

Advertising Planning Applications Guidelines

Guide Owner	Statutory Planning Coordinator Development Approvals
Creation Date	17/12/2018
Revision Date	17/02/2020
Next Revision Date	17/02/2022

Please check Council's Intranet to ensure this is the latest Revision

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Purpose

This guideline sets out Council's commitment to our obligations under Section 52 of the *Planning and Environment Act 1987* (Act) relating to the advertising of planning permit applications.

The purpose of the guideline is to provide for consistent interpretation and implementation of this part of the Act. Further the purpose is to ensure that any persons who may be affected by a land use or development proposal:

- Are aware of the proposal,
- Have the opportunity to learn more about the proposal, and
- Have the opportunity to make a submission about or object to the proposal.

Scope

The guideline applies to members of the Statutory Planning Unit, all those involved in the processing of planning permit applications, permit applicants and community members wishing to make a submission or object to a planning application.

Procedure

Under Section 52 of the *Planning and Environment Act 1987*, planning applications are advertised where a proposal may cause *Material Detriment*. Advertising of a planning permit application may also be referred to as 'giving notice' or 'public notification'.

What is Material Detriment?

Whilst no single definition exists for *material detriment*, principles can be extracted from case law. VCAT considers *material detriment* to be a *real and identifiable detriment*. It is not enough to consider that there might be some potential for an unspecified material detriment.

For the purpose of this guideline a definition (below) is extracted in part from *McBride v Stonnington CC* (2005) [VCAT 2321], which provided that the detriment does not need to be substantial, it must be real as distinct from being fanciful but it may be in fact only minor. This case also provides that it is appropriate for Councils to be conservative in determining the likelihood of a material detriment being caused.

Should the potential detriment considered by Council to a person or persons meet the definition listed below, and described in the foregoing, notice of the application must be given to that person or persons pursuant to Section 52(1)(d) of the Act.

Are there any exceptions?

A planning scheme may exempt any class or classes of application from some or all of the notice requirements that may otherwise apply under section 52(1) of the Act. In these cases, there is no opportunity for other people to formally make submissions or objections in relation to the application.

However, in such circumstances, Council will often provide 'informal notice' to seek the opinion of nearby or adjoining residents and provide them the opportunity to have input into the assessment of the application by Council. These submitters will not have any formal appeal rights if they are dissatisfied with the decision.

What form will the advertising/notice take?

Once all of the information relating to an application has been received, the planning officer decides whether the application needs to be formally advertised. If the decision is made not to advertise an application the reasons why must be fully explored and justified in the officer report.

An application can be advertised using one or more of the following methods, depending on the proposal:

- notice of planning permit application mailed directly to owners/occupiers of adjoining properties (or wider as dictated by the possible impact of a proposal),
- erecting a sign on-site (or multiple signs) sized A3,
- notice of planning permit application in a locally circulating newspaper.

Any material submitted with a planning permit application, including plans and personal information, may be advertised, in accordance with the Act.

In determining which form the notice shall take officers will consider matters such as:

- The scale of development
- The type of land use proposed
- Hours of operation and types of activity
- The sensitivity of surrounding land uses and the local context
- The potential for amenity impact upon existing residents or property owners

Officers will be required to justify their choice of form of advertising through the preparation of the application assessment report. At a minimum notice will be mailed to adjoining properties and where practical a sign erected on the site. Where a site is large or has multiple road frontages a sign may be erected on each frontage.

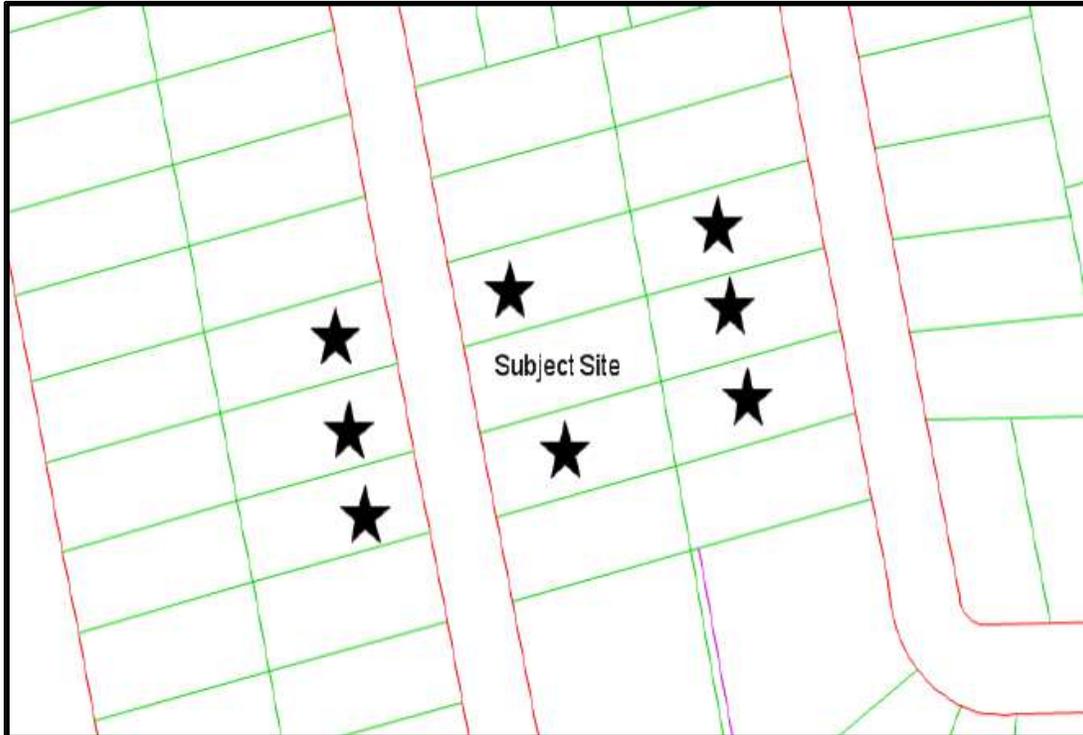
In circumstances where a proposal has a wider potential impact, (e.g. music event, landfill, quarry or other such potential amenity impacting uses) a much wider net will be cast in notices posted to owners and occupiers in surrounding areas based upon the potential for a wider impact. In these circumstances consideration will be given to use of a notice in a locally circulating newspaper.

