



## Overshadowing impacts on solar panels: Planning Guidance Note

This guidance note is intended to assist the community and developers to understand risks associated with new development overshadowing solar panels. It will also assist stakeholders identify the policy context for this issue, including recent legal case law guiding how it is considered at the Victorian Civil and Administrative Tribunal (VCAT).

### Overshadowing of solar panels

Solar panel systems are one way in which residents and businesses can reduce greenhouse gas emissions and save money on energy costs. However, as development continues across the municipality, there is potential that new buildings and additions may result in solar panels on neighbouring sites being overshadowed, limiting the solar panels potential to generate energy.

### Case law

This issue has been tested at the Victorian Civil Administrative Tribunal, with a number of decisions, including 'red dot' (significant) decisions, discussing the matter (Chen v Melbourne CC & Ors (Red Dot) [2012] VCAT 1909, John Gurry & Associates v Moonee Valley CC and Ors (Red Dot) [2013] VCAT 1258, Babaniaris v Greater Geelong CC [2015] VCAT 1793, Bagnato v Moreland CC [2016] VCAT 5).

Some relevant notable reference points are raised to consider when dealing with this issue:

- The ultimate test is one of 'reasonableness', rather than avoiding any overshadowing altogether
- What constitutes 'legitimate expectations' in light of the strategic planning controls and policies affecting the subject land and area
- Whether the position of the solar panels on the host building is due to constraints arising from heritage planning controls or a heritage covenant
- The model and type of solar panels
- The amount of supporting evidence that a party has provided
- When the solar panels were installed on the host building.

Ultimately the tribunal found that the planning policies and controls that guide the scale of buildings set the expectations of what is reasonable in terms of overshadowing solar panels, and that development should not be unreasonably compromised on the basis that it might overshadow solar panels on neighbouring properties.

### Urban growth and development – planning

Solar panels are encouraged throughout the municipality. However, owners should be aware that there is a risk that development (new buildings or extensions) of neighbouring properties may overshadow their solar panels. The level of risk varies throughout the municipality, depending on the extent to which planning policies support changes to built form and urban growth, which influences the height of proposed buildings. The chance of larger scale, or higher buildings being developed (and therefore posing a risk to overshadowing of solar panels) is reduced in areas where little change in built form is supported by planning policies. The risk is

greater in areas where higher levels of growth and development are supported by planning policies. These areas seek to achieve a more sustainable urban form by accommodating increased population in areas that are well serviced by public transport, and are close to jobs and services. For lower scale buildings in such areas, the City of Melbourne considers that protection of solar panels is less likely to be possible.

The planning policies and requirements that will help determine built form heights are found within the [Melbourne Planning Scheme](#)<sup>1</sup>, in particular within the zone (and overlay if applicable) that apply to the subject land and neighbouring area – these can be found online through [Planning Maps](#)<sup>2</sup>. Policies regarding the potential of areas to accommodate urban growth in the future can be found within the Municipal Strategic Statement, which identifies urban renewal areas, and proposed urban renewal areas, where urban growth is envisaged. By contrast, stable residential areas indicate where limited change is expected. Lastly, some areas (such as West Melbourne) have Structure Plans, with guidance about how the area will manage development.

Planners at the City of Melbourne are able to guide the community and business owners through this research and provide further advice.

## Working with planning

Planners at the City of Melbourne can advise on what may be likely to occur in terms of future development based on the zone, overlay and any structure plan or local policy that applies to the site or area and what this means in terms of building heights (keeping in mind that simply because development is allowed, it may not actually occur in the lifetime of a solar panel). Further, if they receive an application for development that may overshadow solar panels, they can consider the impacts of this and request an urban context report that demonstrates how a proposal responds to its context, including solar panels on neighbouring buildings. They can also request technical information, such as shadow diagrams to help demonstrate the extent of overshadowing.

City of Melbourne planners can be contacted on 03 9658 9658 or by emailing [planning@melbourne.vic.gov.au](mailto:planning@melbourne.vic.gov.au).

## Legislation and policy on energy efficiency

There are many Clauses that support energy efficiency in the State Planning Policy Framework (SPPF), the Municipal Strategic Statement (MSS) as well as Council's local policy Clause 22.19 Energy, Water and Waste Efficiency which seeks to maximise energy efficiency.

On 13 April 2017 Clauses 55.07 Apartment Developments and Clause 58 Apartment Developments were introduced into all planning schemes. Both these provisions contain objectives that specifically seek to protect existing energy efficient dwellings and buildings, complementing the existing objectives of ResCode (Clauses 54.03-5 and 55.03-5) that seek 'To achieve and protect energy efficient dwellings'.

Clauses 55.07 and 58.03-1 'Energy efficiency objectives', Standards B35 and D6 of the Melbourne Planning Scheme seek among other things to achieve and protect energy efficient dwellings and buildings. The standards state that buildings should be sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced. This standard is also included within Standard B10 'Energy efficiency objectives' of Clause 55.03 (ResCode) in the Melbourne Planning Scheme. However, there is limited guidance about what is considered 'reasonable' and how this objective competes with other policies supporting urban growth in many locations. As such, the recent introduction of the new policies in April 2017 has further strengthened and clarified the intent to protect energy efficient dwellings by providing more guidance and clearer intent to protect existing dwellings and buildings.

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<sup>1</sup> <http://planning-schemes.delwp.vic.gov.au/schemes/melbourne>

<sup>2</sup> <http://services.land.vic.gov.au/maps/pmo.jsp>

## Next steps

The City of Melbourne has prepared a tool kit for the community to be used by anyone who is considering, or has installed solar panels. This includes:

- This Guidance Note
- [Frequently asked questions on overshadowing](#)<sup>3</sup>

In 2017-18 as part of the Annual Plan Action to **'promote a suite of options to encourage residents and businesses to achieve energy savings and access renewable energy'**, the City of Melbourne will also be exploring the viability of community solar investments to provide an alternative to residents who want to invest in solar panels but whose access is restricted because of adjacent developments or building structural issues.

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<sup>3</sup> <http://www.melbourne.vic.gov.au/sitecollectiondocuments/solar-overshadowing-information-sheet.doc>