



Ordinary Meeting of Council Attachments

3 May 2011

Attachments

Part 3

Item No.	Item Name
10.10	Planning Delegation

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Planning Delegation

“Steering not Rowing”

Planning Delegation Guidelines for Victorian Councils

Draft

Prepared by

TIXXIS
consulting

**For the Municipal Association of Victoria/ Department of Sustainability
and Environment Continuous Improvement Program**

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Executive Summary

The development planning assessment system in Victoria requires Councils to administer planning schemes and issue planning approvals and consents, prior to land use and development taking place. At various stages of the planning approval/assessment process, Councils need to make decisions under the terms of legislation, including whether or not a permit should be issued.

All Councils in the State have a system of delegation in place that allows officers of the Council to make formal decisions on planning permit applications. Some delegations to Council staff promote an efficient consideration of applications. Others allow only the administrative functions to be delegated requiring the final decisions, except on all but minor matters, to be made by the elected Council.

These Model Planning Delegation Guidelines have been produced as part of the Municipal Association of Victoria and the Department of Sustainability and Environment Continuous Improvement Program.

The main purposes of the Model Delegation Guidelines are:

- To assist Councils in achieving consistent and high levels of professional planning through the delegation of appropriate planning decisions.
- To inform the sector of the most efficient and effective options for the delegation of planning matters.
- To assist in creating an efficient and effective planning system that allows elected Councillors to focus on their role as planning policy makers.
- To identify best practice for reviewing and updating Council's instrument of delegation for planning matters.

A number of background documents are outlined in the report. These include both a draft 1998 report into Delegation in Councils and the recently released discussion paper *Better Decisions Faster*.

The underlying theme of these documents is that the effective functioning of the planning system relies on the delegation of decision-making responsibilities to council planners.

An appropriate system of delegated decision-making based on sound Council policies has a number of significant advantages to Council and the community including:

- The council and particularly its elected representatives will have more time to address higher order priorities and responsibilities such as policy development.

- Council planners will take more responsibility in giving advice and decision-making, and will provide consistent and informed professional advice to applicants, objectors and Council.
- The processing/decision time for applications will be significantly reduced enabling council to improve its level of efficiency and provide better customer service to the community. The more robust planning system and efficient and effective consideration of applications will also improve the credibility and reputation of Council.
- The workload for Councillors and council officers will be significantly reduced particularly in administrative and unproductive time.

Twenty-five metropolitan, regional and rural Councils Victoria were surveyed in respect of their planning permit process and the level of delegation. .

The survey confirmed that the principles enunciated in a 1998 draft report remain key ingredients in developing and maintaining an effective delegation system within Councils. Some of the critical factors include: defining the role that a Councillor and Council should take in the process; developing and maintaining an effective two-way communication process between Council officers and Councillors; good reporting mechanisms; developing trust and relationships; and defining policy.

Building on the 1998 criteria this report explores key principles to assist in achieving effective delegation including:

- The legal instrument.
- Documentation.
- Communication
- Interpretation of Policy
- Triage of Applications
- Public Notification
- Appropriate triggers and limitations
- Training
- Audit & Review

Best practice amongst Council would suggest that in excess of 95% of applications are dealt with by officers under delegated authority. This includes both applications that are approved and refused.

The use of checklists and templates throughout the planning permit process ensures robust processing of applications and importantly builds confidence in the permit processing system. This confidence is an important consideration for Councillors/Councils in considering the extent of authority to be delegated and what limitations should be imposed on that responsibility.

The most difficult area to define is the *trigger* or limitation that is imposed by a Council in formally delegating authority to officers. For or a variety of reasons no one model or approach will suit every Council, as conditions will vary markedly across each Council administration and community.

The report recommends that an application's consistency with policy should be the basis of the development of any limitation on the exercise of authority, not the number of objections received, which appears from the surveys to be the most common limitation imposed within delegation instruments.

A formal *call in* protocol is suggested as the most effective way of allowing Councillors, in a structured way, to concentrate their efforts on local policy development whilst retaining the ability to directly intervene in those matters that raise significant policy issues. The *call in* protocol can also be used as a guide for officers to list matters for the Council's consideration as it is recognised that local policy cannot always provide comprehensive guidance for all potential planning permit applications.

The use of risk management principles across the planning permit process and regular internal auditing will ensure appropriate checks and balances within the system and a process of continuous improvement. The surveys indicated that all but three Councils had reviewed their delegation instruments in the past three years.

A number of models are provided in this report that are based on the best practice principles revealed by the surveys that all but a very few number of applications are dealt with by officers with the elected Council confining its activities to regularly scrutinising delegated decisions against Council policies.

1.0 Introduction

This project is one that is commissioned by both the Municipal Association of Victoria and the Department of Sustainability and Environment under the Continuous Improvement Program.

The main purposes of the Model Delegation Guidelines are:

- To assist Councils in achieving consistent and high levels of professional planning through the delegation of appropriate planning decisions.
- To inform the sector of the most efficient and effective options for the delegation of planning matters.
- To assist in creating an efficient and effective planning system that allows elected Councillors to focus on their role as planning policy makers.
- To identify best practice for reviewing and updating Council's instrument of delegation for planning matters.

It has been a long held belief that if policy driven planning schemes are to be successful it is imperative that elected Councils need to become more involved in the development and review of policy to support the development and well being of their community and to ensure that decisions of the Council; accurately reflect community aspirations.

Delegation of planning matters to Council staff is one process that provides an opportunity for Council and to a lesser extent its senior officers to concentrate on the development, monitoring and review of policy.

The introduction of the *Melbourne 2030* strategy as a statement of Government Policy will, for metropolitan Councils, give heightened emphasis to review existing policy/, particularly as it requires the production of housing strategies, consideration of the urban growth boundary and its implications and the need for structure plans around activity centres.

Delegation of authority to officers is not always the solution, but it can provide in the planning permit process efficiency and effective decision making.

Whilst a council can delegate its powers and functions to officers there must be confidence and trust in the planning system to allow the officers to be able to use the delegation as an effective tool of the implementation of both State and Local Policy. Political reasons often dominate the consideration of matters at the Council as residents often urge *performance* by their elected representatives.

2.0 Background to the Project

The Planning & Environment Act establishes the duties and function of Councils as responsible authorities. The Act provides that a Council acting as responsible authority may delegate certain authority, responsibility and functions to Committees of Council or Council officers. In delegating authority to officers Council may impose limitations on the use of the power, matter or thing delegated.

There is considerable variation among Councils as to the level of delegation to planning officers.

A number of Councils have delegated to its officers all of its planning permit consideration responsibility, whereas others have delegated only the administrative functions and minor application approval functions, and therefore require reports to be made to Committee/Council for the permit/refusal decision making part of the process.

It is of course a matter for the individual Council to decide what is best.

It has been suggested that in some municipalities the amount of time required by Councillors to deal with the quantity (and quality) of planning applications has left little opportunity for policy development and the overall management of community matters.

