2005. These amended plans were circulated to the objectors however neither of the objectors withdrew their objection to the application.

After being heard by the CHP on 5 September 2005 the matter was referred back to the DHP for a determination on the 3 November 2005. At this hearing it was resolved to support the application. The permit applicant lodged an application for review at VCAT under section 79 of the Planning and Environment Act, against the failure of the Council to make a determination on the application within the time specified at regulation 31 of the Planning and Environment Regulations. The panel decided to support the application in accordance with section 84(1) of the Planning and Environment Act³⁷ however under section 84(2) of this Act they could not issue a copy of the decision to the applicant, referral authority or any objector until after the hearing. The matter was heard before VCAT on 24 November 2005. Orders from VCAT dated 14 December 2005 directed that a planning permit be issued subject to conditions. The planning permit was issued on the day that the orders were received.

My staff enquired as to why an application that had commenced with one hearing panel was then determined by the other panel. A senior member of staff explained that given the CHP had resolved to support the application upon the requested amendments being undertaken, the matter could be given final determination by the DHP. My officers were advised that it is unusual for a matter to be heard by both panels and this is the only case that staff were aware of.

³⁷ Section 84 of the *Planning and Environment Act 1987*—An application may be determined after an appeal has been lodged

Case study 8—The importance of well phrased permit conditions

The Council received an application for a planning permit on 2 April 2004 for a multi-dwelling development. I noted that the application was promptly referred internally for advice on drainage and other engineering matters. The planning officer requested further information from the applicant on 30 April 2004 which required the applicant to provide a 3D perspective drawing to demonstrate how the development would suit the existing streetscape. The applicant was also advised by letter that drainage plans for the site would also be required to be approved by Council.

On the 23 September 2004 notice of the application was given by means of a notice displayed on the site and notices sent by mail to nine neighbouring land owners and occupiers. In response to the advertising period a total of nine objections were received. These objections were based on concerns about traffic and car parking and neighbourhood character issues. A consultation meeting was held with the applicant and objectors. As a result of this meeting amended plans were prepared by the applicant and circulated to all objectors in an attempt to address the concerns of the residents however none of the objections were withdrawn. The matter was scheduled to go before the CHP for a decision but was deferred from this forum pending a second set of amended plans. These amended plans were prepared but none of the objections were withdrawn.

The CHP resolved to support the planner's recommendation and a NOD was issued subject to a number of conditions. Condition 1 of the NOD required that amended plans be submitted showing five changes. On the 31 October 2005 the Council received notice of an application for review from VCAT. The applicants for review grounds of appeal to VCAT were that condition 1(f) on the permit was inappropriate. Condition 1(f) stated:

Location of garage to unit 2 to be relocated to front boundary of development. Building to be setback same distance from property boundaries. Car access to be forward when entering and exiting the site.

The Council considered that it was necessary to include this condition on the permit to ensure an appropriate level of amenity to the resident of the dwelling located adjacent to the south east side of the subject site.

A hearing was held at VCAT on 2 February 2006 with orders made on the same day. The direction of VCAT was that the wording of condition 1(f) be replaced with alternative wording which would result in a marginal decrease in overshadowing of two habitable rooms on the adjacent property. VCAT supported the Council's inclusion of the condition on the permit but resolved to alter the wording of the condition to more adequately address amenity concerns.

Applications determined at full Council

Case study 9—Community involvement

An application was received by the Council in October 2004 for alterations and additions to an existing chemical storage facility. The proposed alterations and additions were to allow for a gas storage sphere, access roads, pipelines and the construction of fencing and gates. The application was referred to the relevant external agencies including WorkCover and the Environment Protection Authority (EPA) and to the Council's environment and engineering departments.

Due to the nature of the application and the zoning of the land the proposal was exempt from public notification and from third party appeal rights. Despite this, public notification was carried out pursuant to section 52(3) of the Planning and Environment Act.³⁹ As a result of the public notification process a number of submissions were received. The objections generally related to the health and environmental risks associated with the storage of the gas and the appropriateness of Geelong for the storage of this chemical. The notices prepared by the Council provided an explanation that objectors would not be entitled to third party appeal rights however those people that lodged objections with the Council then went on to lodge statements of grounds with VCAT when the matter went to VCAT.

In December 2004 the Council received notice of an application for review from VCAT under section 79 of the Planning and Environment Act. Due to the proceedings lodged with VCAT Council could not formally decide on the matter but a report was put to a full meeting of the Council on 8 February 2005 resolving to not support the application, contrary to the recommendation of the planning officer.

