



Municipal Association of Victoria
Planning Delegation Report

March 2014

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The MAV can provide this publication in an alternative format upon request, including large print, Braille and audio.

The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities. The MAV would also like to acknowledge the contribution of those who provided their comments and advice during this project.

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1 Introduction

Councils in Victoria prepare and administer their planning scheme through the issue of planning permits for identified land uses and development. This equates to about 50,000 planning permit decisions each year. To ensure planning schemes are up-to-date and relevant to decision making, approximately 400 planning scheme amendments are undertaken each year.

For the purposes of efficiency, all councils have a system of delegation in place that allows officers of a council to make formal decisions on components of the planning scheme amendment process and planning permit applications.

The MAV has undertaken a survey of all councils to identify the levels of delegation provided to council officers in relation to planning permit applications and planning scheme amendments. This report provides a snapshot of the different levels of planning delegation in place for different matters. Where possible, the survey results have been classified into council types (metropolitan, interface, peri-urban, regional city and rural) to provide an additional level of detail.

We hope the report gives councils useful context to inform any review of delegation. A best practice model of delegation has not, however, been identified in this work.

Having an appropriate system of delegation in place offers councils a number of significant advantages by allowing them more time to address higher order priorities and improve the efficiency and effectiveness.

2 Background

The *Planning & Environment Act* 1987 establishes the duties and function of councils as Planning and Responsible Authorities. The Act provides that certain authority, responsibility and functions can be delegated to Committees of Council or council officers. In delegating authority to officers limitations may be imposed on the use of the power, matter or thing delegated.

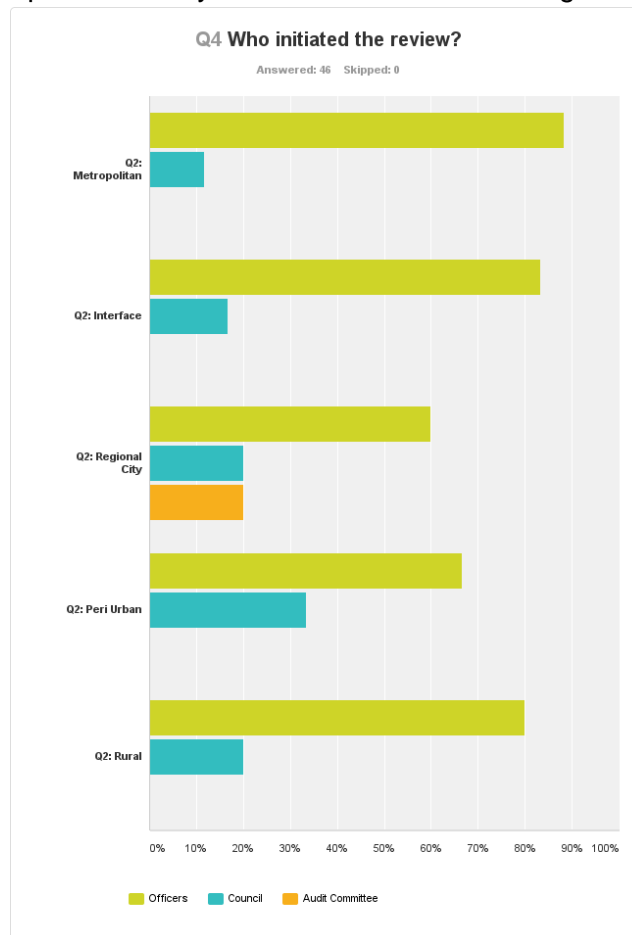
In addition to the *Planning and Environment Act*, the *Local Government Act* 1989 sets out that a council and Chief Executive Officer may, by instrument of delegation, delegate to a member of staff any power, duty of function of a council. A council must review the instrument of delegation within the period of 12 months after a general election.

The Planning Permit Activity Report, prepared annually by the Department of Transport, Planning and Local Infrastructure (DTPLI), indicates that in the 2012/2013 financial year 95 per cent of planning permit decisions were made under delegation. This figure has remained quite stable over time. Levels of delegation in this order reflect a high level of trust between elected representatives and council officers.

To inform this report, a short survey was prepared and circulated to planning directors. A copy of the results is attached. The survey sought feedback on matters such as when a review of delegation last occurred, levels of delegation for permit applications and scheme amendments and limitations to delegation.

A total of 47 councils responded to the survey. Of the councils who responded, 37 per cent were metropolitan councils, 13 per cent were interface (growth area) councils, 10.9 per cent were regional city councils, 6.5 per cent were peri urban councils and 32.6 per cent were rural councils.

