

Referral and Notice Provisions

The purpose of this practice note is to provide guidance to responsible authorities and referral authorities about:

- the use of permit application referral and notice provisions in planning schemes
- reviewing existing, or proposing new, permit application referral and notice provisions.

Referring an application

Section 55 of the *Planning and Environment Act 1987* (the Act) requires that a responsible authority give a copy of an application to every person or body that the planning scheme specifies as a referral authority for that kind of application.

Giving notice of an application

Section 52(1)(c) of the Act requires the responsible authority to give notice of an application to any person specified in the planning scheme.

Using Clause 66 of planning schemes

All referral and notice requirements must be specified in Clause 66 of planning schemes.

Clause	Section	What it does...
66.01	55	Specifies the referral authority for particular kinds of subdivision applications.
66.02	55	Specifies the referral authority for particular kinds of use and development applications.
66.03	55	Specifies the referral authority for applications under other State standard provisions.
66.04	55	Enables a responsible authority to specify a referral authority for a particular kind of application under a local provision. The referral authority is listed in a local schedule to Clause 66.04.
66.05	52(1)(c)	Specifies the persons and bodies that must be given notice of particular kinds of applications under State standard provisions.
66.06	52(1)(c)	Enables a responsible authority to specify a person or body that must be given notice of a particular kind of application under a local provision. The person or body is listed in a local schedule to Clause 66.06.

Using the Section 55 referral process effectively

What is the purpose of a referral?

The key purpose of the referral process is to give a person or body whose interests may be affected by a permit application the opportunity to provide advice to the responsible authority about whether a permit should be granted. Referrals are integral to the application process and avoid the need for referral authorities to establish their own separate land use and development assessment and approval processes.

Two types of referral authority

There are two types of referral authority: a **determining referral authority** and a **recommending referral authority**.

Clause 66 of the planning scheme identifies the type of referral authority for each kind of application that must be referred.

Both types of referral authority can object to the granting of a permit, decide not to object or specify conditions to be included on a permit. However, the effect of that advice on the final outcome of an application is different for each type of referral authority.

If a determining referral authority objects, the responsible authority must refuse to grant a permit, and if a determining referral authority specifies conditions, those conditions must be included in any permit granted.

In contrast, a responsible authority must consider the recommending referral authority's advice but is not obliged to refuse the application or to include any recommended conditions. A recommending referral authority can seek a review at the Victorian Civil and Administrative Tribunal if it objects to the granting of a permit or it recommends conditions that are not included in the permit by the responsible authority.

The process for referring an application is the same for both types of referral authority. Each:

- must be given a copy of the application
- may ask for more information
- must consider every application it receives
- must keep a register of applications it receives and make it publicly available during office hours for any person to inspect free of charge

- must give to the applicant without delay:
 - a copy of any request it makes to the responsible authority for more information
 - a copy of any decision and comments it gives to the responsible authority
- may object to an application or request that conditions be included on a permit
- may give comments on the application.

What are the duties of a referral authority?

A referral authority must, in relation to an application referred to it:

- have regard to the objectives of planning in Victoria
- have regard to the Minister for Planning's directions
- comply with the Act
- have regard to the planning scheme
- provide information and reports as required by the Minister for Planning.

Referral authorities must act promptly and in accordance with the times prescribed in the Planning and Environment Regulations 2015 (the Regulations) to avoid unreasonable and unnecessary delay.

Information to go to a referral authority

A referral authority can respond more quickly and focus its response to a referral if it understands why the application has been referred.

The Regulations set out the information that a responsible authority must give to a referral authority when it refers an application. The prescribed information is:

- the permit application number
- the date the responsible authority received the application
- a description of why a permit is required – the description should use the same words that appear in the permit requirement(s) in the planning scheme
- a list of the clauses in the planning scheme that require the application to be referred



- a copy of the applicable description in Clause 66 of the kind of application required to be referred
- a statement about whether the referral authority is a determining referral authority or recommending referral authority for the application.



In addition, the responsible authority must also give a complete copy of the application to the referral authority. In some cases, not all the information

included in an application will be required by the referral authority to consider the referral. To avoid sending unnecessary documentation, a responsible authority and a referral authority may reach agreement on which parts of the application must be referred.

Full details of referral requirements and procedures are set out in *Using Victoria's Planning System*.