An interim decision on the matter by VCAT, after a visit of the subject site, determined that the application should be characterised as a warehouse rather than a transport depot. This interim decision had significant implications in that it no longer excluded third party involvement in the application of the appeal process.

This case study illustrates the Council's commitment to keeping the community informed and involved. The Council's commitment to community participation is apparent throughout the assessment process of this application including organising meetings for the community with Council's legal representative and arranging for a community bus to transport objectors to VCAT.

³⁹ Section 52(3) of the Planning and Environment Act allows the responsible authority to give notice of an application for a use or development which is likely to be of interest or concern to the community

Case study 10—High profile development

An application was received by the Council in August 2005 for an extension to an existing shopping centre within the retail centre of Geelong. The extension included a link in the air space known as a 'sky-bridge' which would provide pedestrian and vehicle connections over an existing road. The application also sought approval for the waiving of the car parking requirement.

It was considered by the planning officer assigned to assess this application that the proposal might cause material detriment, therefore notice of the application was given by displaying four notices in various locations around the building; by sending notices in the mail to 390 neighbouring landowners and occupiers; and by displaying a notice in the two consecutive Saturday editions of the *Geelong Advertiser*. As a result of the advertising process 101 objections were received. The objections received related to issues regarding obstruction of views, interruptions to businesses, noise and an increased pressure on car parking in the central business area.

The application was referred to Heritage Victoria and to DSE for comment. In this instance DSE was not a statutory referral agency but their comments were sought in relation to the application. Neither of these external agencies raised any objection to the proposal. Advice was also sought from various departments within Council in order to obtain comments on traffic, car parking, access, drainage and streetscape issues. None of the departments within Council raised any objection to the proposal, subject to appropriate conditions being placed on any permit issued.

Given the number of objections that were received and the media attention that application generated, the application was heard by a full meeting of Council on 13 December 2005. At this meeting the Council resolved to issue a NOD. This NOD indicated Council's intention to support the application but could not issue a permit because of objections.

My office received complaints regarding the administrative handling of this application from members of the community. Complaints were made that planning staff responsible for assessing this application travelled to Sydney to view a similar development in Sydney. A complainant alleged that the developer had funded a one-day trip to Sydney for two planning staff, including air fares, limousine travel from Sydney airport to the development and a lavish lunch. When my officers questioned staff about this trip it was explained as a worthwhile opportunity for council staff to have a look at an example of a structure that had been proposed for the central business district of Geelong. I note that the air fares were funded by Council as was the travel to the venue.

A senior staff member advised that it was not unusual for staff to travel outside of the municipality to look at examples of particular land uses and development. Other field trips included a visit to a wind farm and some broiler industries. I understand that these trips were also funded by the Council.

The administrative actions of local government staff and the conduct of councillors are subject to much public scrutiny and attention from the media. Some council planning staff and councillors travelled to Sydney to view the recently completed development which comprised a sky bridge similar to that proposed for the Geelong development. This trip was viewed by some members of the community as the company's attempt to influence the decision making process and to influence the decision makers. The officer's report prepared for consideration by Council failed to refer to the site visit or what relevance the trip had to the final recommendation.

Although when requested by my officers the Council was able to produce receipts for the plane fares for the staff and councillors travel to Sydney, I consider that it would have been preferable if a detailed account of the findings of this trip had been recorded on the file and reflected in the report to Council. I believe that this would have contributed to greater transparency of the planning and decision making process. However, I am satisfied that all air travel for the planning officers involved was funded by the Council. While a simple lunch was provided by the developer, in hindsight it would have been better to have been provided by the administration. The CEO agreed.

ATTACHMENT B

Background and current structure

Prior to the Council amalgamation process of 1994, the area now known as the City of Greater Geelong (the Council) consisted of the former municipalities of Bellarine, Corio, Geelong, Geelong West, Newtown and parts of South Barwon, Barrabool and Bannockburn. The Council is now made up of 12 wards with corresponding councillors, elected every three years.

Between 1998 and 2000, the Council was represented by nine councillors, one councillor representing each of the four wards and the remaining five councillors elected to represent the whole of the Council. In mid-2000 the Council conducted public consultation on what electoral structure would best suit the city. Having received and considered submissions, the Council recommended to the Minister for Local Government that the Council be sub-divided into 12 wards with one councillor elected to represent each ward.