Consistent with the requirements of the *Local Government Act*, 93.5 per cent of councils reported to have reviewed their Instrument of Delegation within the last three years. In all council types, officers predominantly initiated the review of delegation.



3 Planning Permits

3.1 What matters are delegated to officers, CEO, Committee of Council?

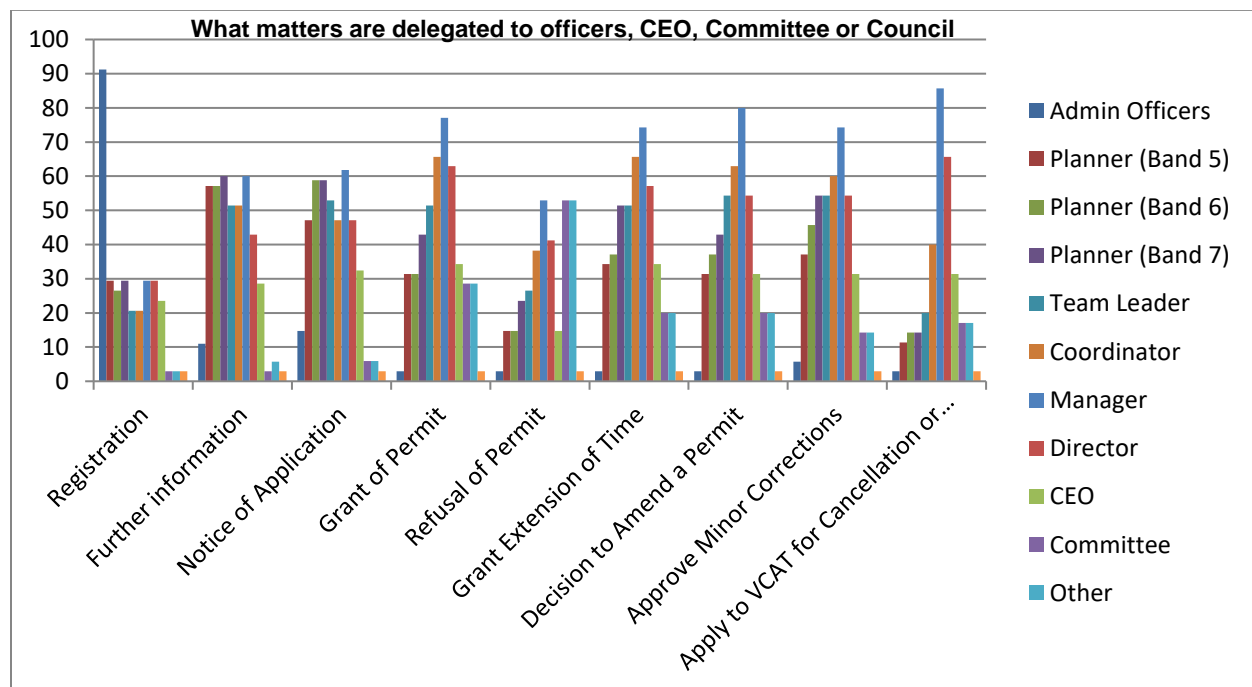
The results of the survey indicate that key procedural steps of the planning permit process are allocated based on role, responsibility and technical skill set.

A key theme of the survey results was an indication that council officers have an extensive level of delegation for the approval of planning permit applications.

Administrative tasks such as the registration of planning permits generally rest with administration officers.

The survey results also indicate that key procedural steps such as further information requests and the notice of applications are typically the responsibility of a planner, dependent on seniority. Decision points such as the granting of a permit, refusing a permit or amending a permit are usually undertaken by a manager or planning coordinator. This is the case across the board although peri-urban councils do appear to give slightly more responsibility to administration officers.

