

1.1 REVIEW OF DELEGATIONS TO COUNCIL STAFF

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council makes the delegations and authorisations to the Council staff, as detailed in this report.

INTRODUCTION

There have been recent discussions regarding the current delegations for staff associated with settling matters at the Victorian Civil and Administrative Tribunal (VCAT). In particular there have been discussions around the use of Officer Delegation to consent to a planning permit through VCAT where the original decision was made by the Council to refuse the application, in the absence of the amended plans being considered at a formal Council Meeting.

Whilst the delegation was designed to respond to the generally limited timeframes allowed by VCAT for Council to form a position, there are ways to be able to deal with these time constraints should the need arise. These include but are not limited to advising VCAT that more time is needed or if required consider holding a Special Meeting of Council to consider a proposal. Clearly, the current delegation as it is structured does not satisfy the intent of how Council wishes to deal with matters and accordingly it should be reviewed and reworded.

The report also provides for some updates to the delegations and authorisations following the most recent review of the current legislation.

This report makes recommendations concerning the primary delegations from the Council to staff primarily within the City Development Division.

KEY CONSIDERATIONS/ISSUES

Council delegates various responsibilities and powers to Statutory and Strategic Planning under the *Planning and Environment Act 1987*, *Planning and Environment Regulations 2015*, and *Planning and Environment (Fees) Regulations 2016*.

The current delegations were last reviewed in August 2018. The current review has focussed on:

- Reviewing the delegations related to decisions made by Council proceeding to VCAT
- Alignment with changes in legislation as guided by Maddocks Delegations and Authorisations

Changes generally include:

- Modifications to the Delegations (Attachment 1) including:
 - Revision of the delegations regarding VCAT appeals contained in S52(1)(ca) and S52(1)(cb);
 - Procedural updates to the delegations regarding notice provisions associated with beneficiaries to covenants.

In relation to settling matters at VCAT it is proposed to change the current wording of the delegation which provides:

Where an Application for Review is lodged at VCAT for a matter that had been considered by Council, Council authorises the Director City Development, or their delegate, to negotiate on Council's position at VCAT where appropriate;

Compulsory Conference:

The Director City Development, or their Delegate will not agree to a change to Council's decision on a matter in any of the following circumstances:

- *Where a redesign of a proposal is required and those plans should be considered on merit, including whether the plans should be placed on public notification;*
- *Where amended plans have been prepared but not formally substituted for consideration by Council;*
- *Where it is proposed to amend an imposed condition of Council that is material to the decision made by Council;*
- *Where an application was called in by a Councillor and/or the Council did not support the officer recommendation, other than in the circumstances outlined above.*

The Director City Development, or their Delegate may agree to a change to Council's decision on a matter in any of the following limited circumstances:

- *Amends an imposed condition where the change is not material to the decision of Council;*
- *Amends the proposal to resolve a specific issues raised in a ground of refusal where the change satisfies the issue related to the ground of refusal;*
- *Provides for an alternative design solution that would achieve the intent of a condition requiring a change;*
- *Accommodates an appropriate resolution to an issue raised by an objector, provided all objectors who are party to the appeal agree with the proposed change, and the decision does not materially affect the decision of Council and the Director City Development or their delegate consider the proposal change warrants support.*

Formally substituted amended plans:

Where plans have been formally substituted at VCAT officers will, wherever possible, refer the plans to a Council meeting for consideration and request that VCAT allow time for this to occur.

Where amended plans do not address Council's issues and Council's original decision stands, the Director City Development or their delegate (following a discussion with Ward Councillors where possible) are authorised to advise VCAT of this position inclusive of the ability to amend conditions or grounds of refusal consistent with Council's original decision based on the amended plans so as to place Council in the best position of defending its decision.

Where there is insufficient time allowed by VCAT for amended plans to be considered at a formal Council meeting and officers determine that amended plans can be supported meaning that Council's position may change, the Director City Development or their delegate is authorised to amend or change Council's position subject to the following:

- *Time permitting, seek to discuss the amended plans, along with the officers position with Councillors at a scheduled Council Strategy or Briefing Meeting, and there is majority support (of Councillors in attendance) that the plans are worthy of support;*
- *Where time does not permit the plans to be discussed at a scheduled Council Strategy or Briefing Meeting, all Councillors will be advised individually of the proposed amendment and the officer's position and there is a majority support for this;*

Where there is not a clear indication from Councillors Council's original position on an application will stand with the Director City Development or their delegate being able to amend conditions or grounds of refusal so as to place Council in the best position to defend its decision.

and replace this with the following:

Settling VCAT Appeals:

The Director City Development is delegated the power to settle VCAT appeals of planning decisions except where the settlement proposal involves approving a proposed development which has been refused by a resolution of Council.

Settling at VCAT

Currently staff are delegated to resolve matters at VCAT by consent, where decisions were made under their delegation. Currently the delegation places limits on this ability as it relates to settling matters at VCAT where the original decision was made by the Council. Having used these delegations for approximately 12 months it is apparent that the current wording for settling matters at VCAT is not achieving the intent of Council in how they want these matters dealt with and in light of recent discussions could be improved upon and simplified. There are no changes proposed to where decisions were made under delegation in regards to settling matters at VCAT.

It is proposed to simplify the delegation to remove the ability for Council Officers to consent to settle matters at VCAT, which would overturn the refusal decision made by Council. Accordingly should a matter before the Tribunal be amended either through the formal submission of revised plans or by way of undertakings offered through a Compulsory Conference Hearing, Officers would not be in a position to settle these without returning to a formal meeting of Council for a resolution. Where Officers believe a matter was worthy of support, Officers would make VCAT aware of this and attempt to gain sufficient time to enable Council to consider the changes and resolve upon them.

Officers delegation continues to provide that they represent the Council to maintain Council's opposition to an application if they deem the changes

are not worthy of Council support or to compel or modify conditions where necessary in the case of modifications to applications already supported by Council resolution.

Procedural Updates

In respect of the other updates proposed in the attachment these are procedural corrections and do not create any new delegations to staff.

CONCLUSION

It is recommended that the delegations and authorisations to the Council staff, as recommended in this report, be made by the Council.