By notice in the *Government Gazette* on 26 October 2000, 12 new wards were established with one councillor to be elected to represent each ward.⁴⁰

One of the critical areas faced by the Council is the urban planning area. Pressures have been caused by, among other things, higher than average growth, brought about by the 'sea-change' effect and the fact that Geelong is the largest in area and population and most diverse municipality in Victoria. Pressure is being exerted in the following ways.

From legislative requirements, developers and constituents:

- To reduce planning application processing times
- To maintain standards in regard to urban character in the Council
- To ensure that applicants are receiving assistance with submission of applications
- To ensure that development is fostered and encouraged
- To act more consistently
- Not to increase fees
- To produce expeditious and favourable outcomes.

From staff:

- To alleviate overcrowding and stress
- To gain support of management.⁴¹

⁴⁰ Information obtained from the Council website – About Council

⁴¹ Findings of City of Greater Geelong Statutory Planning – Process Review Report – April 2004 Page 13

Statutory planning process review

In April 2004, Supply Chain Diagnostics (SCD) conducted a review at the Council to examine the statutory planning environment. The statutory planning review was instigated by the Mayor at the time who had received a number of complaints about how long it was taking the planning department to process planning applications. The objective of the review was to provide the Council with a series of potential improvements to:

- Reduce turn around time for processing applications
- Provide guidance on the staffing requirements to undertake the revised processes
- Assess the efficiency of the current systems to be effective tools in managing the processes.

Factors considered included an examination of:

- Strategic issues in relation to statutory planning
- Process management
- Operations management
- Organisational and personal issues
- Information systems.

Given the objectives of my investigation, I was particularly interested in what weaknesses the consultants had identified in terms of process management and operations management. I was also interested to explore what progress had been made by the Council planning department in implementing the recommendations made by the consultants.

The review provided a range of recommendations, including:

- Restructuring of the statutory planning department to have three teams each led by a team leader. Originally all of the town planners reported directly to the coordinator statutory planning, which detracted from the other important functions of this role.
- Developing a major projects team to work on applications of regional significance. I understand that this option was not adopted as it was felt that this would be too specialised and would not allow staff to work on a variety of applications.
- Overhauling the administrative functions of the statutory planning department which included employing two staff members; one to specifically provide a counter service to the public and one to undertake advertising, including the preparation of notices and their display on site.
- The preparation of a suite of brochures to provide advice and guidance to both applicants and objectors on the planning process.

Two process management issues that were identified by SCD were:

- The consistency of decisions
- The role and function of the delegated panels responsible for making decisions on planning applications—the DHP and the CHP.

In light of these two issues it was recommended that the Council:

- Investigate developing more expeditious outcomes for the DHP and CHP processes.

The role and staff structure of City Development

The statutory planning functions at the Council come under the directorate of Urban Planning, which is managed by the Director of Urban Planning. During the course of my investigations my officers met with staff from Statutory Planning, Strategic Planning and Subdivisions, which all come under the umbrella of City Development. Having my officers meet with these staff and exploring their work processes gave me an insight into the functions of City Development as a whole. During this process my officers concentrated on the functions of the Statutory Planning department.

Manager City Development

The Manager of City Development reports to the Director of Urban Planning and is currently responsible for four departments. These four departments are:

- Statutory Planning
- Strategic Planning
- Subdivisions
- Building Services.

A restructure of City Development was undertaken during late 2005. This restructure essentially disbanded the subdivision department. The responsibilities of the subdivisions area will be shared between statutory planning and engineering services. Statutory planning will undertake the planning function of the subdivisions process under the Act and the *Subdivisions Act 1988* and engineering services will undertake the engineering function of the process. Once this restructure is complete the Manager of City Development will have responsibility for three departments.

Coordinator Statutory Planning

The Coordinator of Statutory Planning runs the day-to-day functions of the planning department. This role is responsible for guiding the statutory planning department, including planning, technical and administration officers. The coordinator oversees the administration of all planning permits for use and development under the Greater Geelong Planning Scheme. This position reports to the Manager City Development.

Team leaders

There are three team leaders within the Statutory Planning department, each of whom has several years experience. Each team leader has a team of four planners and two administration staff. The team leader's role involves teaching, coaching and leading the planners in their day-to-day planning work in addition to working on some of the more complex planning applications that are lodged with the Council. The team leaders report to the Coordinator of Statutory Planning.

Town planners

There are nine town planners that are divided into three teams and report to the three team leaders. The town planners are responsible for the assessment and processing of planning applications, the provision of planning advice both written and verbal via telephone and in person and representing the Council at mediation and at VCAT.