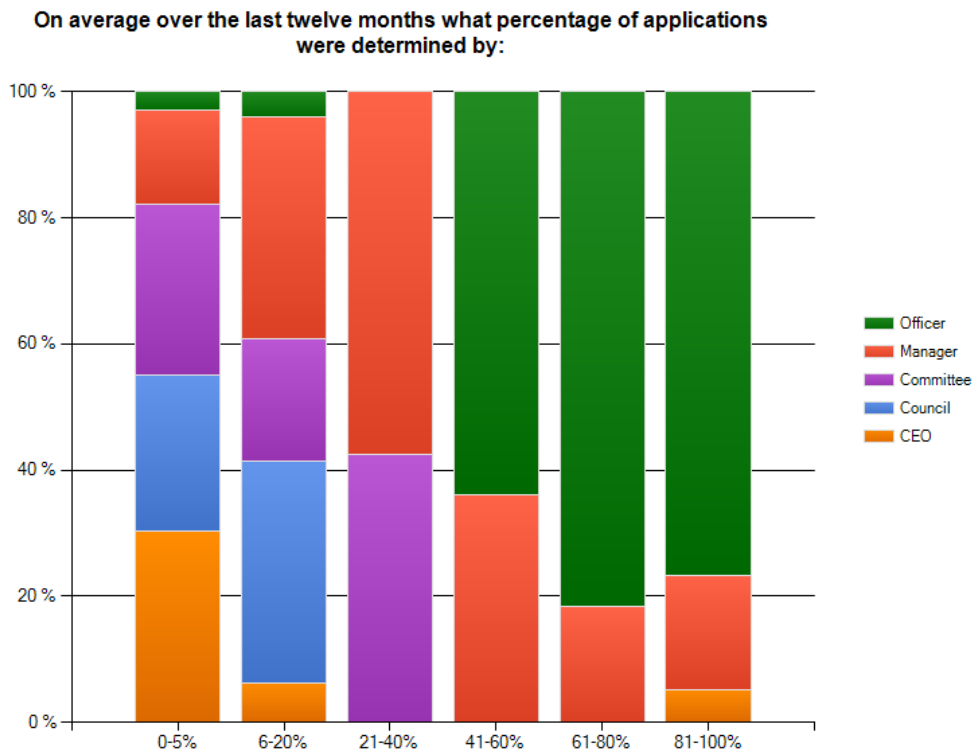
The results also indicate that managers are predominantly responsible for applying to the Victorian Civil and Administrative Tribunal for the Cancellation or Amendment of Permit.



3.2 On average, over the last 12 months what percentage of applications were determined by officers, CEO or Committee of Council?

The results are consistent with the recent DTPLI Planning Permit Activity Reporting indicating that decisions, under delegation of an officer, are made between 81 and 100 per cent of applications. As expected, with the majority of permits being made under delegation, only 0-5 per cent of applications are made by council or a committee.

Rural and peri-urban councils, in particular, have very high levels of delegation to officers, with 89 and 100 per cent respectively decided by officers. Only about 50 per cent of applications are decided by officers in regional cities and metropolitan councils.



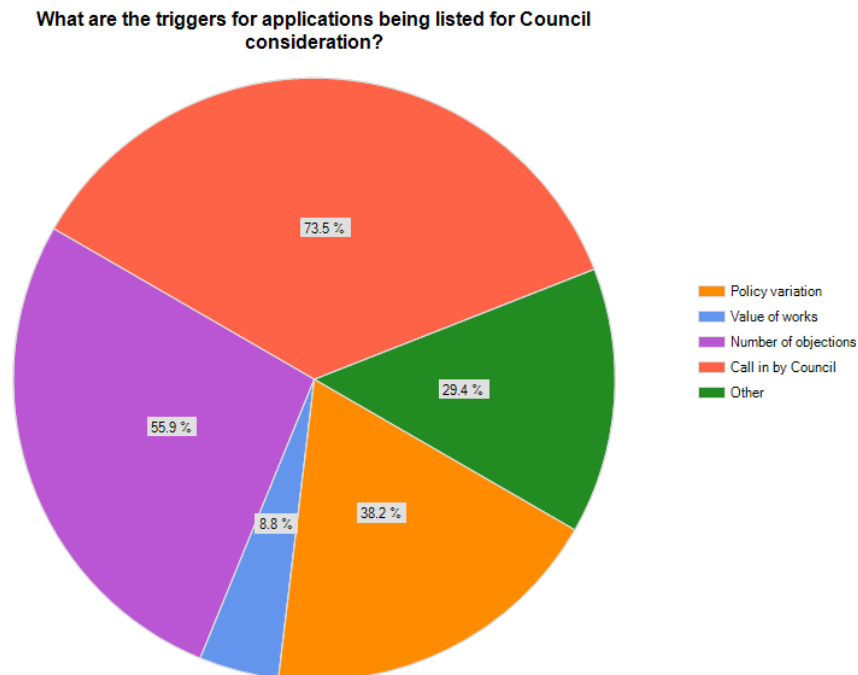
3.3 Does your council have a committee (either council, council officers, or external persons) process that considers planning applications?

