

Managing Referrals and Notice Requirements

The purpose of this Practice Note is to provide guidance to planning and referral authorities about how to:

- ▶ use the planning permit referral and notice provisions effectively
- ▶ review existing or proposed new planning permit referral and notice requirements in a planning scheme.

Using Clause 66 of planning schemes

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

A responsible authority can formally seek advice about a permit application in two ways:

By referral

Section 55 of the *Planning and Environment Act 1987* 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 type of application.

By giving notice

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

One of these methods will be the most appropriate in each circumstance. This practice note provides advice about when and how to use each method.

Planning scheme Clause	PEA Section	What it does...
66.01	55	Specifies the referral authority for particular kinds of subdivision application.
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 certain State standard provisions.
66.04	55	Enables a responsible authority to specify a referral authority for particular permit kinds of applications in addition to Clauses 66.01, 66.02 and 66.03. The referral authority is listed in a local schedule to the clause.
66.05	52(1)(c)	Specifies the persons who must be given notice of particular permit applications triggered by specific State standard provisions.
66.06	52(1)(c)	Enables a responsible authority to specify a person or body who must be given notice of particular permit applications in addition to Clause 66.05. The person or body is listed in a local schedule to the clause.



Using the Section 55 referral process effectively

What is the purpose of a referral?



Seeking the views of other interested parties is an essential part of the planning process and is important in achieving balanced and integrated decisions. Good practice ensures that these requirements are only imposed on applicants and referral authorities when they add value to the planning decision. There are two types of referrals:

1. Kinds of applications which must be referred no matter which zone or overlay triggers the requirement for a planning permit (Clauses 66.01 and 66.02).




2. Kinds of applications which are only triggered by a particular zone or overlay (Clauses 66.03 and 66.04).

Full details of referral requirements and procedures are set out in the Department of Planning and Community Development's guide, *Using Victoria's Planning System*, available from the publications section at www.dpcd.vic.gov.au/planning and referrals section of the department's web page.

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 an agreement with the referral authority as to which parts of the application must be referred. • Set out in the planning scheme the information required by referral authorities that needs to accompany applications. 	<ul style="list-style-type: none"> • Establish clear processes for handling referrals, including delegations, to avoid unnecessary delays. • 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 they will use to assess applications.
<p>Pre-application</p> 	<ul style="list-style-type: none"> • An application does not have to be referred if the referral authority provided consent to the proposal within the past three months. • Identify potential referral requirements as early in the application process as possible. • For complex applications, invite referral authorities to participate in the pre-application process to ensure that conditions are clear and able to be implemented. This is especially important if conditions from more than one referral authority are contradictory. The responsible authority, unless it decides to refuse the permit, should negotiate a set of compatible conditions with the relevant parties. 	<ul style="list-style-type: none"> • Meet with applicants that have finalised plans to provide views, comments and pre-application consent.



	Responsible authority	Referral authority
<p>Quality checking the application</p> 	<ul style="list-style-type: none"> Ensure that the application has been correctly prepared and meets the requirements of the planning scheme. 	<ul style="list-style-type: none"> Check the application documentation provided satisfies the agreed requirements.
<p>Referral request</p> 	<ul style="list-style-type: none"> The application must be referred without delay, preferably within 7 days. Send referrals electronically to minimise delays. 	<ul style="list-style-type: none"> Continue ongoing communication throughout the process.
<p>Referral response</p> 	<ul style="list-style-type: none"> Conditions imposed by the referral authority should be identified as such on the permit. 	<p>Timing</p> <ul style="list-style-type: none"> Respond to applications within 28 days of receipt of request. It is considered good practice to inform the responsible authority in writing within 14 days after receipt of the application if more information is required. (The prescribed maximum time is 21 days.) Respond within 28 days of satisfactory receipt of further information. <p>Write clear, achievable and enforceable conditions</p> <ul style="list-style-type: none"> Ensure that permit conditions are clear since the responsible authority must include them as permit conditions. The conditions should directly 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 at the Victorian Civil and Administrative Tribunal. The Department's guides Writing Planning Permits and Using Victoria's Planning System provide guidance for preparing planning permits and set out the principles for applying permit conditions.



Are the referral requirements in the scheme really necessary?

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 arrangements in schemes on a regular basis.

Specify standard conditions in the planning scheme

Where conditions or standards can be applied across more than one planning scheme or the state, it is preferable that they are included in the scheme.

Consider removing the need to refer applications if the authority's requirements can be met by specifying standard conditions in the planning scheme. Under Section 62(1)(a) of the Act, before deciding to grant a permit, the responsible authority must include any condition which the planning scheme or a relevant referral authority requires to be included.

Some schedules in planning schemes provide the opportunity to set out conditions and requirements that must be applied to all permits or to specified classes of permits. If an authority's requirements can be achieved by applying a standard condition to a permit, the schedule can require that the condition is always applied.

Give notice rather than require referral

Consider whether giving notice of an application under s52(1)(c) of the Act would meet the authority's requirements instead of referral of the application.

Use a standard agreements

The referral 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.