In any larger or potentially amenity impacting proposals, application material will be included on Council's website and where appropriate social media.

Council need to avoid under notification by narrowly interpreting the notice requirements. This is because a person who believes they should have received notice but did not, can seek cancellation or amendment of the permit.

Conversely, the responsible authority must carefully consider the reasonableness of extensive notice requirements as the applicant can apply for a review of an unreasonable requirement.

Adjoining Properties



“Adjoining” includes all properties only separated by a road (i.e. directly opposite), as demonstrated in the diagram above. All ‘adjoining’ properties have been identified with a star. Note this is the minimum number of properties which would be notified and in most cases notice will be provided wider than the above diagram.

Other circumstances

In the event where an adjoining property is identified as public land, notice shall also be sent to any authority or committee responsible for the running or maintenance of that space.

In the event where an application property adjoins a municipal property notice shall be given to the neighbouring Council and a list of affected properties within that municipality sought so that notice can be appropriately given to all affected nearby residents and landowners.

How to make an objection or submission

A planning application is advertised for a minimum of 14 days. The date on the public notice tells you when the advertising period finishes. Council will consider any objections received after this 14 day period has expired, up until the time that a decision is made on the application. However, to ensure that you do not miss this

opportunity to put a submission in to Council it is best to submit your concerns within the specified timeframe outlined in the notice.

An objection must be made to Council in writing stating the reason for the objection and stating exactly how you will be affected by the proposal. A standard form obtained from Council can be used, but a letter is also acceptable. Submissions can also be lodged on line via Council's website under the Planning Services tab.

Email is the preferred method of contact and submissions or objections should be sent directly to mitchell@mitchellshire.vic.gov.au.

Any submissions or objections lodged must contain the following information:

- The Planning application number (eg. PLP123/19)
- Address of the site on which the development or use is proposed
- Your name, address and telephone number as well as your email address
- Your reasons for objecting and how you will be affected. (must be relevant and include planning grounds of objection)

If you are supportive of a proposed development, you also have an opportunity to lodge a submission in favour of the proposal.

Note - Council must make a copy of every objection and submission available at its office to any person for inspection until a decision on the application is made.

Note – over the Christmas/New Year period, the 14 day advertising period will be extended.

What happens if petitions are lodged?

The first name on the first sheet is viewed, in accordance with planning legislation, as the contact person. This person is notified in writing of the Council's decision and is also responsible for notifying all other signatories on the petition of all Council correspondence. A petition is normally considered as one objection.

What happens once an objection has been lodged?

You will receive a letter from Council acknowledging that your objection has been received. The planning officer assessing the application will review all objections/submissions received and may be in touch to discuss.

If four or more objections are received to an application the matter must proceed to a full Council meeting for determination. In this event you will receive an invitation to attend a Community Questions and Hearings Committee where you may present your submission directly to the Councillors in a public forum. This committee normally sits on the second Monday of each month and the week prior to the full Council meeting.

It is possible that the Applicant may amend the plans after advertising. Council may re-advertise amended plans. All original objections received will be considered when Council makes a decision.

If you reach a compromise with the applicant and you no longer have any concerns about the application, you can withdraw your objection in writing to Council. However, if you withdraw your objection, you will not be informed of the decision and you will lose your right to apply to VCAT for a review if you are unhappy with Council's decision.

After a decision is made

If Council supports an application and no objections have been received a planning permit will be issued.

If Council supports the application and objections have been received a Notice of Decision (NOD) will be issued. This is not a planning permit. It is a notice stating that Council supports the application, subject to conditions. An objector has 28 days to lodge an appeal against Council's decision to the Victorian Civil and Administrative Tribunal (VCAT). If an appeal is not lodged, VCAT will notify Council when a planning permit may be issued.

If Council does not support the application, a Notice of Refusal will be issued, including the reasons for the refusal. An applicant has 60 days to lodge an appeal with VCAT against Council's decision.

If you have lodged an objection to Council you will be notified in writing of the Council's decision.

Definitions

Material Detriment

Material Detriment is detriment that is real, not trivial or imaginary, not subjective to the mind of a particular person(s) but which is detriment in an objective and reasonable sense. Material Detriment may be minor, so long as it is not fanciful.

Responsibilities

The Development Approvals Department are responsible for maintaining and implementing this guideline.

Related Documents

Mitchell Planning Scheme
Planning and Environment Act 1987 & related regulations