Good practice referral process

	Responsible authority	Referral authority
<p>Establish clear processes</p> 	<ul style="list-style-type: none"> • Maintain an up-to-date register of guidelines published by referral authorities and make them available at the planning counter and online. • Reach agreement with the referral authority about which parts of an application must be referred. • Include standard conditions and requirements in an agreement with the referral authority or in the planning scheme to avoid unnecessary referrals and delays. • Make agreements available to the public. 	<ul style="list-style-type: none"> • Establish clear processes for handling referrals in accordance with the Act and Regulations, including delegations, to avoid unnecessary delays. • Keep a register of all applications received and make it publicly available during office hours for any person to inspect free of charge. • Maintain an up-to-date register of names and addresses of the officers to whom applications should be sent and provide this information to the responsible authority. • Provide responsible authorities with checklists of information required to accompany applications. • Provide responsible authorities with guidelines which explain the criteria that will be used to assess applications.
<p>Pre-application</p> 	<ul style="list-style-type: none"> • Identify referral requirements early in the application process. • For complex applications, invite referral authorities to participate in pre-application meetings to ensure that conditions are clear and able to be implemented. This is especially important if conditions from different determining referral authorities conflict with each other. The responsible authority, unless it decides to refuse the permit, should negotiate a set of compatible conditions. 	<ul style="list-style-type: none"> • Meet with applicants that have finalised plans to provide advice and pre-application consent (if appropriate).

<p>The referral</p> 	<p>Responsible authority</p> <ul style="list-style-type: none"> • Give a copy of the complete application, including application form and all reports and plans, to the referral authority along with the information prescribed in the Regulations without delay (preferably within seven days of receiving the application). • An application does not have to be referred if, within the past three months, the referral authority has stated in writing that it does not object to the granting of a permit for the proposal. • Send referrals electronically to minimise delays. 	<p>Referral authority</p> <ul style="list-style-type: none"> • Consider every application referred. • Check the application documentation provided satisfies agreed requirements. • Continue ongoing communication throughout the process. • When considering the application have regard to: <ul style="list-style-type: none"> • the objectives of planning in Victoria • any applicable directions issued by the Minister for Planning • the planning scheme, in particular the provisions that relate to the referral.
<p>Referral response</p> 	<ul style="list-style-type: none"> • Consider any decision or comments of a referral authority. • Conditions required by a determining referral authority must be included on the permit. • A permit must be refused if a determining referral authority objects to the granting of the permit. 	<p>Timing</p> <ul style="list-style-type: none"> • Request more information within 21 days of receiving the application (within 14 days is considered good practice). • Respond to referrals within 28 days of receiving the application or further information. • Give to the applicant, without delay, a copy of any request for more information, and any decision and comments given to the responsible authority. <p>Write clear, achievable and enforceable conditions</p> <ul style="list-style-type: none"> • Ensure that permit conditions are clear and relate to the purpose of the referral and to the referral authority’s area of responsibility. • The conditions should specify requirements that are enforceable by the responsible authority. • The referral authority should be prepared to justify the conditions at any review by the Victorian Civil and Administrative Tribunal. • Two documents, <i>Writing Planning Permits</i> and <i>Using Victoria’s Planning System</i>, provide guidance for preparing planning permits and set out the principles for applying permit conditions.

Are existing referral requirements necessary?

Responsible authorities and referral authorities should together consider whether a referral requirement under Clause 66.04 is necessary or whether the referral can be dealt with by an alternative arrangement. The four-year review of the planning scheme provides an opportunity to evaluate the effectiveness of referral provisions in schemes on a regular basis.

Use of standard agreements

The referral and notice requirements of Clause 66 do not apply if, in the opinion of the responsible authority, the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the referral authority. Avoiding the need to refer applications can speed up decisions.

An agreement may specify standard conditions that must be included on any permit granted. It may also specify requirements, which if satisfied by the proposal, means that the application does not need to be referred.

Agreements must be clear, easy to understand and publicly available (preferably on the responsible authority's website).

Specify standard conditions and requirements in the planning scheme

To avoid unnecessary referrals and delays, responsible authorities and referral authorities should consider inserting standard conditions and requirements in the planning scheme.

If a referral authority's standard permit conditions can be applied across all planning schemes it is preferable they are included in a State standard provision. Alternatively, the planning scheme provision may enable permit conditions to be included in a local schedule. Section 62(1)(a) of the Act requires the responsible authority to include in a permit any condition that the planning scheme requires to be included.

Some planning scheme provisions also enable application requirements to be included in a local schedule. If a referral authority routinely requests specific information about particular kinds of applications this information should be included as a standard application requirement in the schedule.

Under section 47(1)(c) of the Act, an application must be accompanied by information required by the scheme.

