

5.2 CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 AND THE MONASH PLANNING SCHEME

(COM76:BG:RMK)

Responsible Director: Don Cameron

Reason for Council Consideration: Legislation requirements

RECOMMENDATION

1. *That Council's Corporate Plan be amended to incorporate the statement,*
 - *Council is committed to acting compatibly with the human rights of the community.*
2. *That clause 21.03-1 of the Monash Planning Scheme be amended to add the following dot point under Council's articulated values:-*
 - *Council is committed to acting compatibly with the human rights of the community.*
3. *That each section under clause 22 of the Monash Planning Scheme be amended to ensure that the human rights of any persons affected by the application or the proposed development are considered.*
4. *That discussions be held with the Department of Planning and Community Development to expedite the above amendments and that all relevant actions to incorporate these amendments into the Monash Planning Scheme be undertaken*
5. *That appropriate training, in respect of the Charter of Human Rights and Responsibilities Act of 2006 requires of decision-makers in assessing planning permit applications, be undertaken.*

BACKGROUND

The Charter of The Human Rights and Responsibilities Act of 2006 (Charter) became law in July 2007 and became fully operational in January 2008.

Following an assessment of the Charter, a legal opinion was sought to carry out a review of the Monash Planning Scheme with reference to Council's obligations as a public authority under the Charter. In particular to:

- identify the relevant Human Rights set out in the Charter that are likely to be applicable to the operation of the Monash Planning Scheme and to Council's assessment of planning applications under the Planning Scheme;
- provide a description of how the Charter might impact on the decision-making process of Council's planning officers; and

- review clause 21 [Municipal Strategic Statement (MSS)] and clause 22 [Local Planning Policies (LPP)] of the Local Planning Policy Framework (LPPF) in the Monash Planning Scheme to identify any amendments required to the LPPF to ensure that it is compliant with Council's obligations under the Charter.

THE CHARTER

The Charter definition of public authorities in Section 4, includes Councils, Councillors and members of Council staff within the meaning of that definition. Monash, as a public authority under of the Charter, must act in a way that is compatible with all of the human rights set out in Part 2 of the Charter and, in making decisions, must give proper consideration to relevant human rights.

The advice received identified the following rights that may, on occasion, be relevant to the operation of the Monash Planning Scheme and the assessment of planning applications:

- a person's right to have a proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (Section 24 of Charter);
- a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with (Section 13 of Charter);
- a person's right not to be deprived of his or her property other than in accordance with law (Section 20 of Charter);
- a person's freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds (Section 15 of Charter);
- a person's right to move freely within Victoria and to enter and leave it and freedom to choose where to live (Section 12 of Charter);
- a person's right to recognition and equality before the law (Section 8 of Charter).

Legal advice received is that although there is potential for a planning process to impinge on the aforementioned rights, these potential limits are reasonable and may be demonstrably justified under Council's current planning statutes and processes.

Nevertheless, the following general additions to the MSS and the LPP should be considered:

- a) Clause 21.03-1 be amended to add the following dot point under Council's articulated values:

- Council is committed to acting compatibly with the human rights of the community.
- b) For each section under clause 22, add the following dot point under the heading 'Decision guidelines':
- The human rights of any persons affected by the application or the proposed development are considered.

The MSS draws upon the principles stated within Council's Corporate Plan and, therefore, it would be appropriate for the Corporate Plan to be amended to also incorporate the statement,

- Council is committed to acting compatibly with the human rights of the community.

The final conclusion of the legal advice states that it is not necessary for Monash to incorporate in the LPP and MSS any further policy guidelines in relation to how human rights should be balanced. Also, appropriate training on what the Charter requires of decision-makers in assessing planning permit applications should be undertaken.

CONCLUSION

It appears that the Charter of The Human Rights and Responsibilities Act of 2006 creates no requirements for any significant changes to the content of the Monash Planning Scheme or the assessment process for applications for planning permit.

However, it is important that this legislation is clearly understood and applied.

The recommendation of Council's legal advisors have been adopted and recommended for implementation.