Administration and technical staff

There are five administration/technical officers who rotate tasks on a fortnightly basis. The administration staff are responsible for registering planning applications and other administrative duties associated with the processing of planning applications, in addition to answering telephone enquiries.

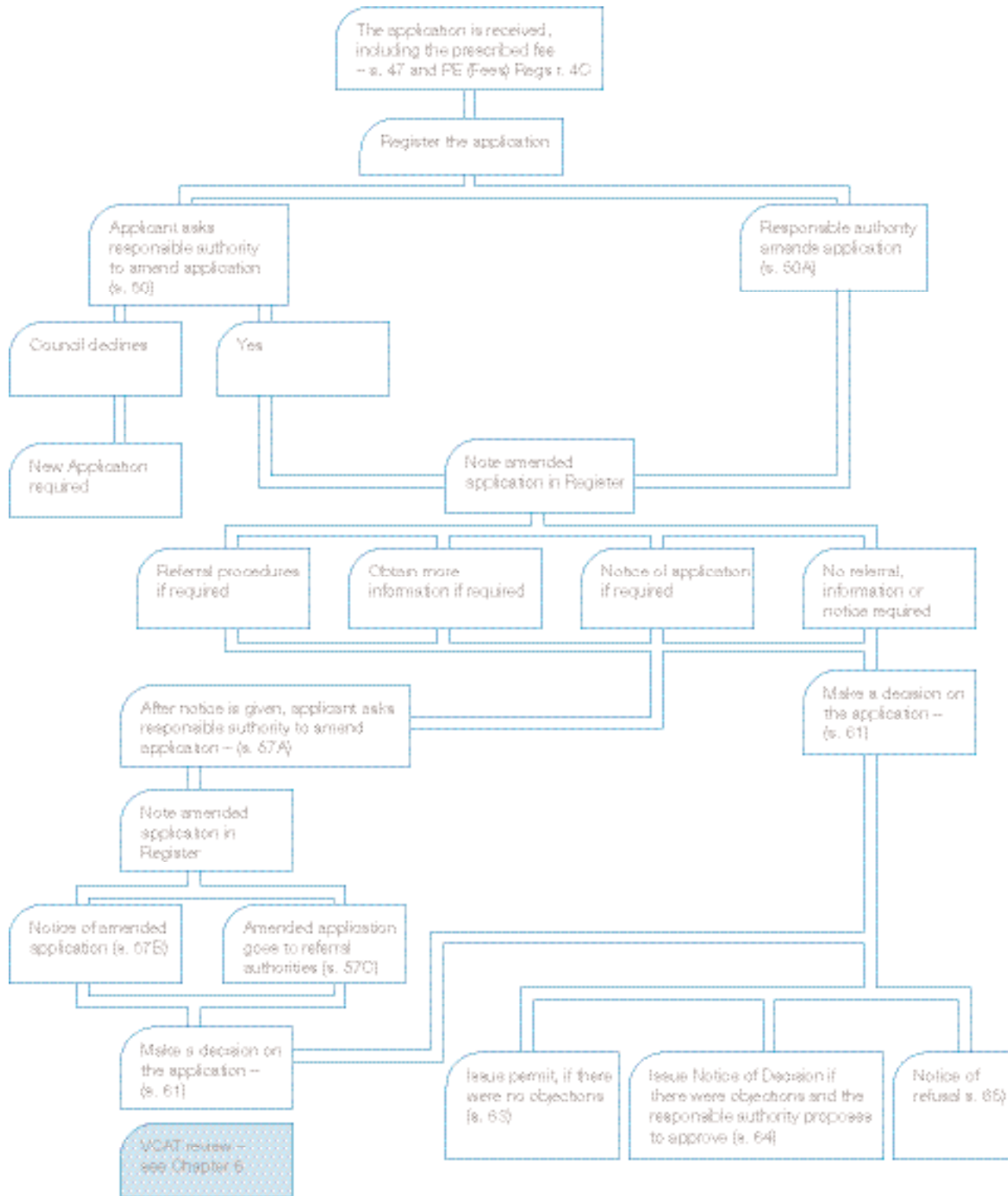
One technical officer is solely responsible for undertaking the advertising of planning applications. This position was created in response to the recommendations of the statutory planning process review. Prior to this review permit applicants were required to undertake the advertising procedure themselves, in accordance with section 52 of the Act,⁴² including sending notices out by registered mail. The SCD report identified that when the advertising was undertaken by permit applicants there were lengthy delays in the planning permit process and the advertising was not undertaken in accordance with the Act. The SCD report recommended that the Council undertake the notification process and that one technical officer be employed to undertake that role.