A total of 41.5 per cent of respondents (17 councils) stated their council has a Planning Committee that considers planning applications and has delegated power to determine approvals and refusals. The committees are constituted primarily of only councillors (81.3 per cent) with only 37.5 per cent being comprised of council staff. None of the committees were reported to be comprised of a mix of both councillors and staff. Committees are most popular in metropolitan councils with 69 per cent having a committee in place with only 21 per cent of rural councils. Regional cities have a committee in place 50 per cent of the time and only 33 per cent of interface and peri-urban councils having a committee in place.

The majority (43.8 per cent) of the committees met on a monthly basis and almost all (93.3 per cent) of them have delegation to approve and refuse permit applications. Metropolitan committees typically met more frequently than monthly.

3.4 What are the triggers for applications being listed for council consideration? What are the limitations imposed by any instrument of delegation in respect to the granting of a permit?

Survey results in response to this question indicate that call in by a councillor is the most significant reason for applications being listed for consideration by the council (73.5 per cent), with the number of objections coming in second at 55.9 per cent of responses.



The number of objections received did feature prominently in these comments with a number of councils indicating that any objection received would require a council decision. Others indicated 2, 4 and 5 objections as being the threshold used.

There is some variation across council types with some metropolitan councils using the cost of works as a trigger.

	Policy variation	Value of works	Number of objections	Call in by Council	Other	Total
Q2: Metropolitan	58.33% 7	25% 3	50% 6	83.33% 10	16.67% 2	28
Q2: Interface	16.67% 1	0% 0	66.67% 4	33.33% 2	50% 3	10
Q2: Regional City	0% 0	0% 0	50% 1	50% 1	50% 1	3
Q2: Peri Urban	33.33% 1	0% 0	66.67% 2	100% 3	0% 0	6
Q2: Rural	40% 4	0% 0	60% 6	80% 8	40% 4	22

A number of councils also indicated that specific aspects of a proposal would trigger referral to council for determination. These range from a lot size trigger for a dwelling within the Farming Zone, development of more than five dwellings, liquor licence applications, applications for telecom sites and brothels, development of buildings over eight metres in height and applications seeking a reduction in on site carparking requirements.

Other comments indicate that the criteria for council decisions can be less specific, and relate to 'all major and significant applications' or those that 'impact on the community'.

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

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.

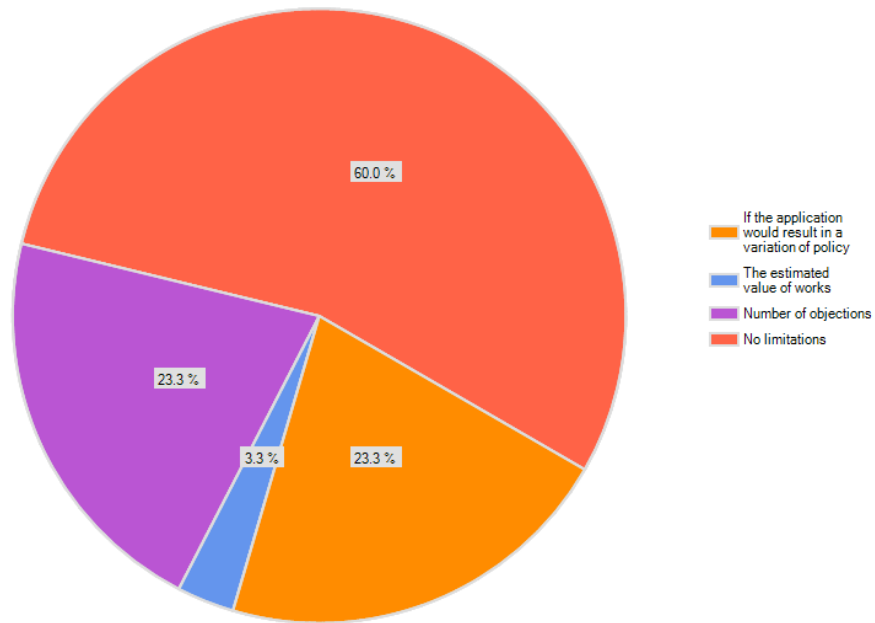
The report of the Auditor General No 62. *Land Use and Development in Victoria, The State's Planning System* December 1999 recommended that councils should embark on a process that assesses risk issues in delegating responsibilities, and then determining the appropriate involvement of councillors in planning applications.

3.4 What are the limitations imposed by any instrument of delegation in respect to refusal of a permit?

Written comments and findings provided in response to this question indicate that refusal of a permit seems to generally reduce officer delegation and require a council decision. This was true in 60 per cent of responses. The main exceptions were applications being refused due to the objection of a referral authority or where the application is prohibited.