An agreement can be made between the responsible authority and the referral authority, to identify those applications that do not need to be referred. The agreement can also identify standard conditions that need to be included in any permit issued for applications that are not referred. An agreement can be in the form of a letter between

the responsible authority and the referral authority. It is important that the requirements and conditions agreed to in writing are clearly understood so that the responsible authority does not have to rely on its discretion to determine what is to be referred. This information should be publicly available.

Introducing new referral requirements

When is a s55 referral process warranted?

A new section 55 referral should only be introduced where the referral authority's direction should govern the outcome of the application. Section 55 referral may be appropriate where a particular type of use or development requires case by case assessment by the referral authority to ensure that it does not prejudice:

- ▶ the implementation of a program for which the authority is responsible, for example, the requirement to refer certain applications to remove or destroy native vegetation to the Department administering the *Flora and Fauna Guarantee Act 1988*, or applications within a Special Water Supply Catchment Area to the relevant water board or authority
- ▶ the need to ensure that the proposal meets required criteria or standards, such as compliance with a State policy
- ▶ the need to protect public assets, for example infrastructure, public open space or waterways
- ▶ the need to protect public safety, for example land subject to high fire or flooding hazard
- ▶ the need to protect flora, fauna and environmentally sensitive land (such as land subject to erosion or salinity)
- ▶ the need to protect land that is to be acquired for a public purpose.

A referral authority has responsibilities

A potential referral authority should weigh up the cost and benefit offered by referral status.

- ▶ What are the reasons for the referral? Should the views of the referral authority govern the outcome of the application?
- ▶ Does the authority have resources and mechanisms in place to ensure timely and effective referral responses?
- ▶ Will referral provide the authority with a simple and effective means of implementing its objectives?



- Would other mechanisms deliver its objectives? Potential referral authorities should consider the publication of referral guidance notes and the inclusion of relevant requirements in planning schemes. Referral authorities should not be nominated in the hope that they may be useful in assessing certain types of applications or be used as a substitute for the responsible authority's own evaluation of the application.

Other information

View the [Planning referrals](#) web page.

Read [chapter 3](#), section 3.3 of *Using Victoria's Planning System*.

A checklist for introducing new referral requirements

Use this checklist when considering adding or changing a referral requirement in a scheme.

- Should the views of the referral authority govern the outcome of the application?
- Are the kinds of application proposed to be specified only those that are directly relevant to the reason for the referral?
- Has the type of information required to accompany the referral been considered? Can it be clearly specified in the scheme?
- Does the referral authority have adequate resources and procedures to ensure timely and effective referral responses?
- Are there any standard responses to applications that can avoid the need for a referral?
- Are there standard conditions, requirements or standard designs that may be applied for certain types of applications? Can these be specified in the scheme to avoid referral?
- Are there other opportunities to develop conditions or requirements for certain uses or development to avoid the need for referral?
- Can the need for input from another authority be met by mandatory notice under section 52(1)(c), a mandatory condition on every permit or a decision guideline?



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

What is notice under section 52(1)(c)?

A planning scheme can require that particular persons¹ be given notice of certain applications in accordance with section 52(1)(c) of the Act. A person given notice in this way has the same rights and obligations as any other person given notice of a planning permit application.

Under section 38 of the *Interpretation of Legislation Act 1984* a 'person' includes a body politic (ie Government department or authority) or corporate as well as an individual.

The Department's guide *Using Victoria's Planning System* sets out the notice requirements and procedures of section 52.

Example of mandatory section 52 provision:

In accordance with section 52(1) (c) of the Act, notice must be given to:

- ▶ the Catchment Management Authority if the application relates to land in an area specified in the schedule.
- ▶ the Roads Corporation.

This does not apply to an application for a sign.

When should section 52 notice provisions be used?

Use section 52 notice when a responsible authority wishes to bring an application to the attention of a person whose opinion may influence the outcome of the application, but the circumstances do not warrant allowing that person to direct the decision the responsible authority makes.

The responsible authority does not have to comply with comments from a person who receives notice. If no comments are received within the prescribed time, determination of the application can proceed.

Introducing new section 52 notice requirements

If a requirement to give notice under section 52(1) (c) is included in the planning scheme, the clause should be unambiguous, similar to the referral authority requirement in planning schemes. If the person or authority does not object to conditions being imposed on the permit, the conditions must be unambiguous and able to be implemented.

Unlike section 55, 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 in a planning scheme the planning authority and the person to whom notice is proposed to be given should agree in writing as to what information from the application should accompany the notice. Otherwise, it is the responsibility of the person to view the application at the offices of the responsible authority.

A checklist for introducing new notice requirements

If a planning authority decides to introduce mandatory notice requirements under section 52(1)(c), the provisions should only be introduced after careful assessment against the following checklist.

- What are the reasons for the giving of notice? Why would the person have a special interest in the application?
- What are the types of applications that would require the giving of notice?
- What type of information is required to accompany the giving of notice?
- Does the person have adequate capability to respond to the giving of notice?
- Are there other opportunities to develop conditions or requirements for certain uses or development to avoid the need for notification?

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