It is not uncommon for Reports to Council recommending approval or refusal of an application to exceed 30 pages. Assessment of policy and technical matters require considerable examination and explanation to allow the Council to form a view. Preparing such reports coupled with the Councils meeting agenda dead lines frequently causes substantial delays in making a decision on an application. It is also not uncommon for applications to be deferred adding further to time delays frustration and inefficiency.

The move to performance based planning assessment and a greater emphasis on policy being the driver of better planning outcomes has occurred at a time when local government has emerged from a period of restructure, the introduction of the Victoria Planning Provisions and its policy and performance basis, the introduction of Best Value reform, greater accountability and performance measurement requirements.

Requirements to report to Council on planning applications that do not have policy implications can also be inefficient and may develop a piecemeal and inconsistent approach to decision making rather than consideration of matters in accordance with planning policy.

The report of the Auditor General No 62. *Land Use and Development in Victoria, The State's Planning System December 1999* made recommendations in relation

to delegation. It recommended that Councils should embark on a process that assesses risk issues in delegating responsibilities and then having completed that assessment make a determination as to the appropriate involvement of Councillors in planning applications compared to higher level policy and strategic issues.

In 2001 Civic Mutual Plus as a key insurer of local government produced a publication titled *Municipal Planning Best Practice Manual*. It was specifically compiled to address the potential liability risks for Councils when determining planning applications and issuing planning permits. It noted that where claims are made against Councils in relation to planning matters the allegations generally centre upon procedural breakdowns or mistakes being made by officers. It advocated a risk management approach to the processing of applications. It did not specifically make recommendations in respect to delegations. It advocated the use of procedures and protocols throughout the planning application process to ensure robust decision-making.

The Reference Group on Decision-making Processes (Whitney Committee) was appointed by the Minister for Planning in 2002 to analyse specific issues and provide advice about improvements to aspects of the planning system. It recommended that models of delegation should be prepared to assist councils in establishing good delegation systems and effective relationships with the planning community and the broader community.

"Planning in Victoria: A Councillors' Guide", November 2002, notes that the effective functioning of the council's planning department and the planning system relies on the delegation of decision-making responsibilities to senior council planners.

The delegation of responsibility, particularly the responsibility to make decisions on minor and routine matters can and in many cases should be delegated to the most appropriate level within the planning departments. The responsibility perhaps should not be limited to just senior officers. The opportunity exists to delegate a range of the Councils powers and functions to a wide range of both experienced and less experienced officers to make the planning permit processing system as effective and efficient as possible.

An appropriate system of delegated decision-making based on sound Council policies has a number of significant advantages to Council and the community including

- The council and particularly its elected representatives have more time to address higher order priorities and responsibilities such as policy development.
- Council planners take more responsibility for giving advice and decision-making and are able to provide consistent and informed professional advice to applicants objectors and Council.
- The processing/decision time for applications is significantly reduced thus enabling council to improve its level of efficiency and providing better customer service to the community. The more robust planning

system and efficient and effective consideration of applications can also improve the Council image in the community.

- Significantly reduced workload for Councillors and council officers, particularly administrative and unproductive time.

Better Decisions Faster, a discussion paper released by the Department of Sustainability and Environment in August 2003 suggests several initiatives for opportunities to improve the planning system in Victoria. As part of suggested improvements to the permit process, the paper outlines that the effective functioning of the planning system relies on the delegation of decision making responsibilities to council planners.

3.0 The 1998 Report

In 1998 the then Local Government and Planning Advisory Council produced a draft report "*Review of Processes for the Delegation of Planning Matters at Council*",.

The purpose of the report was to develop a tool to assist councils in developing delegation processes for planning that sought to empower Councillors by focusing on developing clear policies to influence decision making.

The draft 1998 report contained a number of principles that have been assessed in this project, noting the evolution and changes that have occurred since.

The key principles of the report to assist in achieving effective delegation include:

1. Determine the Role of Councillors

At each Council there is a need to clearly determine the role that its Councillors are comfortable in performing in the planning process. This will vary from Council to Council.

2. Understanding the role of Councillors and the decision making process by the community

In defining the role it is also necessary to educate and communicate that role and expectations to the wider community and not just internally.

3. Communication and reporting

Communication on a regular and appropriate basis was a key fundamental in Councillors feeling comfortable with delegating responsibilities. A range of the information that was considered appropriate to keep Councillors informed was indicated,

4. Trust & relationships

There is a need to continually improve and enhance the relationship between the Councillors and Staff. It noted that delegation would not work if it is not accompanied by trust and team work amongst the various players.

5. Policy framework in place

Clear policies are required to enable quality decision making by officers under delegation.

6. Time frame

There is a need to establish a timeframe for decision making which is acceptable to all parties. It notes that there is a need to provide some certainty that applications will be dealt with expeditiously and to the highest level of governance.

7. The need for Councillors to be kept in the decision making circle

Councillors need to be kept in the decision making circle. Councillors should be able to request matters be dealt with at the full Council level in certain circumstance.

8. Provide opportunity for the public to have access to decision makers

It was felt important that if people had their say they would be more accepting of the decision being made.

9. Listening

Listening is an important skill for all staff and Councillors noting that communication is a two way process.

10. Opportunity to negotiate outcomes and relevant conditions.

The facilitation role of Council staff in the process is extremely important. If a negotiated outcome can be achieved it will be less likely that appeals and further disputes will be generated.

11. Clarification.

In any process for planning matters a Council must be able to seek clarification on the reasons for a decision. If people know and understand the process there is more likely to be more acceptance of decisions made under delegation.

12. Certainty.

The understanding of an outcome at a meeting or in a process is vital to the acceptance of the process.

13. Meeting procedures.

It is important the any meeting held to discuss an application is conducted in an orderly manner to ensure people attending can present their case

The draft report notes that the key building blocks for a delegation process is that Councillors and the community have confidence in the planning scheme, the process and the staff.

These and other more specific issues were tested and explored in surveys of selected municipalities across Victoria as part of the development of the guidelines.

In summary, the principles enunciated in the *1998* report are equally relevant today in considering guidelines for *best practice* delegation. This is discussed further below.

4.0 Surveys

In drafting a survey to examine the above, the extent of existing delegation and how it operates it was difficult not to delve into the planning permit process as distinct from just delegation of planning decisions.

The information sought in the survey went beyond the question of who has the authority to decide the application as the whole planning process requires *decisions* to be made at various stages of processing an application. Whilst much of the information may not be directly relevant, it provides a context to the process and a valuable resource to examine wider issues of the planning process. With this in mind, when reviewing the role of delegation each council should consider its role in the broader context of the efficiency and effectiveness of its planning departments systems and processes. Regular process auditing as identified in Better Decisions Faster would be a useful tool to carryout this task.

In total 25 councils were surveyed (Councils surveyed are listed in Appendix A). It is noted that they include a mixture of metropolitan, regional and rural Councils.

The survey is included in Appendix B.