The SCD review also recommended the appointment of a planner to undertake counter enquiries in order to provide consistency in the delivery of advice given. The workload of this position is based on the understanding that they may spend a great deal of their day assisting customers at the counter.

There is one planning enforcement officer at the Council who is responsible for monitoring compliance with and contraventions to permit conditions. Enforcement action usually occurs when there has been a breach of the Act, planning scheme, permit condition or section 173 agreement and the breach warrants enforcement, especially if it causes detriment to the community. As my investigation focussed on the planning permit assessment and decision making process the role of the enforcement officer was not examined.

ATTACHMENT C

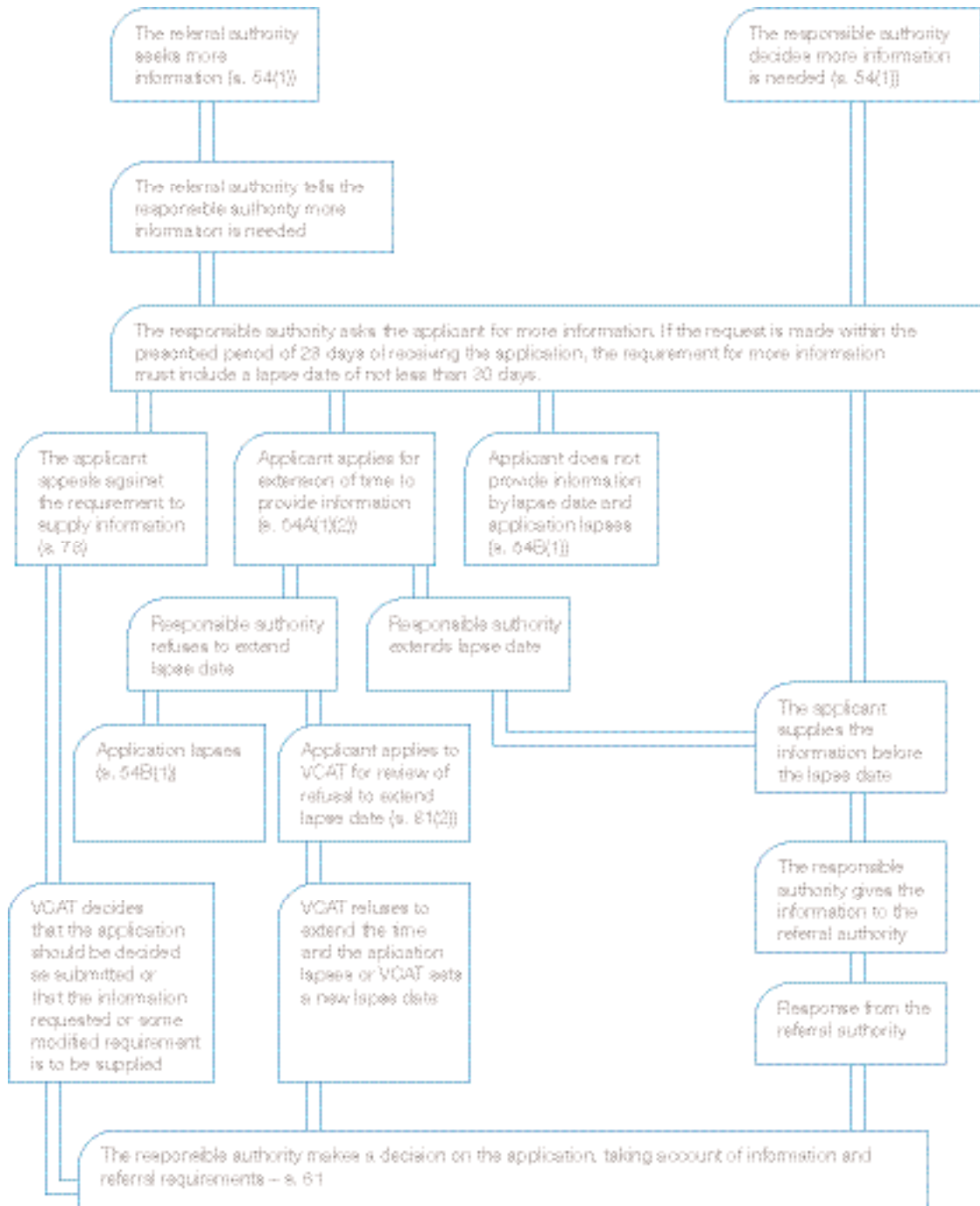
The planning permit process⁴³



43 Source: DSE Publication *Using Victoria's Planning System*

ATTACHMENT D

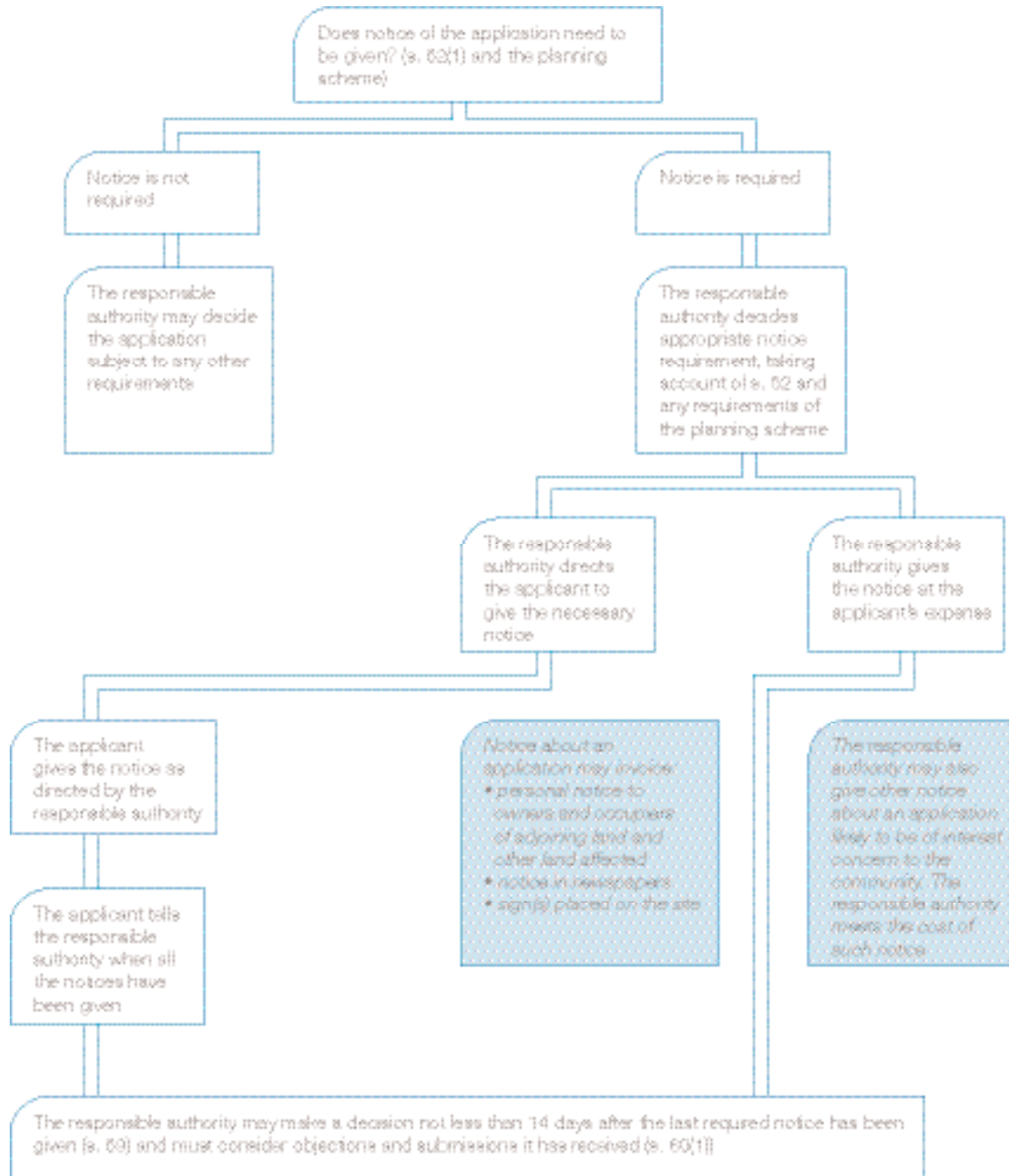
The referrals process⁴⁴



44 Source: DSE Publication *Using Victoria's Planning System*

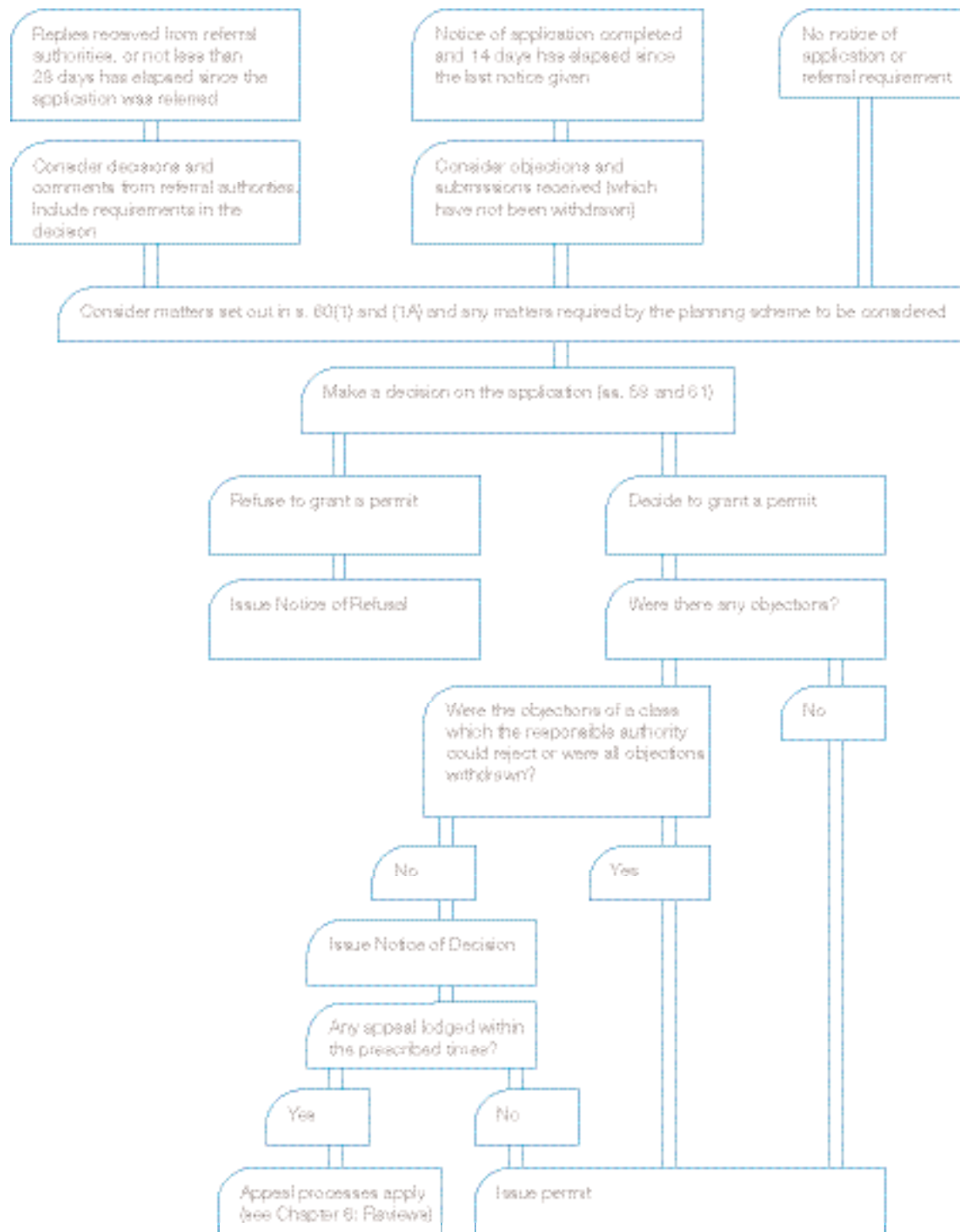
ATTACHMENT E

The advertising process⁴⁵



ATTACHMENT F

The decision making process⁴⁶



ATTACHMENT G

2004 Review

The *Statutory Planning Process Review Report* prepared by Supply Chain Diagnostics in 2004 involved an examination of the statutory planning environment and an evaluation of planning assessment processes. The study was commissioned in response to the Mayor's concerns about timeframes for issuing planning permits. The report included a number of observations about Council's decision making processes, particularly in terms of timeframes.

It identified the following average delegate decision making timeframes.

Delegated officer	3 days (939 occurrences in sample)
DHP	40 days (113 occurrences in sample)
CHP	75 days (21 occurrences in sample)

The report found that:

While the DHP/CHP option is worthwhile, particularly for objectors, the delay is a significant detriment to the applicant from a processing perspective.