It may also be possible to incorporate a referral authority's requirements into the description of the kind of application that must be referred. For example, if the referral authority is only interested in development applications within 30 metres of a waterway, this requirement could be included in the referral provision so that applications outside this distance do not need to be referred.

Change from a determining referral authority to a recommending referral authority

Some existing determining referral authorities may provide specialist or technical advice to the responsible authority that:

- assists the responsible authority in making an informed decision on an application but does not need to direct the outcome of the application; or
- needs to be balanced against other scheme requirements to achieve a net community benefit or produce acceptable state and local policy outcomes.

In these circumstances, consider whether the status of the referral authority should be changed from a determining referral authority to a recommending referral authority. A planning scheme amendment will be required to make this change.

Give notice rather than require referral

Consider whether giving notice of the application under section 52(1)(c) of the Act would meet the referral authority's requirements instead of referring the application under section 55. If the referral authority needs to be made aware of an application but does not need to always receive a copy of the application or direct the outcome of the application, a section 52(1)(c) notice may be appropriate.

Introducing new referral requirements

When should a section 55 referral requirement be included in a planning scheme?

A new section 55 referral should only be introduced where either:

- the decision of the referral authority must direct the outcome of the application (a determining referral authority); or
- the referral authority's specialist or technical advice is necessary for the responsible authority to properly assess and decide the application, but does not need to direct the outcome (a recommending referral authority).

A section 55 referral may be appropriate where a particular type of use or development requires case by case consideration by the referral authority to ensure that:

- implementation of a State Government policy or program is not adversely impacted, for example, the protection and management of Victoria's biodiversity or natural resources
- relevant specialist and technical advice is made available to the responsible authority
- proposed use or development will satisfy criteria or standards in other applicable legislation or regulations
- public assets, for example infrastructure, public open space or waterways, are protected.

Before introducing a new referral requirement, planning authorities and potential referral authorities should consider the following questions:

- What are the reasons for the referral? How do they relate to the purpose of the planning scheme provision that triggers the application?
- Should the decision of the referral authority direct the outcome of the application or should it be advisory only?
- Does the referral authority have resources and processes in place to ensure timely and effective advice, and to comply with the duties and requirements of the Act and Regulations?

- Will a referral provide a simple and effective means of implementing the referral authority's objectives? Would other mechanisms, for example, a notice requirement under section 52(1)(c) of the Act, be more effective?
- Can standard conditions and requirements be specified in an agreement between the referral authority and the responsible authority or in the planning scheme to avoid unnecessary referrals and delays?
- Can the description in the planning scheme of the kind of application that must be referred be drafted to avoid unnecessary referrals?

A referral authority should not be specified in the planning scheme simply because they may be useful in assessing certain types of applications or be used as a substitute for the responsible authority's own assessment of the application.

An amendment to a planning scheme to specify a person or body as a referral authority should only be prepared with the agreement of that person or body.

Using the notice provisions of section 52(1)(c)

A planning scheme can require that specified persons be given notice of particular kinds of applications in accordance with section 52(1)(c) of the Act. Under section 38 of the *Interpretation of Legislation Act 1984* a 'person' includes a body politic (for example, a government department or authority) or corporate as well as an individual.

A person or body given notice under 52(1)(c) of the Act has the same rights and obligations as any other person given notice of an application.

Full details of notice requirements and procedures are set out in *Using Victoria's Planning System*.

When should a section 52 notice requirement be included in a planning scheme?

A section 52 notice requirement should be used when the comments or advice of the person or body may influence the outcome of the application, but the circumstances do not warrant:

- that person or body receiving a copy of the application and prescribed information
- their comments or advice directing the outcome of the application.

Unlike a section 55 referral, under section 52(1)(c) only notice of the application is required to be given, not a copy of the application. Before including a new notice requirement, the responsible authority and the person or body to whom notice will be given may agree on additional information from the application that will accompany the notice. Otherwise, it is the responsibility of the person or body given the notice to view the application at the offices of the responsible authority.

Before introducing a new notice requirement responsible authorities and the person or body that will be given the notice should consider the following questions:

- What are the reasons for the giving of notice?
- Why would the person or body have a special interest in that kind of application?
- Should additional information about the application accompany the notice?
- Does the person or body have adequate resources and processes in place to respond to a notice?
- Can the description in the planning scheme of the kind of application that the new notice requirement will apply to be drafted to avoid giving unnecessary notice?

Other information

More information is available on the department's website at www.delwp.vic.gov.au/planning

Read *Using Victoria's Planning System* for more information about the operation of referral and notice provisions.

Read *Writing Planning Permits* for more information about preparing planning permits.

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