

1.0 AUTHORITY

- *Planning and Environment Act 1987*
- *Local Government Act 1989*
- *Local Government Act 2020*
- Council and Wellbeing Plan Strategic Objectives 1.1, 1.2, 1.3, 1.4, 2.2, 2.3, 2.4

2.0 INTENT

The purpose of this policy is to:

- Ensure a lawful, consistent, and best practice approach to decision making in planning matters. It establishes a policy approach, underpinned by practices that are supported by Councillors and staff to ensure that all decisions made in planning matters are made consistently and in accordance with the planning framework in Victoria. In doing so, it will provide for clarity and consistency in how Councillors are briefed and how planning decisions are made at the Council.
- Reinforce Council's role as both a Planning Authority and a Responsible Authority under the Planning and Environment Act 1987 (the Act).
- To reinforce the separation of power in the role of Council in setting the vision, policy and strategic direction and the implementation of policy and the making of decisions by officers in planning matters.
- Ensure that decisions are not compromised by premature or ill-informed advice provided to proponents, applicants, objectors, or submitters but through consistent, appropriate, and defensible processes.

3.0 SCOPE

This Policy applies to all Councillors and staff.

4.0 GOVERNANCE PRINCIPLES

Under the Local Government Act 2020 (LG Act), Council must give effect to the following overarching governance principles:

- a) Council decisions are to be made and actions taken in accordance with the relevant law.
- b) priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- c) the economic, social, and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- d) the municipal community is to be engaged in strategic planning and strategic decision making.
- e) innovation and continuous improvement are to be pursued.
- f) collaboration with other Councils and Governments and statutory bodies is to be sought.
- g) the ongoing financial viability of the Council is to be ensured.

- h) regional, state, and national plans and policies are to be considered in strategic planning and decision making.
- i) the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

- 5.1 Councillors and staff will work together to ensure that the objectives of Council policy and strategy are met, within the broader regulatory and policy framework underpinning planning law in Victoria.
- 5.2 In carrying out its duties under the *Planning & Environment Act 1987* (the Act), a Council has two key roles:
 - As a planning authority the Council sets the strategic policy framework for the community.
 - As a responsible authority the Mornington Peninsula Shire Council administers the planning scheme and makes decisions on individual applications for planning permits.
- 5.3 The role of the Councillor is to have broad and active involvement in the planning system, to understand and shape the strategic planning framework and to be informed about and make decisions on planning permit applications and planning scheme amendments that are presented to Council.
- 5.4 Councillors equally play an important role in encouraging responsible and appropriate use and development of land and in facilitating such use and development in the Mornington Peninsula Shire.
- 5.5 The role of the Council planner is to apply their professional qualifications, skills, and expertise to manage the sometimes-competing policies within the planning scheme and the interests of all stakeholders involved in the assessment of planning permit applications. It is to provide an impartial professional service to all parties and to the Council. It is also to provide impartial advice to Council and the community in relation to planning scheme amendments and strategic land use planning decisions.
- 5.6 To achieve the outcomes of the Policy, the following practices are put in place.

Obligations of the Councillor

- 5.7 In acting as part of the Council, in addition to their responsibilities under the LG Act, the Governance Rules and any other policy, the Councillor must:
 - Consider the objectives and policies of the Council as they relate to the planning matters before it.
 - Consider the Act and the obligations it places on Responsible Authorities, in particular section 60 regarding matters that a responsible authority must consider when deciding an application.
 - Consider the recommendations of advisory committees, planning panels, Ministerial Directions and other government authorities and the Minister for Planning.
- 5.8 In accordance with the LG Act, the role of the Councillors is to participate in the decision making of the Council, to represent the interests of the municipal community and to contribute to the strategic

direction of the Council.

- 5.9 If approached by a Lobbyist, Councillors (and staff) are to follow the process and guidance contained in the Lobbying Policy.

