

Terms of Reference

Flood-related Amendments Standing Advisory Committee

Standing Advisory Committee appointed under Part 7, section 151 of the *Planning and Environment Act 1987* (the Act) to advise the Minister for Planning and relevant councils and catchment management authorities (CMA) on referred planning matters associated with the introduction of flooding controls into planning schemes.

Name

1. The Standing Advisory Committee is to be known as the 'Flood-related Amendments Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a) Strategic and statutory planning
 - b) Water and flooding
 - c) Infrastructure planning and civil engineering
3. The Committee will include a Lead Chair, Chair/ Deputy Chairs and multiple other appropriately qualified members.
4. The Committee may engage specialist advice as required.

Purpose

5. The purpose of the Committee is to provide timely advice to the Minister for Planning, councils and CMAs on specific matters referred to it related to implementation of flood studies and any associated draft planning scheme amendments.

Background

6. Flooding has recently occurred in 46 of Victoria's 79 municipalities, including 39 of 48 regional municipalities. The flood waters have inundated approximately 8,000 properties and impacted 65,000 people.
7. Flood studies identify flooding risk and the potential infrastructure required to mitigate the risk but are costly and take time to develop and implement.
8. Flood studies also provide the basis for flood related planning controls – to prohibit or restrict land use and development in flood prone areas.
9. The extent of flooding to be considered can be influenced by coastal adaptation studies (i.e., inclusion of climate change and sea level rise impacts).
10. CMAs are the regulatory authority responsible for the preparation of flood studies. Councils are usually responsible for the implementation of flood studies unless the Minister for Planning takes on that role.
11. Not all existing flood studies have been introduced into planning schemes. Since 2008 22 of 84 studies have been introduced into planning schemes and a further 22 planning scheme amendments have commenced. This extent and impact of recent flooding has highlighted these deficiencies in planning schemes.
12. Victorian Government funding has now been provided to introduce some existing flood studies into planning schemes in the 2022-23 financial year.

13. Flood studies and related planning scheme amendments have a degree of local variation but with generally consistent rationale, methodology and technical basis. Similar issues of community interest and concerns are often raised.
14. This Committee process allows submissions to be made to the relevant councils or in some cases the Department of Transport and Planning's (DTP) Planning Group on the flood study's draft planning scheme amendment, with any unresolved issues to be considered by the Committee before the final planning scheme amendment is submitted to the Minister for Planning for approval under section 20(4) the Act.
15. In some cases, the Committee may be requested to assess submissions seeking a review of existing flood controls.

Method

16. The Minister for Planning or delegate may refer flood related draft planning scheme amendments and related matters to the Committee.
17. In making a referral, the Minister for Planning or delegate must be satisfied the proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes.
18. A proposal may be in the form of changes to the planning scheme and/or a combined planning permit application.
19. The Minister for Planning may seek additional advice from the Committee based on specific proposals, including coastal adaptation related studies, or other proposal that may potentially compromise a flood prone area.
20. The Committee may meet and, depending on the nature of the referral and the issues raised, undertake consultation that is fit for purpose. This may be on the papers; through round table discussions or forums; or hearings. There must be a quorum of at least two Committee members, including a Chair or Deputy Chair.
21. The Committee will provide a targeted and timely process to assess the merits of discrete unresolved issues.
22. The Committee may apply to the Minister for Planning to vary these Terms of Reference in any way it sees fit.

Stage 1 – Notice and submissions

23. The council may seek the written consent of the Minister for Planning or the Minister's delegate to prepare and give notice of a draft planning scheme amendment.
24. As directed by the Minister for Planning, the council will prepare and give notice of a 'draft planning scheme amendment' and receive submissions. The council will consider all submissions and where possible seek to resolve issues with submitters prior to requesting the Minister for Planning to refer matters to the Committee.
25. When preparing documentation for public notice, the council must liaise with the Committee to agree to:
 - a) A directions hearing date
 - b) The public hearing datesThe agreed dates are to be included on all notices for public exhibition.
26. The Committee is not expected to carry out additional public notification or referral of matters but may seek the views of any relevant referral authority, responsible authority or government agency.

