

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

18 February 2014

Agenda Item 5.4	Development Hearings Panel (DHP)	
Attachment 1	Revised DHP Guidelines - Feb 14.....	127
Attachment 2	Letter to Greater Shepparton Better Local Government Association - Concerns regarding DHP.....	131

GUIDELINES FOR DEVELOPMENT HEARINGS PANEL



Development Hearings Panel

Review Date: 18 February 2014

Responsible Officer: Manager Planning

Approval Date:

1. SUMMARY

The Development Hearings Panel (“DHP”) has been formed to consider and determine, as a delegate of Council, various matters under the Planning and Environment Act 1987, the Greater Shepparton Planning Scheme and other relevant regulations. In particular this includes:

- planning permit and permit amendment applications where up to 5 objections are received (*for 6 or more objections these must go to Council*);
- any permit or permit amendment application, secondary consent, request for extension of time or other determination of an officer (under a delegated authority) which is recommended for refusal by an officer;
- any relevant matter referred to the DHP by an officer.

The DHP is a special committee of the Council established under section 86 of the Local Government Act 1989 and exercises powers delegated to it by Council, from time to time.

2. OBJECTIVES

To establish policy and related processes for the DHP for its decision making as the delegate of Council in respect of various planning and development matters in order to:

- avoid delays in decision making where consideration by a Council meeting is not appropriate or as directed;
- create a body to consider applications where objections (up to 5) have been received, rather than under Officer delegation;
- provide a forum for presentation of views of relevant parties; as applicable (eg applicants, objectors, other government agencies);
- act as a check and review in respect of potential refusals by Council of applications and other decision making.

3. DEFINITIONS

“Responsible Authority” has the same meaning as Responsible Authority under the *Planning and Environment Act 1987*.

“The DHP” means the Development Hearing Panel, the Special Committee of Council established by Council, as described in these Guidelines;

“Officer” means a member of Council Staff; .

“Nominated Councillor: means the Councillor nominated by Council resolution, from time to time, as the Councillor member on the DHP;

“Alternate Councillor” means the Councillor nominated by Council resolution, from time to time, as the alternate (to the Nominated Councillor) Councillor member on the DHP;

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL**



4. TERMS OF REFERENCE

4.1 Expected / Definite life of the Committee

- The DHP established by the Council is intended to continue until its existence is discontinued by the Council.

4.2 Members of the Special Committee

The 9 Members of the DHP are the:

- Director Sustainable Development,
- Manager Planning;
- Team Leader Statutory Planning;
- Team Leader Strategic Planning;
- Team Leader Development Engineering;
- Principal Strategic Planner;
- Manager Building Services;
- Manager Projects Department;
- Nominated Councillor or Alternate Councillor, appointed.

A meeting of the DHP will also be validly constituted at the time of the meeting by:

- the attendance of an Officer "acting" in one of the officer position descriptions above;
- failing the attendance of the Nominated Councillor, the Alternate Councillor attending.

4.3 Meeting Attendance

- The Chair of the DHP is the Director Sustainable Development or if that person is absent, the Chair is appointed by a majority vote of the DHP at the commencement of the relevant meeting.
- The Nominated Councillor is principally responsible to attend the DHP. The Alternate Councillor will only be called on to attend if the Nominated Councillor is unable to attend a meeting.
- A majority of the 9 DHP members are required to form a quorum (that is 5) provided present at any DHP meeting must be:
 - not less than 4 Officer appointees; and
 - the Nominated Councillor or the Alternate Councillor.
- Meetings are open to the public other than in circumstances where the DHP resolves to close the meeting in accordance with section 89 of the *Local Government Act 1989*.

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL****4.4 Authority of the Committee**

- The DHP is a special committee of the Council established under section 86 of the *Local Government Act 1989*.
- The DHP exercises power delegated to it, including under the *Planning and Environment Act 1987*, pursuant to an Instrument of Delegation adopted by resolution of the Council from time to time.

4.5 Meetings

- The DHP operates under Local Law No 2, with such modifications and adaptations as the DHP deems necessary for the orderly conduct of meetings.
- The Chair will give reasonable notice of any proposed meeting to the public, which must not be less than 7 days.
- All DHP members have 1 vote at a meeting.
- Decisions of the DHP are by ordinary majority resolution. If a vote is tied the Chair of the DHP has the casting vote.
- The process for submitters to be heard by the Panel shall be:
 - the officer to present the report
 - referral authority to present a submission as relevant
 - the objectors to present a submission
 - the applicant to present submissionsunless otherwise directed by the Chair.
- Applicants and objectors are to be limited to three minutes per person unless otherwise directed by the Chair.

