

SCS-027 Planning Consultation Policy

TRIM Reference: D21/206366 Due for Review: 23 November 2024
Responsible Officer: Manager Planning and Development

Purpose

To promote and support the use of consultation and mediation in the management of planning disputes in Surf Coast Shire where there are objections and submissions to planning applications, development plans and planning scheme amendments to resolve concerns.

To improve the customer experience for those in our community who may participate in the planning system as objectors, submitters, supporters, owners or applicants within the relevant planning processes under the Planning and Environment Act 1987.

Policy Principles

To provide a fair process to all parties that enables participants to hear each other's concerns in a safe environment.

To listen actively to each other, seeking to genuinely understand those concerns and aspirations then focus on finding solutions to the issues and not to lay blame.

To recognise that there is a value in participating in discussion with parties gaining a wider understanding and appreciation of each other's concerns or aspirations, which is a reason in itself to have tried even when resolution is not achieved.

Scope

This policy applies to:

- (a) Planning applications lodged with council where two or more objections have been received against the proposal.
- (b) Development plans where submissions have been received that do not support the plan and consultation / mediation are considered to be an appropriate way of addressing the concerns prior to council considering the plan.
- (c) Planning scheme amendments where submissions have been received that do not support the amendment or aspects of the amendment and formal mediation is considered to be an appropriate way of addressing the concerns prior to council referring the submission to an independent panel.

Application

The policy applies to Councillors, employees of Surf Coast Shire Planning and Development Department, applicants, owners, objectors and submitters involved in the statutory planning assessment processes under the Planning and Environment Act 1987.

Policy

Surf Coast Shire Council is committed providing an opportunity for parties to amicably participate in planning with the intention to resolve planning disputes between the parties through mediation.

The following provisions apply:

1. General Provisions

- 1.1 Planning Consultation meetings are conducted on a “without prejudice” basis.
- 1.2 Parties will be invited to attend a planning consultation meeting or a height pole meeting when:
 - There are view impacts which require assessment and a height pole meeting is required.
 - There are two or more objections received to a planning application.
 - The type of submissions received to a development control plan would benefit from parties being brought together for a mediated conversation.
 - The type of submissions received to a planning scheme amendment would benefit from parties being brought together for a mediated conversation.
- 1.3 Parties will not be asked to participate in consultation / mediation:
 - If a height pole meeting occurs on the site and the view sharing and character are the main issues of concern.
 - Where matters of difference are adequately resolved in discussions carried out as a normal part of the application assessment process. (e.g. where there is a single objection/submission and the planner is able to resolve the matter).
 - Where the applicant has declined to participate in the process. In this situation the applicant will be asked to respond to the concerns in writing with the response to be shared with the objecting / submitting parties who may provide comment on the response to planning officers.
 - When the objections to an application do not relate to statutory grounds that can be considered.
 - If it has been decided that the matter is to be considered formally through the hearing of submissions process for determination by Council.
 - Where a planning application has been assessed and recommended for refusal due to multiple compliance failures with the Surf Coast Planning Scheme and the Manager for Planning and Development is supportive of the refusal.
 - Where there is a perceived threat of violence or abusive behaviour.
- 1.4 The facilitator will be a Council Officer trained in mediation or for larger matters an external facilitator / mediator may be appointed by Manager Planning and Development.
- 1.5 When consultation meetings are held during office hours at the Surf Coast Shire office they will generally be on Monday from 10am to 11:30am, Monday at 3pm to 4:30pm or Wednesday at 3pm to 4:30pm. Consultation meetings can be held via an online forum platform at other times.
- 1.6 Consultation meetings are not open to the public. Representation and attendance is to be only by invitation to the parties involved.
- 1.7 All parties attending must have the authority to make decisions on behalf of the individual they are representing.
- 1.8 Where the owner is not the applicant, the owner is expected to attend and actively participate in order to directly assist with the discussion between the parties involved, unless authority to make decisions has been given to the applicant under clause 1.7.
- 1.9 Legal representatives and or other consultants who are not applicants or who have not directly lodged an objection on behalf of a party may not take part in discussion but may attend as observers. This is to facilitate direct discussion between with the parties. The facilitator may use their discretion to provide opportunity for parties to seek advice from legal representatives and or other consultants who are present as observers.
- 1.10 When the objection is in the form of a petition, only a nominee petitioner will be invited to attend the meeting.
- 1.11 All parties are to agree to the ground rules for behaviour.