27. Petitions and pro forma letters will be treated as a single submission and only the first name to appear on the first page of the submission will receive correspondence on the Committee matters.

Stage 2 - Referral

28. The council will request the Minister for Planning to refer the proposal to the Committee.

29. The council Chief Executive Officer will provide a copy of all submissions received in response to notice, a detailed response to those submissions and the particular matters or unresolved submissions.

30. Upon request, the council will also provide a copy of its preferred draft planning scheme amendment to the Committee.

31. The Minister for Planning or delegate will provide a letter of referral to the Lead Chair of the Committee, seeking its advice on particular matters or unresolved submissions and/or any other relevant matter. The letter of referral will be a public document. The letter of referral may seek advice on one or more matters.

32. The letter of referral must be accompanied by:

- a) All relevant plans, reports and associated draft planning scheme amendment documents
- b) The referred submissions, the list of all submitters, and the council's summary of submissions
- c) Any supporting background material including flood studies.

Stage 3 - Committee Hearing and Assessment

33. The Committee may inform itself in anyway it sees fit, but must consider:

- a) The relevant components of the referred draft planning scheme amendment, plans and reports that relate to the submissions or issues referred to it
- b) The referred submissions
- c) The relevant Planning Scheme
- d) The relevant flood studies
- e) The views of the relevant CMA and the council
- f) Any relevant ministerial directions and planning practice notes
- g) Any other material referred to it.

34. Depending upon the nature of the referral, the Committee may undertake any of the following:

- a) a directions hearing
- b) a public hearing and provide an opportunity for submitters to be heard
- c) forums, meetings or workshops with one or more submitters or any other party
- d) a review of submissions based 'on the papers'.

35. The Committee may:

- a) Direct that parties meet, to discuss and further resolve issues, or
- b) Act as a mediator to seek to resolve issues in dispute.

36. The Committee may direct the council, CMA and relevant parties to provide additional information on specified matters.

37. The Committee may limit the time of parties appearing before it and may prohibit or regulate cross-examination.
38. The Committee will be advised by the council of the position of any interested agencies and Traditional corporations and others as required.
39. The Committee may invite these groups to participate in any process as required, even if they have not made a submission.

Outcomes

40. For each matter referred to it, the Committee must produce a written report for the council and the Minister for Planning, providing the following:
 - a) Whether the referred element(s) of the planning scheme, draft planning scheme amendment or planning permit is appropriate
 - b) A summary and assessment of the issues raised in submissions referred to the Committee.
 - c) Any other relevant matters raised in the course of the Committee process.
 - d) A list of persons who made submissions considered by the Committee.
 - e) A list of tabled documents.
 - f) A list of persons consulted or heard.
41. The Committee may address more than one draft planning scheme amendment and/or relevant strategic planning matters and combine its assessment in a single report.

Submissions are public documents

42. The Committee must retain a library of any written submissions or other supporting documentation provided to it until a decision has been made on its report or five years has passed from the date of the specific letter of referral.
43. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain 'in camera'. A document may be made available for public inspection electronically.

Timing

44. The Committee is required to commence its process by issuing a written notice of the referral of a matter from the Minister for Planning to all submitters, the council and DTP no later than 10 business days from the date of any specific letter of referral received.
45. The Committee is required to submit its report in writing as soon as practicable but no later than 30 business days from the last day of its proceedings, tabling of submissions or consultation process.

Fee

46. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the Act.
47. The costs of the Committee and any associated public consultation notification will be met by the council unless an alternative is specified in the letter of referral from the Minister to the Committee.


HON Sonya Kilkenny MP

Minister for Planning

Date:

11/5/23

The following information does not form part the Terms of Reference.

Project Management

- 1 Administrative and operational support to the Advisory Committee will be provided by [REDACTED] the Department of Transport and Planning, [REDACTED]
- 2 Day to day liaison for the Advisory Committee will be through [REDACTED] of Planning Panels Victoria, on [REDACTED] or planning.panels@delwp.vic.gov.au.