The key outcomes of the survey are:

- Administrative type tasks are well delegated and understood. They generally rest with either the administrative function of the planning department or the general administration of the Council.
- Triage of applications is undertaken usually within one week of receiving the application. This is generally undertaken by senior planners who then allocate the file to other staff within the office. In two cases triage is performed together by senior and less experienced planners. Another example uses a team-based approach to the early assessment of applications.
- The delegation of advertising and further information varies considerably between the Councils surveyed and may be undertaken by the coordinator of the planning office or less experienced planners. One model adopted pairs a less experienced planner with a senior planner, which clearly has benefits. Generally this part of the process rests with more senior officers.
- Certification of Design Response Plans for Dwellings also varies across Councils. This can be carried out by a team leader at some councils while at others it is the role of all planning staff. Discussion with a number of Councils post survey revealed that the planner who undertakes the application triage will usually approve the Design Response Plan when the adequate level of information is provided.
- Nearly all Councils surveyed use weekly lists of applications received or delegated decisions either in hard copy form or electronically as a key part of information exchange with Councillors.
- Most Councils' engage a *Councillor call in* procedure that would have an application listed for the formal consideration of the Council. The procedure is not well understood by Councillors or effectively documented.
- Delegation for the approval of planning permit applications is a varied between Councils. It appears some have extensive levels of delegation whilst others have minimal delegated authority.
- Some Councils have not delegated the refusal of an application to officers and require that matter to be dealt with by the Council
- A number of Councils use a formal Officers Committee to approve applications and is seen by many as a positive exercise of delegated authority.
- Most instruments of delegation for deciding applications contain *triggers* or limitations that indicate who can decide an application within the

planning department generally from junior planner through to senior planner level and what limitations exist in respect to the exercise of that authority. Limitations and Triggers commonly include:

1. The number of objections. This appears from the surveys to be the most common determining factor on officers considering and approving/refusing applications. The survey indicates that 5 objections is the average number used by Councils. Objection numbers in some councils also elevate the application to be determined by a more senior member of staff. This *trigger* relies purely on the weight of numbers rather than the strength or validity of an objection(s).
 2. The monetary value of an application. An application will be determined by Council if it exceeds a dollar value.
 3. Where there is no clear policy direction in the Council's Local Planning Policy Framework to guide officers in exercising their discretion, an application will be escalated to Council for a decision. In doing so the Council should consider the policy that should apply in future applications.
 4. The type of application. For example, a subdivision of a certain number of lots or greater or a application that was previously dealt with by the Council
- Applications that involve sensitive or political issues. Generally these types of applications are "called in" by Councillors or escalated by officers, meaning that the Councillors wish to have the final decision on an application that they consider to be sensitive and or political.
 - Of the Councils surveyed 9 indicated that they have delegation that allows over 95% of applications to be dealt with by officers. At the other end of the scale some Councils have a regime of delegated authority in place that leads to more than 50% of matters being listed for formal Council consideration.
 - Training: Approximately half of respondents saw value in training and most commented that it would be appropriate for Councillors and less experienced staff. In discussion with a number of Councils there was general agreement that as part of staff induction, it is important to explain the instrument of delegation and any limitations.
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Audit: Very few Councils surveyed had a formal audit system in place. Some thought that it was a good idea and it was suggested by one respondent that if adopted it could lead to an increase in the level of delegation. Concern was expressed as to how an audit should be done: ie: imposed by regulation or driven as an internal requirement. It is noted that most Councils have an internal audit Committee that could oversee such a process.

- Amending plans: Most Councils dealt with amending plans expeditiously. Some however had limitations that severely frustrate and slow a system by having to report the amending plans to Council for formal approval.

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5.0 Best Practice Guidelines

No general model of delegation is ideal and each Council will need to look at local issues, resources and other factors to determine what fits their situation best.

The models and guidelines outlined provide an outline of delegation that is considered to represent an effective form of delegating responsibility to officers of Council.

Best practice in delegation is based on a principle that would see the Councils responsibilities being delegated to its officers based on sound planning policy frameworks and understanding, but with a qualification that Councillors may call an application to be considered by the formal Council process.

The delegation of responsibilities are not in their own right the sole contributor to appropriate effective, efficient and proper planning processes. Nor by their introduction will they provide a level of good governance. There are a considerable number of matters that will impact to varying degrees on the manner in which effective delegated decision making can take place at any one Council. These include:

- 1. Resources applied**
- 2. Local political issues**
- 3. Experience and level of staff**
- 4. Standard of application being submitted.**
- 5. Sophistication and clarity of local planning policies.**
- 6. Relationship between the Council and its staff**
- 7. Knowledge of community expectations**
- 8. Relationship between the Community and the Council.**

Critical issues that form the basis of any effective guidelines for the delegation of responsibility to nominated council officers include:

The legal instrument

In delegating any power and function it is imperative that the instrument that purports to give the responsibility is proper, is comprehensive in its application and is kept up-to-date. A number of Councils use a common template prepared by their Solicitors as it provides in one document all of the powers and functions that are able to be delegated. Importantly it provides a format that includes the description of what the limitation is that is attached to the power or function delegated.

A number of the respondents to the survey indicated that such an approach to them would constitute leading practice.

The delegation of power to an officer or a Committee must be done by a resolution of Council. Council must understand and be comfortable with what it is delegating and the Committee and/or officer must understand the extent of the responsibilities and any limitations on the exercise of the responsibilities that it has delegated.

Communication, clarity, listening and training, as well as legal advice are critical ingredients to the establishment of an appropriate instrument of delegation.

Documentation

When decisions are made under delegated authority it is a requirement that the reasons for the decision are well documented. The report of the Auditor General was critical in respect to the way in which some Councils made decisions under delegation. It was suggested that the reasons explaining why particular courses of action were taken on a wide range of issues, were not evident from the reading of some of the responsible authority files.

The use of Checklists and templates is considered by many Councils to constitute best practice.

CMP Insurance Best Practice Planning Manual 2001 identifies the potential risk to Councils and suggests management controls to minimise risk and liability as part of the planning permit process. A key aspect of minimizing the risk relates to control systems and proper record keeping. This should not necessarily be interpreted as centering the authority to approve or reject an application in one officer rather it needs to be seen as building a planning application process that can delegate the decision making responsibility to the most appropriate level within an organization.

These checklists and templates are able to provide a rationale and criteria for assessment to ensure all of the necessary matters are included and considered.

The use of templates and checklists particularly at the application triage stage of an application will identify at the outset whether the application raises policy and technical issues. It will ensure as far as possible that matters are not missed and their use can identify early on in the process any shortcoming in the application.

Communication

One of the key success factors considered in both the 1998 draft report and responses to surveys by Councils is the level of communication and the level of trust that exists between the elected representative and the Council staff, particularly the senior staff.

The importance of establishing and maintaining a high level of communication about planning applications and related issues, cannot be stressed enough. Two way communication and team work is an essential ingredient to ensure the elected Council understand and trust the officers to highlight particular issues and when the Council should take specific interest in an application.

Suggested best practice amongst Councils would be to have weekly communication between Councillors and officers about such issues as:

- Summary of applications received including the address, permission sought and the planner handling the application.
- Decisions made (eg. further information request, public notice, number of objections, Permits and Refusals issued etc.)
- Appeals lodged.
- Appeals heard.