There appears to be a limited ability for officers to refuse applications relating to particular kinds of applications such as Development Plans, 15 or more dwellings, dwellings in a Farming Zone under the minimum lot size, and developments of four or more storeys.

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



4 Planning Scheme Amendments

4.1 What matters are delegated to officers, CEO, committee?

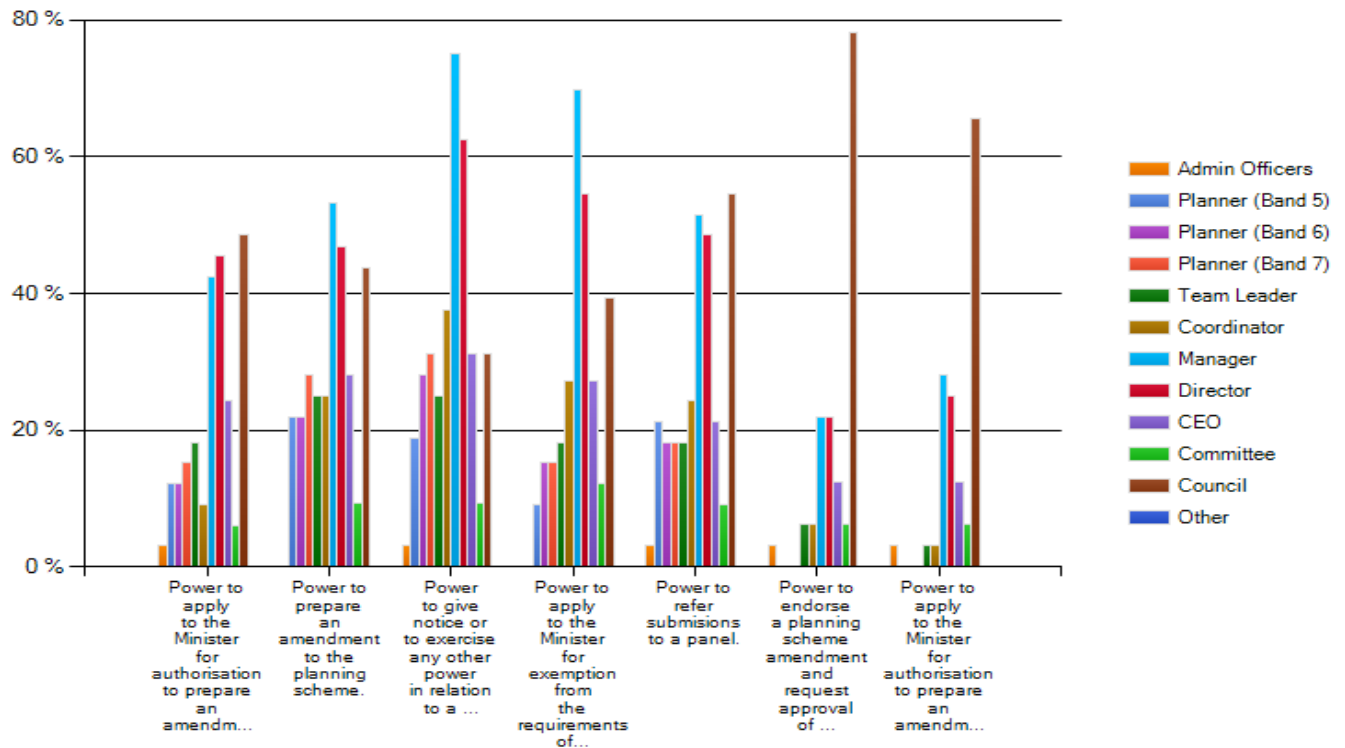
The survey results show lower levels of delegation for components of the planning scheme amendment process than for planning permit application process.

The majority of councils constrain requests for authorisation of an amendment (from the Minister for Planning) to manager level and above.

Planning managers are the majority holder of delegation power to prepare an amendment (53.1 per cent of councils) and to give notice of an amendment under Section 19 of the Act (75 per cent of councils).

However, in the majority of cases, the council (councillors) are primarily responsible for requesting that the Minister appoint a panel to hear submissions on an amendment (54.5

PLANNING SCHEME AMENDMENTS - What matters are delegated to Officers, CEO, Committee?