Contact with Permit Applicants or objectors/submitters

- 5.10 Council acknowledges that permit applicants and objectors/submitters play a significant role in the planning and economic prosperity of the Mornington Peninsula and that Councillor engagement with potential applicants and objectors/submitters is important.
- 5.11 Councillors acknowledge that their principal obligation is to:
- Serve the public interest by ensuring their decision is consistent with the planning legislation, Council's planning scheme and policies.
 - Have appropriate regard to the advice provided by or on behalf of planning officers; and
 - Not be influenced by any other irrelevant or inappropriate considerations.
- 5.12 As such Council acknowledges that to protect the integrity of planning decisions and the impartiality of Councillors, that contact with permit applicants and objectors/submitters at certain stages will not be appropriate.
- 5.13 Where there is no matter before a Council, or to a Councillor's knowledge, no application has been presented to the Council, then Councillors may continue to engage with a prospective permit applicant and potential objectors/submitters having regard to appropriate conduct.
- 5.14 All Councillors meeting with applicants or objectors/submitters about planning proposals must be accompanied by another Councillor, Manager or Director. If another Councillor, Manager, or Director is unavailable, the meeting must not proceed.
- 5.15 Where there is a matter before a Councillor, or before a Council, the Councillors should:
- Make it clear to all parties that they can provide general information but cannot give advice about likely decisions, conditions or reasons for refusal.
 - Suggest that the parties seek independent, impartial advice.
 - Redirect the person back to Council staff and encourage them to have active involvement with Council staff including availing themselves of pre-lodgement meetings and advice.
 - Not in any way represent the Council's possible attitude to the potential application or intimate a possible decision.
- 5.16 To ensure transparency and accountability, comprehensive minutes of these meetings must be submitted to Governance and the Director Planning and Liveability within seven days of the meeting or before the meeting in which the application is considered, whichever comes first.
- 5.17 To ensure transparency and accountability, any other contact with a party regarding an application must be disclosed to Governance and the Director Planning and Liveability within seven days or before a meeting where the application is considered, whichever comes first

- 5.18 Notwithstanding this Policy, a Councillor may continue to interact with a permit applicant and objectors/submitters, where they act in another capacity (e.g., an applicant or objector/submitter may be part of a community committee) or as part of industry associations, training, development, conferences, and seminars.
- 5.19 Councillors should always be mindful of their obligations under the LG Act and the Councillor Code of Conduct including the perception of conflict through the acceptance of gifts, benefits, or hospitality.

Call in provisions and referral to Council for decision

- 5.20 The power to make decisions in relation to planning applications, is a power granted to the Council by the Planning and Environment Act and delegated accordingly to Council Planning officers. However, this does not apply to applications that satisfy VicSmart or any type of application prescribed in clause 72.01 of the planning scheme criteria as the delegation for such decisions is to the CEO and Council Planning officers directly. As such, the call in procedure does not apply to VicSmart applications, or any application prescribed in clause 72.01.

A list of application types that are exempt from call in will be available on Council's website.

- 5.21 While Council should be advised by and fully consider the advice of planning officers, the ultimate responsibility sits with Council.
- 5.22 The ability to call in a planning permit application for a decision by Council should carefully balance the powers of the Council, the powers of delegation, and the effective and appropriate management of planning applications as a responsible authority. The Council has a duty under section 14 of the Planning and Environment Act to efficiently administer the planning scheme as the responsible authority.
- 5.23 Whilst a Councillor may decide to call in any application (other than as above), if a Councillor decides to call in a planning permit application, it should be of significant or broader community or policy interests. In balancing the interests and duties outlined above, an application should only be called in where more than one of the following criteria applies:
- An application on the Significant Application register (see criteria in clauses 5.32).
 - The application has received a significant number of objections. i.e. 15 or more objections
 - The application seeks significant variance from the performance standards which may impact on future decision making and policy.
 - There is conflicting policy or a policy vacuum which may impact future decision making and policy.
- 5.24 To call in the application, the Councillor must:
- Notify the Director Planning and Liveability or Manager Statutory Planning in writing either within 7 days of receipt of an Intent to Determine notification or alternatively prior to the delegate decision being made in the case of non-significant applications; and
 - Specify the reason for the call-in.

- 5.25 The reason for the call in should relate to the above guidelines and principles of good governance.
- 5.26 The application must not be discussed further with the Councillor unless at a briefing of all Councillors or a Council Meeting.
- 5.27 Councillors must not use the call-in process to question, negotiate, or engage with the applicant or objectors/submitters outside of the Council Meeting.
- 5.28 Any information requested by or shared with an individual Councillor must be shared with the broader Councillor group.
- 5.29 The application must be tabled for decision at the earliest possible Council Meeting to minimise the delay resulting from the call-in.
- 5.30 Once a matter has been called in, Councillors should follow clauses 5.10 – 5.19 (Contact with Permit Applicants or objectors/submitters).
- 5.31 The Director Planning and Liveability may also refer an application to Council on matters of broader policy issues or significant community interest using the above guidelines.