Communication of the delegated decision will ensure Councillors are kept informed and in the planning process loop, thereby minimising any concern about decisions being made by officers under delegation. It will also over a short period of time alert the Council to emerging policy issues and allow consideration to be given to new policy initiatives.

Effective communication and team work will also provide confidence to officers who have delegated authority to use it.

A second aspect to communication that arose in discussion following the survey relates to the communication of the decision. Administrative support is critical to applicants and objectors in informing them about the decision that has been made. Some examples quoted include notices being received some 10 days following a decision, which is unacceptable and leads to further frustration in the process. Council officers agreed that decisions should be communicated to parties within 24 hours of the decision being made.

Interpretation of policy

With the emphasis of policy being the principle driver of planning outcomes, the interpretation of policy by the officers, the Councillor(s) applicants and the community, can at times present a problem. Communication at an early stage of an application to identify issues of significance and a means to resolving them will result in a more robust system that has the confidence of all the participants.

Two way communication between Councillors and officers at all levels within planning departments is seen as vital in building trust to allow a system of delegation to work effectively.

Triage of Applications

The triage of applications and requests for further information are matters that can add potentially lengthy delays to the application as in many Councils the power rests with the Manager and or Team Leader.

The survey results tend to suggest that triage occurs generally within 2 weeks of receipt.

If templates and checklists are developed and used it speeds this process up. It may allow a more consistent approach to the assessment of applications and provide a checking in the processing of an application.

Some Councils adopt a team based approach to the triage of an application where a senior officer will review applications with more junior officers. This has an advantage of training on the job and the greater understanding of issues by those less experienced and provides a greater level of consistency in the Councils' process.

The added benefit of this approach is that it allows advice to be given to applicants and third parties to be more complete as time progresses. Not every Council has the luxury of resources to be able to undertake this team based assessment. However the principle that aligns the decision to the most appropriate officer level still remains.

Public Notification Policy

A number of Councils have adopted a notification policy. Whilst there is nothing inherently wrong with this approach the Act requires a responsible authority to form an opinion and then direct notice to persons who may be materially affected by the grant of a permit.

The simple adherence to a policy may not cover all those persons who may be materially affected. Adherence to the policy can on the other hand lead to a situation of excessive notification beyond those persons who are genuinely materially affected. Again a template is used by a number of Councils to guide the officers in making a judgment as to who may be affected.

The added benefit with the use of such a checklist is that it allows a clear interpretation of what matters the delegate considered in giving a direction, should it ever be challenged that insufficient notice was given.

Triggers

One of the most contentious and difficult issues in specifying a best practice delegation guideline relates to the defining triggers or limitations that could be imposed as part of the delegation instrument.

Many Councils use the number of objections as the basis for whether or not a planning application needs to be considered by the full Council or committee of Council. Community agitators aware of this can easily organise the requisite number of objectors to an application forcing a longer process with potentially the same outcome but at considerable cost, frustration and anxiety. In addition, the number of objections does not indicate the real substance of issues at stake but is simply a numerical measure that is easy to interpret.

Some Councils have placed a monetary value of development requirement while others have been specific in the type of development that needs to be reported to the Council.

In developing any limitation or trigger it is important to keep in mind that if the Councillors are kept informed during the process they will be more acquainted with the application and its issues, so they can work with the officers applicant and the community in achieving an appropriate outcome.

Best practice would suggest that no numerical type triggers be imposed i.e.: a number of objections. The number of objections received is not an appropriate indicator of the level of compliance of the application with council policy.

A limitation in respect to policy may be appropriate depending upon the circumstances. One Council has in place a delegation instrument that imposes an application type limitation on less experienced officers (at Band 5 and 6 Level of the Industrial Award), but no limitation on the Team leader and Manager. An alternative to this is employed at another Council where the planners at the same level has the power to issue an approval but it require two signatures signing off the decision.

A ***Councillor call in*** model would allow the Council (or committee depending upon the governance structure at the Council concerned) to deal with a matter in a particular circumstance. A "call in" protocol is provided below.

Whatever limitations are imposed it is essential that they are directed towards a system that promotes efficient and effective decision making that seeks appropriate and professional planning outcomes. The delegation should be to officers at a level that ensures their expertise and experience is appropriate to the responsibility being delegated.

Refusals

An issue highlighted during discussions with Council officers was the requirement to list for Council applications for refusal even when it was clear the application was clearly proposing a development/use that was contrary to the planning scheme policy or failed to meet the technical/specific provisions of the scheme.

Anecdotally even when the officers recommended refusal it was a rare occurrence for the Council to take a different view.

Accordingly where an application proposes a matter that is clearly contrary to the policy or technical requirements of the planning scheme the refusal of the application should be delegated to officers.

Conditions

The use of standard conditions (adopted by the responsible authority) and following the guidelines of the DSE/MAV ***Writing Planning Permits*** document is advocated as a positive action to ensure consistency in planning approvals and validity. It also provides confidence to less senior officers in ensuring correct and relevant conditions are imposed on any approval that they have the responsibility for issuing.

Training

A significant number of respondents to the survey indicated that as part of general training of both the elected representatives and officers that some time could be spent on delegation and the exercise of power. In discussion with a number Councils surveyed, it was felt that less experienced planners would be better assisted in understanding the planning process by an introduction provided in their Council's induction of new staff program.

For the Councillor it was indicated that training should form part of an education program that was specifically designed for Councillors to understand the Planning & Environment Act and Councillors responsibility.

It is noted the MAV *Planning in Victoria A Councillors' Guide* publication provides to all Councillors an excellent reference document that includes a short section on delegation.

Audit

Better Decisions Faster suggests that audit and a health check of the planning process will promote a more effective and efficient planning approval system.

In respect to delegation, the use of an Audit process at two levels can assist in the building of a higher level of confidence in the planning system at Council. It can also lead to a higher level of delegation and therefore a more effective and efficient system.

The two levels could include:

1. At officer level a monthly random sample of application files to ensure that all of the processing matters have been appropriately dealt with and documented.
2. At the senior management and Council level by the use of the internal audit system (in operation at most Councils) to ensure an appropriate level of delegation occurs to officers and the exercise of authority by officers is leading to the implementation of council policy. It also ensures that the Planning processes on a regular agreed basis forms part of Councils general and overall risk management program.

The adoption of an audit process of planning application was supported by a number of respondents to the survey. It would provide a check and balance in the system and identify improvements in Council processes. Importantly it can lead to improvements and reduction of risk.

Officer's self-assessment of files as an audit will immediately identify *housekeeping* issues that can be dealt with to improve processing times and standards of applications. It can also assist in identifying inefficient processes that may be in place and suggest measures for continuous improvement. By involving senior and less experienced staff in the audit process will increase awareness of issues that impact on the robustness of the application process.

Importantly, the use of an Internal Audit Committee (comprising Councillors and independent external members) provides a structured way to continually assess the appropriateness of and operation of the instrument of delegations in place. It can measure performance and provide to the Council an independent measure of the robustness of the planning system. It can provide to the Council a level of confidence that delegations are appropriate and working correctly.