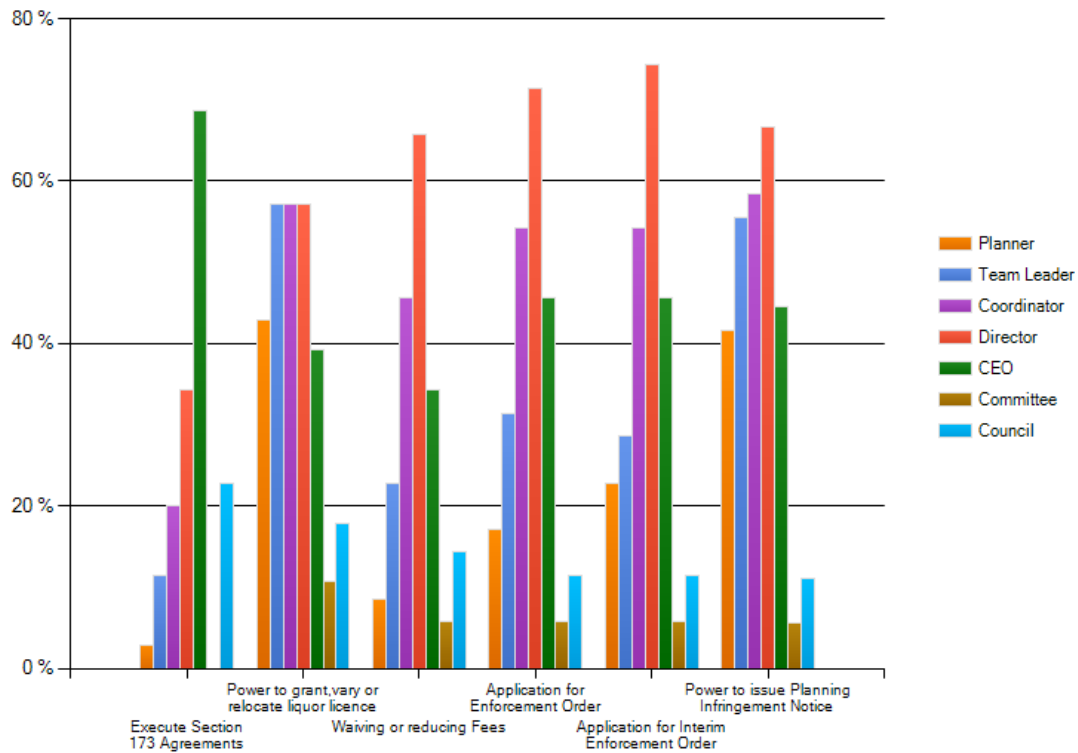


per cent), adoption of amendments and requesting the Minister approve a planning scheme amendment (78.1 per cent).

Other matters

Responses to this question indicate that planning directors make decisions on the bulk of other statutory actions that a council planning department would deal with including variations to liquor licences, fee waivers, enforcement orders and the issuing of infringement notices. One exception is in the execution of Section 173 agreements, the majority (68.6 per cent) of which are determined by a council's CEO.

OTHER MATTERS - Which other matters are delegated to Officers, CEO, Committee?



5 Conclusions

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

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

For planning scheme amendments, delegation from council sits largely with the planning manager for the preparation of amendments and notice. Other decisions such as requests for authorisation, appointment of a panel, adoption and request for approval from the Minister for Planning have been retained at a council level.

Other matters such as variations to liquor licences, fee waivers, enforcement orders and the issuing of infringement notices are primarily delegated to Planning Directors. CEOs, however, largely execute Section 173 agreements on behalf of the organisation.

6 Attachment

The MAV receives regular queries about the different levels of planning delegation across the sector. To provide current advice the MAV has prepared a short 10 minute survey to capture the varying approaches.

General Questions

1. Please provide the name of your council
2. What type of council are you?
3. When was the last review of your instrument of planning delegation?
4. Who initiated the review?

Planning Permits

5. What matters are delegated to officers, CEO, committee?
6. On average over the last 12 months what percentage of applications were determined by?
7. Does your council have a committee (either council, council officers, or external persons) process that considers planning applications?
8. How is the committee constituted?
9. How often do they meet?
10. Does the committee have delegated powers to determine approvals/refusals?
11. What are the limitations imposed by any instrument of delegation in respect to the granting of a permit?
12. What are the limitations imposed by any instrument of delegation in respect to refusals?
13. What are the triggers for applications being listed for council consideration?

Planning Scheme Amendments

14. What matters are delegated to officers, CEO, committee?

Other Matters

15. What matters are delegated to officers, CEO, committee?