Significant Applications and Intent to Determine (ITD) process

- 5.32 Applications considered to be of significance are noted in a register that is searchable by ward and is regularly updated (at least once per week). These include:
- Applications for 3 or more dwellings where the deemed to comply standards of Clause 55 are not met and more than 5 objections have been received
 - Industrial or commercial development in excess of \$5,000,000
 - Subdivisions with 10 or more lots (not units)
 - Applications for non-residential use in residential zones
 - Applications for non-industrial (anything other than Section 1 use, or Section 2 uses that are not 'industry' or 'warehouse') in industrial zones and more than 5 objections have been received
 - Applications for use and development of a dwelling in the Green Wedge Zone (excludes replacement dwellings and alterations and additions)
 - Applications for non-agricultural uses in the Green Wedge Zone
 - Applications considered significant within the township, locality or ward
 - Telecommunications facility applications
- 5.33 To support transparency and to provide Councillors with oversight, a notice of Intent to Determine (ITD) any significant applications will be published weekly for all Councillors.
- 5.34 The Council officer's delegate report and final recommendation will be complete prior to publishing the Intent to Determine to ensure transparency and robust decision making.
- 5.35 A councillor may use this as information, seek further clarity, or use it to call in an application, if the call in provisions apply.
- 5.36 As per clause 5.24 – within 7 days of receipt of the notice of Intent to Determine the Councillor must

decide to call in the application or continue to a delegated decision. In the absence of a response within the required timeframes – delegated officers will proceed to determination in accordance with their recommendation.

- 5.37 A councillor must not attempt to influence the proposed decision.

Briefing Councillors on Planning Matters

- 5.38 Council will be briefed on planning matters coming before the Council as part of the briefing schedule. Relevant planning matters will go to a briefing before a Council meeting.
- 5.39 If a planning matter arises that requires a briefing outside of the briefing schedule, a special briefing will be arranged.
- 5.40 Additionally, a general verbal planning update will be arranged every two months during Council briefings, for all Councillors, whereby Council will be briefed on matters arising, strategic projects, industry developments and other matters of concern.

Contact with Planning Officers

- 5.41 It is important that Councillors have access to planning information to support their decision making.
- 5.42 It is also important to ensure the integrity of officer recommendations and advice and to ensure that it is free from influence. This protects both officers and Councillors.
- 5.43 Councillors may seek advice about planning matters through the Councillor Requests System, unless it relates to a notice of Intent to Determine. Per the 'Staff and Councillor Interactions Policy,' all Councillors must contact Shire officers regarding planning matters through a Manager or Director. This must be followed by written correspondence summarising the conversation.
- 5.44 Councillors must not seek to influence planning officer advice or recommendations, and as such must not be contacting officers whilst an application is in the process of being determined. Directing or improperly influencing or seeking to direct or improperly influence a member of staff exercising decision making delegations is an offence under the LG Act.

Reversing an Officer's Recommendations

- 5.45 A Councillor has a responsibility to be informed about planning permit applications.
- 5.46 As such, the planning officers have a responsibility to ensure that Council reports are fulsome, prepared in time and are discussed fully with Councillors.
- 5.47 When Councillors are deciding, or proposing to make an alternate decision, they should have an understanding of:
- The proposal.
 - The relevant policies and controls in the planning scheme.

- The relevant decision guidelines in the planning scheme.
- The reasons why a planning permit is required.
- The objections and the council officer's assessment of the planning merits; and
- The reasons for the council officer's recommendation.

5.48 Councillors should explore alternate recommendations with the Director Planning and Liveability or Manager Statutory Planning as early as possible, but not less than two business days before the Council meeting, to ensure that any decision is defensible. The minimum two business day timeframe does not apply to urgent or late reports. However, should an alternate recommendation be outside the scope of planning advice, the Chief Executive Officer or Director Planning and Liveability may procure independent advice.

5.49 Notice to move an alternate recommendation should be given as early as possible, but not less than two business day before the Council meeting, unless it is an urgent or late report. This will provide officers with sufficient time to consider and provide the best advice possible in relation to the matter to ensure the decision is sound and defensible.

Submitters to all planning matters

5.50 Rule 36 of the Governance Rules allows a person to make a verbal submission to a meeting of Council in which a planning matter is being heard.

5.51 Submitters must:

- Notify the Council at least one business day before the meeting
- Contain their submission to the matters before the Council
- Not repeat previous submissions

5.52 The submission will be heard at the commencement of the item or at a separate submissions hearing.

5.53 The Chair of the meeting may allow questions to be asked of the submitter, but not of the officer – until such time as the item is presented to the Council.

5.54 In allowing submissions, Council should be mindful of making their decisions on the planning evidence before them and to ensure that their decision is not swayed by irrelevant considerations.