2. Roles

- 2.1 *Facilitator:* To chair the meeting and control the mediation process so that the participants can have a constructive conversation. The facilitator / mediator must act impartially and not become involved in debating the content or planning merits in the discussion.
- 2.2 *Planning Officer:* To be the technical expert available to respond to planning questions to assist the conversation. They are to be the scribe and recorder of actions. This role will normally be filled by the planning officer assessing the application.
- 2.3 *Councillors:* To be as an observer when in attendance.

3. Limitations

- 3.1 By participating, all parties agree that the council or the facilitator / mediator shall not be liable for any act or admission arising from the planning consultation whether involving negligence or not.
- 3.2 Council will meet its administrative costs and any external mediator's fees. Any costs incurred by the parties in preparing, presenting or attending the consultation meeting will be the responsibility of the individual parties concerned.

4. Meeting procedures

The mediation process is to be based on the Dispute Settlement Centre of Victoria process and consist of:

1. *Identifying the parties*, determining their preparedness to use mediation and whether the dispute is suitable for mediation
2. *Establishing ground rules* and the roles of the mediator and technical expert
3. *Describing the problem* through uninterrupted opening statements from the parties
4. *Naming the issues* through setting the agenda for discussion
5. *Exploring the issues and underlying interests* through direct discussion between the parties
6. *Exploring the options* for resolution / settlement of the dispute
7. *Coming to agreements where possible*

The planning consultation meeting procedures are detailed in the Planning Consultation Management Procedure.

Local Government Act 2020 Principles

Principles	Applicable to policy	If yes, provide details
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes	The planning consultation policy provides a frame work to respond to planning disputes in a way that provides opportunity for the parties to achieve acceptable planning outcomes together.
Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020)	Yes	The policy provides a clearly defined scope and objectives are framed within the policy principles. The consultation policy provides the basis for participants within the planning processes to engage in discussion to find common ground.
Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	Yes	In line with accepted practice in dispute resolution, meetings are not open to the public but are open to all who are directly affected being parties to the planning dispute. Councillors are able to attend as observers.
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	No	
Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	No	
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	Yes	The Planning Consultation Policy is considered best practise and has been developed in response to the continuous improvement of the planning service.

Definitions

Applicant: A person/group/organisation that has signed and submitted a planning application to Council.

Consultation	An opportunity for information sharing.
Facilitator:	A neutral, independent and suitably qualified/experienced person selected by the Manager Planning and Development to assist all parties involved in a dispute. If the person is a council officer; that person should not have been previously involved with the planning application. A trained mediator will be considered to be a facilitator.
Height Pole Meeting:	An onsite meeting scheduled to understand the view impacts of a planning application. Height poles are erected prior to the meeting under the supervision of a licensed surveyor to enable a potential view impact to be considered by the parties.
Mediation:	A form of assisted negotiation between parties to a dispute.
Objector:	A person/group/organisation that has signed and submitted an objection to a planning application.
Owner:	The owner of a property that is the subject of a planning application or development plan.
Parties:	Any person involved in a consultation / mediation process being an applicant, owner, objector, submitter, supporter or a Council Officer.
Planning Officer:	The Council Officer who is responsible for assessing the planning application.
Submitter:	A person/group/organisation that has signed and made a submission to a development plan or a planning scheme amendment.
Supporter:	A person/group/organisation that has signed and submitted a letter of support to a planning application or a planning scheme amendment.

Related Procedure

- Planning Consultation Management Procedure

References

<Include other documentation, e.g. Legislation, Policies, Standards, Forms, etc.>

- How to get the Best out of Planning: A Guide to Facilitation Meetings

Document History

Version	Document History	Approved by – Date
1	<i>Adopted</i>	<i>Council Resolution – 24 April 2018</i>
2	<i>Amended</i>	<i>Council Resolution – 22 February 2022</i>