While the development community generally considered some form of hearing process to be beneficial, they considered the CHP process particularly slow. In general there is a perception that while the DHP will achieve an equitable outcome, they are concerned with the CHP process.

Given the delays in the DHP and CHP processes we believe that there is a need for an investigation into developing more expeditious outcomes.⁴⁷

The report concluded that:

Further (time) savings in regard to DHP and CHP would depend on the extent to which council is willing to change the current process.⁴⁸

Recommendations of this report included:

- *That the membership of the DHP be increased from one councillor representative to two*
- *That matters could be called in to be heard by a full meeting of the Council where an application is of regional significance or has major policy implications.*
- *That any matter to be placed before CHP shall be at the discretion of the Portfolio holder of Infrastructure/Planning, the ward councillor and three other councillors.*

The proposal to streamline the panels hearing system within Council was advertised in the *Geelong Advertiser*, *The Echo*, *The Geelong News* and *The Independent*. The report was also placed on Council's website and was made available at the customer service centres.

At the completion of the exhibition period, 45 submissions were received, all of which opposed changes to the existing system. The concerns outlined in the letters of opposition to the proposed changes ranged from a perceived lack of ability for the community to influence the planning process by placing pressure upon the locally elected ward councillor to concerns about developing a system for a rotating venue. At the Ordinary Meeting of Council on 14 September 2004 based on the submissions received by the community, it was recommended that no changes be made to the current DHP and CHP systems.

⁴⁷ SCD – City of Greater Geelong Statutory Planning Process Review Report, April 2004. Page 44

⁴⁸ SCD – City of Greater Geelong Statutory Planning Process Review Report, April 2004. Page 45

2006 Review

The Council commissioned *Glossop Town Planning* to undertake a review of the decision-making processes for planning permits in February 2006. The purpose of the report was to reassess processes in relation to Council's function in determining planning applications. This report examines the current arrangements for the delegation of decision making to council officers, the DHP, the CHP and full Council.

The report provided a detailed analysis of the current delegation arrangements in the planning department at the Council and the structure and function of the three decision-making forums. The review made a comparison between the delegation arrangements and the decision making forums at the Council and five other local government municipalities. This analysis found that planning staff at most councils have more delegated responsibility but have the ability to refer a matter to a forum with councillor representation. These comparisons found that very few matters were referred to full council for a determination which generally reflects the low number of planning applications that are referred to full council for a determination at the Council.

The following conclusions and recommendations were made:

1. Council should review its existing instrument of delegation to reflect the following change:

Council officers should be provided with greater delegated authority to make decisions on planning applications. This should include the ability to refuse applications and approve applications with more than one objection (say five). We suggest that this delegation be introduced gradually and that in the short term, this should be restricted to team leader, coordinator and manager level positions.

The DHP be retained, however, its terms of reference should be redrafted to address the greater delegation provided to officers. We support the current role of councillors in the operation of DHP.⁴⁹

2. The CHP process be retained, but its terms of reference revised in the following ways.

The numbers of members to form a quorum should be increased from three to say, seven councillors.

The call-in process should be amended. Councillors should provide a written request to have a matter called in and this should be publicly available. Lastly, the written approval of someone—preferably the Chair of the CHP—be required to approve a request to call in an application.

The definition of what constitutes 'regional significance' should be clarified.

All decision making and discussion by DHP and CHP should be held in public.

A time limit should be placed on submissions to DHP to enable matters to be considered in a timely manner.

3. Council should collect data on the reasons why a matter has been considered by CHP.
4. We support the current arrangements for the consideration of matters referred to full Council.⁵⁰

ATTACHMENT H

Abbreviations:

The Council	City of Greater Geelong
CHP	Councillor Hearing Panel
SCD	Supply Chain Diagnostics
DHP	Development Hearings Panel
MAV	Municipal Association of Victoria
DSE	Department of Sustainability and Environment
PIA	Planning Institute of Australia
VPP	Victorian Planning Provisions
MSS	Municipal Strategic Statement
VCAT	Victorian Civil and Administrative Tribunal
EPA	Environment Protection Authority
NOD	Notice of Decision to Grant a Permit





Ombudsman Victoria

Level 9, North Tower
459 Collins Street
Melbourne VIC 3000

Phone 03 9613 6222

Fax 03 9614 0246

Toll free 1800 806 314

Email ombudvic@ombudsman.vic.gov.au

www.ombudsman.vic.gov.au