Privately led Planning Scheme Amendments

5.55 Any person or body can request that Council as the Planning Authority prepare an amendment to the Planning Scheme. Council is under no obligation to agree to the request. If Council does agree to the request, it must apply to the Minister for Planning for authorisation to prepare the amendment.

5.56 When a privately led amendment request is received by Council, planning officers will assess the request to determine whether it is strategically justified, before making a recommendation to Council as to whether to agree to the request.

5.57 Privately led amendments requests should only be progressed in exceptional circumstances

because these requests are ad hoc, resource-intensive and can divert resourcing from delivering Council's priority strategic planning program. Therefore, Council will:

- a. Only progress amendment requests which clearly align with or implement adopted Council policy, plans or strategies, and deliver a significant community benefit.
- b. Consider the availability of resources when determining whether to progress an amendment to authorisation.
- c. If there is limited available resourcing, only consider amendment requests if the applicant agrees to pay full costs for third-party review and assessment of the request on Council's behalf, with the third-party to be selected, briefed, and directed by Council – not the applicant.
- d. If there is no available resourcing, defer assessment of the amendment request until sufficient resourcing becomes available.
- e. Require applicants to prepare all amendment documentation and associated supporting technical documents, at their own cost, with documentation to clearly demonstrate the proposed amendment's strategic justification.
- f. Require applicants to reimburse Council with certain costs to progress the amendment request (in addition to the standard fees as per the Planning and Environment (Fees) Regulations 2016), such as, but not limited to, public exhibition costs, Planning Panel fees, and costs for Council representation at a Panel Hearing (including expert witness costs).
- g. Promptly reject amendment requests which clearly do not align with adopted Council policy, plans or strategies.

- 5.58 Any meeting requests to Councillors from the proponent of a privately led amendment should be referred to Councillor Support for coordination and these will be held in the presence of the Team Leader Strategic Planning or Manager Strategic Planning, Transport & Environment.
- 5.59 Councillors will be briefed about any privately led amendment, including an opportunity to hear from the proponent. Councillors must remain impartial during these briefings and avoid making any statements of support or opposition. There will be an opportunity at these briefings to ask questions of officers once the proponents have left the meeting.
- 5.60 Should the proponent of a privately led amendment approach Councillors, the Councillors must:
- Refer the proponent to the strategic planning team.
 - Not in any way represent the Council's possible attitude to the potential amendment or intimate a possible decision.
 - Keep a record of their engagement and provide this to Councillor Support to be placed on file.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

7.0 ASSOCIATED DOCUMENTS

- Delegations Register
- Governance Rules

- Mornington Peninsula Shire Planning Scheme
- MAV Land Use Planning in Victoria Councillor Guide 2016
- MAV, VLGA, LGVic & LGPro Good Governance Guide

8.0 DEFINITIONS

Call in	Means a request of a Councillor that the planning application be brought to a Council meeting for decision instead of a decision under delegation.
Council	Means The Mornington Peninsula Shire Council.
Councillor/s	Means the individual/s holding office as a councillor of the Council.
Governance Rules	Means the Governance Rules adopted and in force at any particular time.
Local Government Act	Means the <i>Local Government Act 2020</i> and the <i>Local Government Act 1989</i> .
Notice of Intent to Determine	Means a notice distributed to Councillors, identifying a decision proposed to be made by planning officers under delegation.
Planning permit applicant	The person making the application, or the person assigned to represent them in the application.
Policy	Means this Planning Matters policy.
The Act	Means the <i>Planning and Environment Act 1987</i> .
Planning officer	Means an officer responsible for decision making under the Planning and Environment Act.
Planning permit application	An application made pursuant to the Planning and Environment Act.
Planning Scheme	Means the Mornington Peninsula Planning Scheme.
Responsible Authority	Means the Mornington Peninsula Shire when acting as the authority making decisions on Planning Permit applications under the Planning and Environment Act.
Planning Authority	Means the Mornington Peninsula Shire when acting as the authority making decisions on Planning Scheme Amendments under the Planning and Environment Act.

Planning matters	Means matters that relate to considering planning permit applications under the Planning and Environment Act and matters relating to the Mornington Peninsula Planning Scheme, generally amendments.
Significant planning application	As defined in the criteria in clause 5.32 of this policy, or as amended by Council or the provisions of the Act/Planning Scheme.
Objector / Submitter	Means an objector or submitter to a planning permit, a planning scheme amendment and strategic planning project.

9.0 POLICY SPONSOR

The Director for Planning and Liveability is responsible for overseeing the application and review of the Planning Matters Policy.

10.0 DOCUMENT CONTROLS

Council will review this policy ever four years or earlier as required.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.