4.6 Secretariat

- The Chair of the DHP is responsible for the convening of meetings, ensuring written minutes are kept and implementation of decisions of the DHP.

4.7 DHP Decision Options

The DHP may:

- determine a matter; or
- decide (whether before, during or after the hearing and consideration of a matter at a DHP meeting) to refer the matter to a Council meeting for determination.

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL**



4.8 Information to Councillors

- On a quarterly basis all Councillors must be provided with a list of matters considered by the Panel.
- Where objections are lodged, the Council officers will often hold mediation meetings with applicants and objectors in an attempt to resolve differences or reach compromise, subject to Council's decision. Where an objection is withdrawn it will no longer be considered (or counted) as an objection provided that if it is withdrawn subject to condition(s) it will require a decision in accordance with such condition(s) to constitute a withdrawn objection.

23 December 2013

Mr Gordon Hamilton
President
Greater Shepparton Better Local Government
Association Incorporated
7142 Golden Valley Highway
KIALLA WEST VIC 3631

Email - info@enviropodaustralia.com.au



Dear Mr Hamilton

CONCERNS REGARDING THE DEVELOPMENT HEARING PANEL

You have raised concerns both in correspondence and publicly in relation to the Development Hearing Panel (DHP) of this Council.

Council has taken those concerns seriously and (as you are aware) undertaken a review of the formation of and delegations to, the DHP. This has included obtaining legal advice.

Council's legal advice indicates that:

- whilst the delegations to the DHP are validly made;
- the introduction of additional members to the DHP late in 2012 raises some concern.

The concern is the DHP, since December 2012, can be formed effectively from the pool of members, including specified Council officers and councillors.

Originally the DHP had some 5 members and from time to time it was difficult to have enough members attending or achieve a quorum.

The Council (in adopting a model used elsewhere in Victoria) specified all of the members as members of the committee, whereas the committee should have been created with five members (at any one time) drawn from the pool. The practical effect was that it can be argued that a quorum of 7 (of 13 members) is required for every meeting.

If the DHP is reconstituted with 5 members at any one time, drawn from a pool of 13, the committee can validly perform its functions with only five members invited and three as a quorum. More members could be invited or attend, in which case at such a meeting the majority of the members present would form a quorum.

This potential technical defect has not been the subject of any decision of a court however the concern is sufficient to cause the Council to take steps to effectively constitute a new Development Hearing Panel early in 2014.

I note that unless you had raised this issue, this possible technical defect would be unlikely to have been discovered. To that extent the Council is grateful for your interest.

Greater Shepparton City Council
Locked Bag 1000, Shepparton 3632
Central Office: 90 Welsford Street, Shepparton 3630
Ph: (03) 5832 9730 Fax: (03) 5831 1987 Email: council@shepparton.vic.gov.au
ABN 59 835 329 843

As to decisions made by the DHP in the relevant period there are unlikely to be any significant consequences in relation to those, although I have instructed an analysis of those to be undertaken by Council officers.

In many cases the determination of the DHP is only one step in the process, for example where a matter has gone to VCAT the determination of VCAT would stand. Similarly any permit issued is valid unless it were challenged and any permit which allowed development which has been acted on and completed, creates no issue.

Other Matters

You have also made an FOI request of the Council in request of the DHP and related issues. That request has been properly responded to in the more formal way required through the FOI legislation, however I thought it helpful to provide some other comments in relation to other issues you raise.

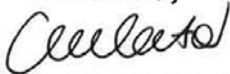
First it appears that a number of the guidelines that are supposed to operate in conjunction with the DHP (for example reporting of decision, public notice of the DHP committee meetings) have not been followed through. I have instructed that this must occur in future and it is likely that the DHP guidelines will also be reviewed and improved in conjunction with the new resolution intended in relation to the creation of a "new" DHP early in 2014.

You have sought copies of legal advice about the right of myself as CEO to affix the seal to particular delegations. As noted in the FOI request response there is no specific legal advice in relation to the particular delegations however the requirement to affix the seal to a delegation arises under the *Local Government Act 1989*.

Conclusion

Finally I note again our thanks in relation to clarification of these concerns regarding the DHP and reiterate this Council's commitment to continue to work with its residents and associations, such as yours, in relation to governance in the municipality.

Yours Sincerely



Gavin Cator
CHIEF EXECUTIVE OFFICER

Greater Shepparton City Council
Locked Bag 1000, Shepparton 3632
Central Office: 90 Walsford Street, Shepparton 3630
Ph: (03) 5832 9730 Fax: (03) 5831 1987 Email: council@shepparton.vic.gov.au
ABN 59 835 329 843