The updating and reviewing of the various delegation instruments is a matter that could form part of an annual audit plan in place within Councils.

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6.0 *Delegation Models*

The following models are presented as examples of best practice. They are presented in simple form and assume that the steps in the planning process up to the time a final decision is made, have been carried out and completed. They assume that:

- All of the administrative tasks have been completed
- The details and information provided as part of an application is competent,
- Councillors are aware and up-to-date on issues and any changes to an application, and
- Any mediation of issues with objectors has been satisfactorily undertaken (but not necessarily resolved).

It is accepted that the responsible authority would have delegated to the officers the necessary delegation to complete these tasks. Therefore the models seek to examine only the final decision making steps in the process.

The surveys revealed that a number of Councils maintain a delegation process that rests all of the permit issuing power with the most senior planning officer. In discussion it appears that the principle reasoning behind this is that it ensures consistency in decision making. The reverse of this argument is that it also increases the time it takes to consider an application as the manager has responsibility for staffing resource, budgeting, human resources and other corporate duties.

A number of Councils use a system that allows less senior officers to issue approvals for minor buildings and works and other specified type applications. For those applications that are more complex or where objections have been lodged the authority generally rests with the more senior members of staff.

It is clear from discussions with Council officers following the survey that in those Councils where the officers deal with a significant number of applications (95% and above) under delegation, the processing time for applications is much less for those Council where only 80% of applications are dealt with by officers. Importantly those matters listed for Councils consideration generally involve significant issues that clearly need the input of the elected representatives and involve matters of policy.

Councillors however still are able to play an important role in the process.

The models presented all have provision for Councillor(s) to have the planning application dealt with at a Council meeting, but rely heavily on officers to implement the adopted policy. A protocol has been developed that provides a framework to allow matters to be dealt with at Council level in a structured way. Depending upon the Governance system at individual Councils it may be adapted

to require all Councillors in a Ward or alternatively the Mayor and one Councillor to call a matter in.

In adopting a protocol approach it is believed over time that Councillors will be able to better spend time and resources developing policy, which underpins the current planning system. A structured protocol approach is preferred to an ad-hoc approach currently engaged in many Councils as it provides a simple document that can be understood by the community who may agitate for a matter to be placed before Council.

Best practice models in operation across the State also place a great onus upon officers to handle matters efficiently and expeditiously. It also assumes that once a delegate has made a decision that decision will be communicated promptly and does not *lay on the table* for a period of time or take a week or two to reach the applicant or objectors.

Measures are being applied to gauge performance and ways are being explored by Councils to improve processing times.

Extensive delegation is seen as being a major contributor to increasing the effectiveness of the process and the satisfaction by staff, applicants and the community.

Model A:

This model is based on the principle of full delegation to Council staff with a call in protocol to provide a framework to formalise any matter being dealt with by Council. It is perhaps the simplest model and is based on a high level of trust and communication between the Council and its officers.

A protocol is provided at Appendix C

Under this model the number of applications referred to a Council or referred to Council for its consideration would be minimal.

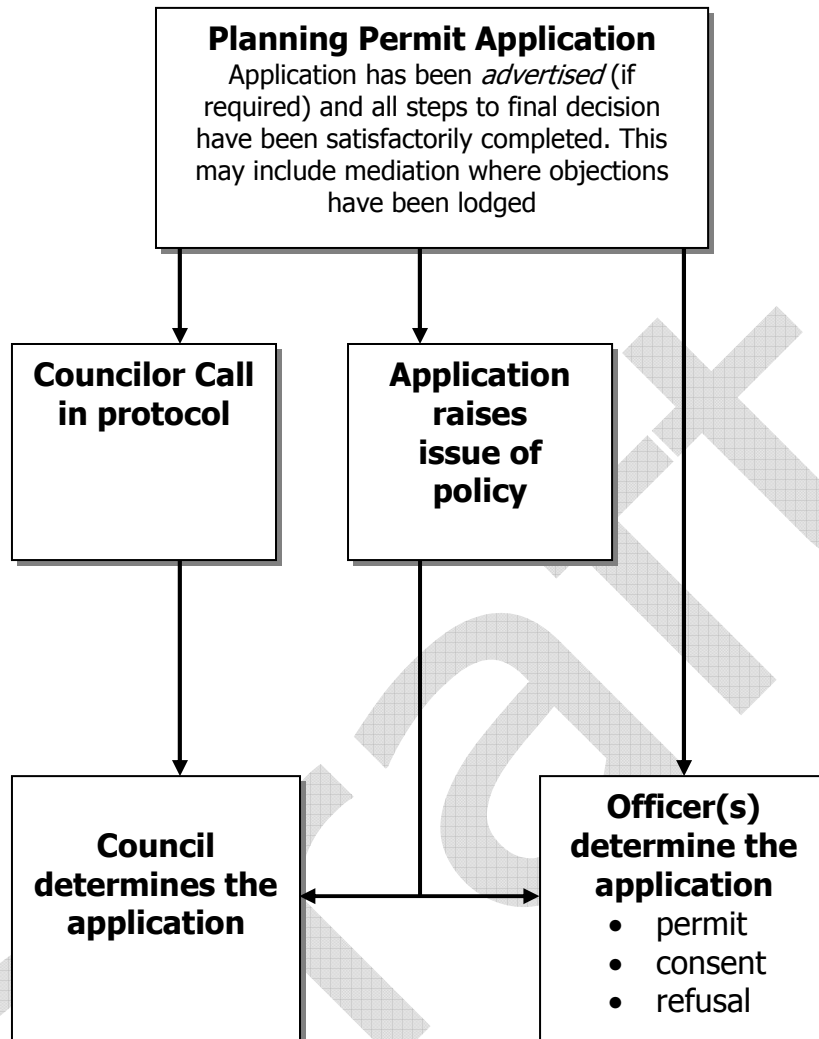
It requires clear and open communication to exist between Council officers and Councillors. It requires an understanding by the community that the role of the Councillor is to debate and make policy, which the officers are required to implement. It is based on a policy framework that is clear and understood by all.

Experienced officers hold delegation to issue approval, with limitations in relation to the nature of the application being able to be approved by the less experienced officer. It is in operation at a number of Councils and achieves in the view of Council officers effective (and efficient) processing of planning applications.

Significantly it generally results in excess of 95% of applications being dealt with at officer level.

Importantly it allows Councillors to focus more on making their local policy more relevant and sophisticated to better meet the needs of their evolving communities.

MODEL A



Note:

1. Council may also include a Committee of Council, which has delegated authority to consider and determine applications.
2. Officers have the delegated authority to grant permits or refuse an application with policy being the limitation imposed.
3. Officers may refer matters to Council in accordance with the criteria set out in the "call-in" protocol.
4. Officers may be able to determine matters where the policy issue is only minor or the matter under consideration will not affect the achievement of the overall direction of the planning authority.

Model B:

This model builds on the principles of Model A, in that the majority of applications are dealt with by the officers. It does however provide an alternative step in that the Council provides full delegation to a committee of Council Officers to determine and if necessary refer the application to Council for determination.

