



## LOCAL PLANNING POLICY – STATE ADMINISTRATIVE TRIBUNAL – PROCESS AND PROCEDURES

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### 1.0 PURPOSE

- 1.1 This policy prescribes the procedures by which Councillors and the City's Administration shall deal with applications for review made to the State Administrative Tribunal (SAT).

### 2.0 APPLICATION OF POLICY

- 2.1 This policy applies when an application is made to the SAT for review of a planning decision or direction notice issued by Council, or Administration under delegated authority, as per the *Planning and Development Act 2005* (PD Act).

### 3.0 OBJECTIVES

- 3.1 To outline the procedure for Council and Administration to follow in responding to an application for review lodged with the SAT that is financially responsible, consistent, impartial and transparent.

### 4.0 POLICY MEASURES

#### The Council's and the City's role in SAT proceedings

- 4.1 Council shall use its best endeavours to assist the SAT to make a correct and preferable decision of a review as per its obligations under the SAT Act.
- 4.2 Councillors and the City's Administration shall avoid discussions or correspondence concerning an ongoing SAT review with third parties.
- 4.3 Notwithstanding policy measure 4.2, discussions with third parties may occur only where necessary or appropriate to:
- inform a person that a matter is before the SAT;
  - make a person aware of their ability to access relevant information on the SAT website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au), including information concerning the role of third parties in SAT reviews;
  - to obtain advice from an expert or government agency, or to obtain a witness statement.
- 4.4 Direct communication between a proponent and Councillors (individually or collectively) shall be avoided for the duration of a review before the SAT. Should contact be made by a proponent, Councillors are encouraged to:
- make the person aware of this policy; and



- advise the applicant to contact the responsible officer if they require any further information.

### **Representation**

- 4.5 Where the applicant has engaged legal representation, the City will also engage legal representation.
- 4.6 Where an applicant has elected to not have legal representation, the City shall be represented by either officers or appointed consultants.
- 4.7 Where a Council decision is the same or essentially the same as an officer's recommendation, then officers may represent the Council's position, at the Chief Executive Officer's discretion.
- 4.8 Where an application is made for the review of a decision made by Council, and that decision is substantially different to the recommendation made by the City's Administration (e.g. against, or change to, the recommendation or a condition is introduced by Council), then independent consultants may be engaged to represent the City. The mover and the seconder of a Council Resolution shall be notified of the SAT proceedings and shall represent the Council in the proceedings and an alternative/s shall be requested to attend if the mover and the seconder are unable to attend.
- 4.9 Where a review proceeds to a final hearing, independent consultants will usually be engaged, however the decision to engage, independent consultants under any circumstances, shall be made by the City's Chief Executive Officer or the City's Director Planning and Development.

### **Mediation proceedings**

- 4.10 Discussions occurring for the purposes of mediation are conducted by the Tribunal on a "without prejudice" and confidential basis. Councillors and the City's Administration will not disclose the content of these discussions outside the mediation session whilst the matter is still under review.
- 4.11 Where a matter is referred to mediation, the Councillors, legal representation, relevant consultant or officers:
- (a) Shall participate constructively in the mediation to attempt to reach a solution to remain consistent with the Council Resolution; and
  - (b) Shall refer any potential solutions arising out of the mediation back to the decision maker of the original application.
- 4.12 With respect to 4.11 above, where the matter was originally considered by Council, any proposed solution arising from the mediation shall be presented to Council for further consideration in accordance with the procedures for section 31 reconsiderations set out below.



4.13 Where practical, officers shall provide regular updates on proceedings before the SAT to Councillors. Updates shall be limited to issues relating to the programming of proceedings, including timeframes, and likely cost implications. Specific details in relation to the proceedings shall not be discussed.

### **Section 31 reconsiderations**

4.14 The responsible officer, in consultation with the Director Planning & Development, shall have the discretion to advise whether a reconsideration under section 31 would assist with the resolution of a matter in a timely and cost-effective manner.

4.15 Upon receipt of a section 31 reconsideration, the responsible officer shall assess the proposal and refer it to Council. Council may affirm the original decision, vary the decision or set aside the decision and substitute a new decision.

4.16 Reports presented to Council for reconsideration under section 31 of the SAT Act shall be presented as confidential reports to ensure compliance with the *State Administrative Tribunal Regulations 2004* (SAT Regulations).

4.17 Where a proposal the subject of a SAT review has already been advertised, the proposal will not be re-advertised before Council reconsiders the proposal pursuant to a section 31 invitation except where:

- (a) the SAT mediating member suggests re-advertising, or the applicant agrees;
- (b) the proposal to be reconsidered is substantially different to the proposal previously advertised and may add planning issues not raised by the advertised proposal; or
- (c) in the judgment of the responsible officer, there are exceptional circumstances which justify re-advertising.

4.18 If it is determined by the relevant officer, under 4.17(c) above, that a proposal should be re-advertised before a reconsideration by Council, but the applicant does not consent to the re-advertising, the responsible officer shall be entitled to decline to refer the proposal back to the Council.

4.19 Should the item be advertised; the content of advertising shall not be placed on the City's website to ensure the confidentiality of the mediation process is maintained to only relevant parties.

### **Appeals against decisions of the SAT**

4.20 The City will not generally appeal a decision of the SAT unless, in the opinion of the City, it is considered that the SAT has made an error of law and the issue at stake has significant implications for the City or local government in general.

4.21 In considering making an appeal against the decision of the SAT, the City may seek legal advice and shall give weight to the cost and legal implications prior to undertaking an appeal of the SAT's decision.



**Parallel direction notice under s.214 of the PD Act 2005**

4.22 Where an application for review of a decision is lodged and the matter is also the subject of a direction notice under s. 214 of the PD Act, the City will generally defer enforcement of the direction notice until the application before the SAT is determined. If the review application is dismissed, the City will enforce the direction notice immediately without further consideration by Council.

**Notification of community members**

4.23 The City will advise all parties who made a submission on an application that was the subject of review at the SAT, in writing as soon as practical, of the SAT decision.

**Costs**

4.24 The City shall not seek an order relating to costs against an applicant, unless the applicant behaves in a dishonest, frivolous or vexatious manner. Should an applicant behave in a dishonest, frivolous or vexatious manner, the City will seek legal advice as to the reasonable chance of success in recovering costs, prior to deciding to seek such an order.

**5.0 RELATED LEGISLATION**

5.1 This policy has been prepared in accordance with Schedule 2, Part 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

5.2 This policy should be read in conjunction with the following and its requirements apply unless specifically stipulated elsewhere in any of the below:

- State Administrative Tribunal Act 2004
- Planning and Development Act 2005
- Planning and Development Regulations 2009
- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Planning Scheme No. 3

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