The type of applications likely to be dealt with are those that raise issues of policy rather than just technical matters.

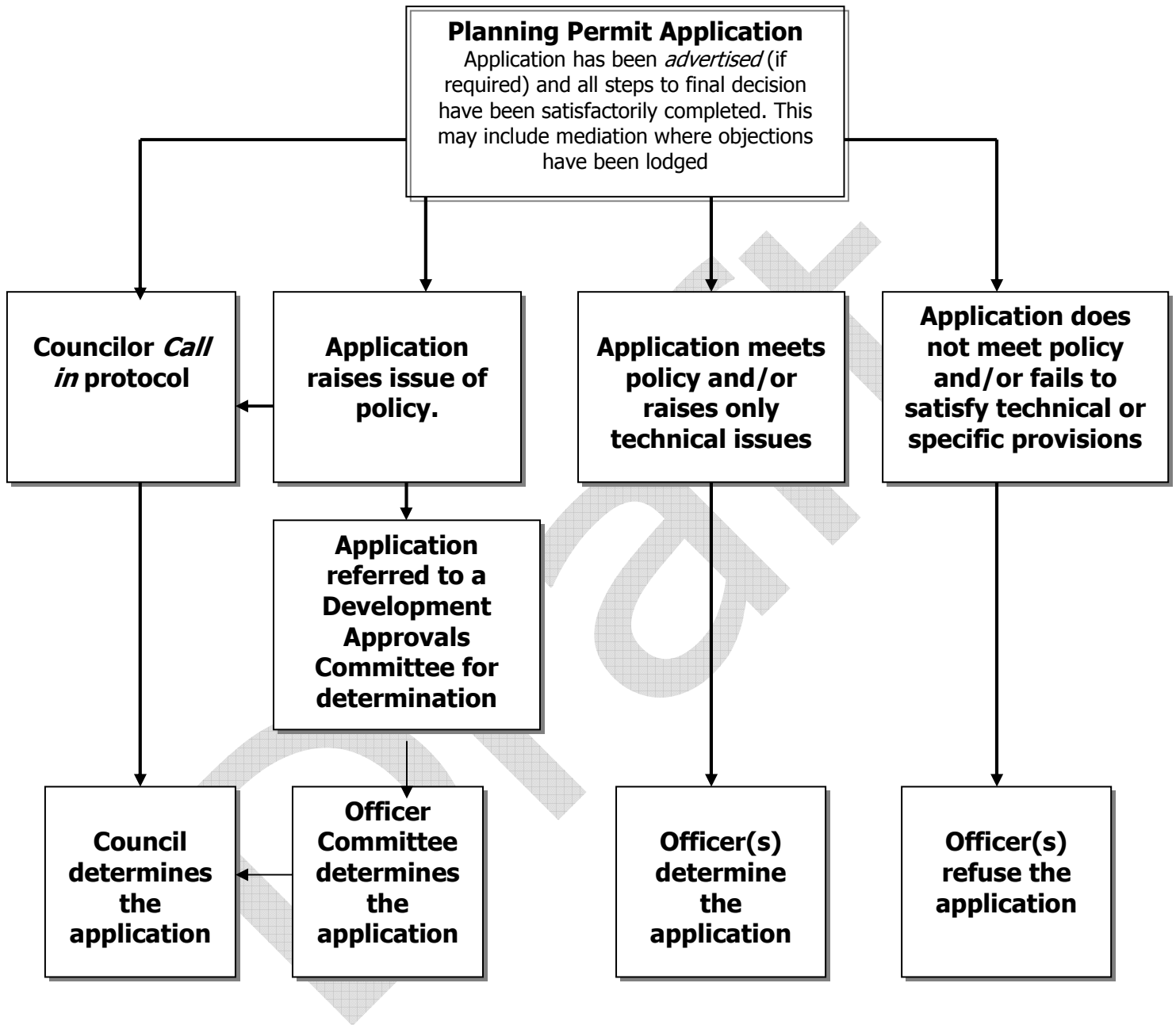
The Committee could be constituted by Senior Planning Officers as well as a representative from another area of Council (for example the Governance area). It allows affected parties to be heard by the officer committee and would formally meet on a fortnightly basis.

The instrument of delegation would be to the officer committee.

The planning officer responsible for the carriage of the application would present the item to the committee and other parties that may include the applicant and objectors have the right to present their point of view. There are a number of advantages of this committee including providing valuable training for planning officers, it allows parties to present their case to a committee in an informal setting (compared with a Council meeting) and allows importantly a frank exchange of views that may lead to consensus or modifications being made to an application. The Committee may if necessary seek external assistance in giving advice if parties raise matters that are beyond the expertise of the Council officers or the provision of external advice would assist in resolving a point of difference between the parties.

Councillors are provided with a copy of the minutes of the meetings and the decisions made. Applications can if the circumstances require be referred to the Full Council or Council committee for determination.

MODEL B



Note:

1. The Development/Use Approval Committee constituted by Officers has a formal instrument of delegation.
2. The Officer Committee can refer applications to Council for decision depending upon the circumstances.

Model C:

Model C provides an variation of Model A & B in that all applications of a technical nature and all but significant applications are dealt with by officers at various levels. Those higher-level applications where a gap in policy is evident or planning scheme policy does not adequately provide for the matter under consideration, are dealt with by a committee of Councillors.

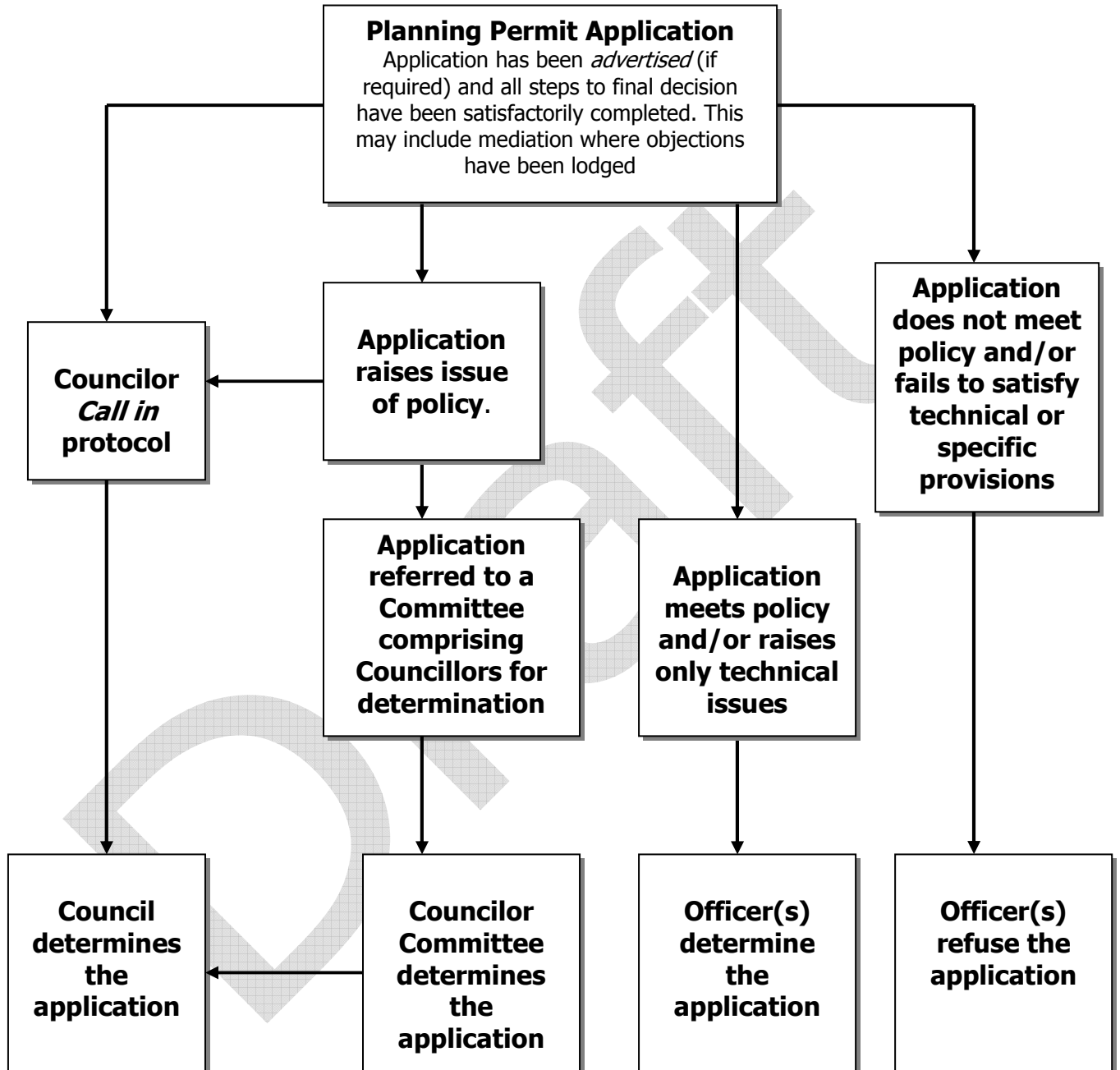
The Committee may, depending upon the governance structure of Council, comprise a number or percentage of the elected representatives or it may involve all Councillors, ie: separately constituted planning committee.

What constitutes significant applications will depend upon a number of issues but the principle is that it would normally involve only those applications that raise matters of policy or the achievement of the planning authority long-term goals as expressed in the Municipal Strategic Statement or Corporate Plan.

Applications that meet the policy direction and/or are only technical in their nature are dealt with by officers under delegated authority.

It provides that the Call in protocol is available to Councillors

MODEL C



Model D:

Model D provides a further variation on the models presented.

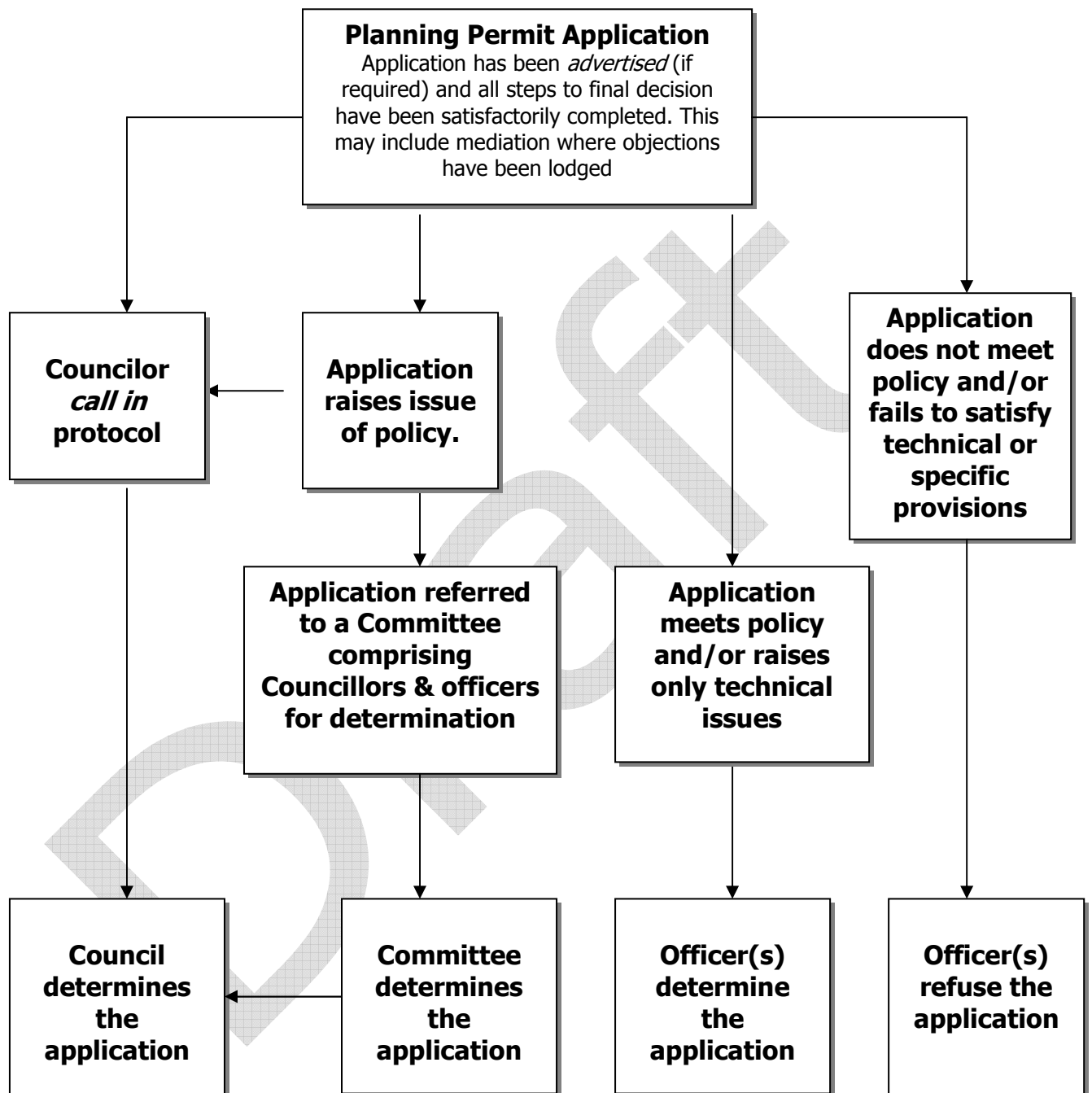
A formal committee of officers and Councillors (for example the Mayor and one other Councillor possibly on rotation) would meet on a regular basis to determine more significant applications or applications that raise matters of the achievement of policy, with the vast majority of applications being dealt with by officers.

The trigger that would result in a matter being considered at a committee level would be determined by either the Councillor *call in* protocol or where the existing planning scheme policy does not adequately cover the issue at hand. It may also be a use/development that meets one or some of the principles outlined in the protocol document.

Similar to Model B and Model C the Committee would adopt a meeting procedure that would allow parties to present submissions and would have the authority to determine matters. Formal minutes would be recorded and circulated to all Councillors.

The call in protocol could be used to refer matters to this Committee rather than to a formal meeting of Council.

MODEL D



Appendix A

List of Councils Surveyed

- Ballarat**
- Banyule**
- Bass Coast**
- Baw Baw**
- Bayside**
- East Gippsland**
- Glen Eira**
- Greater Dandenong**
- Hobsons Bay**
- Knox**
- Manningham**
- Maroondah**
- Melbourne**
- Mildura**
- Moira**
- Monash**
- Moreland**
- Port Phillip**
- Surf Coast**
- Warrnambool**
- Wellington**
- Whitehorse**
- Wodonga**
- Wyndham**
- Yarra**

Appendix B

Survey

1.0 General Questions

1.1 Do you have a simple flow chart of the process used by your Council indicating who/which position holds the delegation/authority to deal with Planning Permit applications?

- Yes
 No
 Attached.

1.2 When was the last review of the instruments of Planning Delegation?

- 2003
 2002
 Prior to 2002

1.3 Who initiated the review?

- Officers:
 Council:
 Audit Committee:

1.4 What was the outcome?

- No Change:
 Increased Delegation to Officers:
 Decreased Delegation to Officers:
 Increased Delegation to Committee:

1.4 How many applications did the responsible authority determine in the last financial year?

Number:

1.6 What percentage of these applications were:

- Refused %
 Permitted %

1.7 What matters are delegated to Officers, CEO, Committee? (attach pages if available)

Mark an x in the table below against each position and the delegation that exists

	Admin Officers(s)	Planning Officer B 5	Planning Officer B 6	Planning Officer B 7	Team Leader	Manager	Director	C.E.O.	Committee	Council	Other
Registration											
Further Info											
Cert. Plan											

Public Notice											
Permit											
Refusal											
Amending Plan											
Condition 1 of Permit											
Appeals mediation											

Note: B5 refers to the level of the officers under the relevant Industrial Award.

Other:
Please specify:

1.8 What are the limitations imposed by any instrument of delegation in respect to:

Permits:

- Policy Please attach Policy
- \$ value
- no. of objections
- other List:

Refusals:

- Policy Please attach Policy
- \$ value
- no. of objections
- other List:

1.10 Staff Numbers

Planning officers: No.
Administrative Officers: No.
Investigation/enforcement officers: No.

2.0 Application

2.1 Do you have a flow chart of the process adopted at your Council for the processing of a Planning Application? If so please attach.

2.2 How are Councillors and senior management of informed of planning applications?

- Weekly/fortnightly lists:
Electronic advice:
Other: List

2.3 Who is responsible for registration? (title)

2.4 What is the estimated average length of time between lodging an application and initial assessment/triage?

2.5 Who normally conducts the triage of the application? (title)

2.6 Does this person hold delegated powers to request Further Information.

2.7 Certification of Design Response Plan:

Who holds the delegated power for the certification of design response plan(s)?

Is this person the same as the person who undertakes the triage of the application?

Yes

No

2.8 Advertising:

Does Council have a policy on public notification?

Yes Please attach.

No

Who assesses the application for advertising requirements? (title)

Does this person(s) hold delegated powers?

Yes

No

3.0 Decision Making Process –
(post Further Information and Public Notification)

3.1 What percentage of applications are dealt with by:

Officers: %

CEO: %

Committee: %

Council: %

3.2 What are the *triggers* for applications being listed for Council consideration

- Policy
- \$ value
- no. of objections How many?
- *Call in* by Councillors
- other List:

3.3 Does your Council have a Committee (either Council, Council Officers, or external persons) process that considers planning applications?

Yes Please attach details.

No

3.4 How is the Committee constituted?

- Council officers Formal or informal
Councillors
External
Combination List:

3.5 How often do they meet?

- Weekly
Fortnightly
Monthly
Other

3.6 Does the Committee have delegated powers to issue approval/refusals?

- Yes
No

3.7 If not, how long does it take for an application to then be approved/refused at Council?

Weeks: No.

3.8 Do applications proceed direct to Council (and not go via a committee process)?

- Yes
No

3.9 How often does the Council meet?

- Fortnightly:
Monthly:
Other:

4.0 Post Approval

4.1 Do the officers have delegated approval to approve:

Plans submitted in accordance with conditions of the Permit:

- Yes
No

Plans submitted by a permit holder to make minor changes to plans of an approved development/use:

- Yes
No

4.2 What limitations are imposed by the instrument of delegation in dealing with these matters?
(List or attach)

5.0 Other

5.1 Do you believe your process and delegation is an example of best practice?

Yes
No

If so why;

5.2 Do you believe your processing of planning applications is made more difficult by the delegation in place?

Yes
No

If so why;

5.3 If a best Practice Guidelines were developed what do you believe are the essential ingredients to assist your Council improve its processes

-
-
-

5.4 Audit

Does your Council have an audit process in place in respect to Planning Applications?

Yes
No

If yes, please provide details:

5.5 Training

Does your Council undertake any formal training of Officers and/or Councillors in respect to exercising delegated authority?

Yes
No

If yes please provide details:

If no, would a formalised training program be of benefit to your organisation?

Yes
No

Thank you for completing the survey. Please provide the name of a contact person should we need to follow up any of the answers to the survey.

Name:
Position:
Telephone:

Appendix C

Call In Protocol

What does this Protocol apply to:

This protocol is produced as part of a Model Planning Delegation Project to assist Council's provide an effective and efficient processing of planning permit applications.

The protocol can be adapted to be used by either a Councillor in requiring a planning permit application to be formally dealt with by Council or by officer deciding to list a matter for the consideration by the Council (or Committee given the Council's Governance structure).

Depending upon the Governance Structure adopted at a particular Council, a requirement may be adopted that would need either the Mayor and/or all the Ward Councillors to agree for a planning application to be listed as an additional step to the criteria listed below.

Criteria:

In considering the call-in in of an application by Councillor(s) or the listing a matter for Council's formal consideration by an officer regard shall be had to the following principles:

1. The planning permit application raises issues of genuine municipality wide significance that would:
 - Have a substantial impact on the achievement of local planning policy
 - Raises a major issue of local planning policy, or interpretation of local planning policy
 - Will have an significant impact beyond the immediate locality, including an impact across municipal boundaries.
2. The planning permit application clearly raises an issue that is not adequately provided for under existing planning scheme policy.
3. The planning permit application or the development of the land has had significant community unrest in the past and the proposed development or use would raise issues of public interest.
4. The planning permit application would have impact on a policy in preparation or a planning scheme amendment.
5. The consideration of the application raises matters of fairness or public interest where:
 - The mechanics of the application and process have raised issues of propriety, unjustness, transparency or conflict of interest
 - Public interest would be best served by the matter being dealt with by a formal meeting of Council.

As an overriding consideration the call in procedure will only be used within the confines of the legislative power available to the responsible authority and shall not be used to advance an ulterior purpose.

Draft