

## 11.2 Review of Local Planning Policy 28 'Independent Representation for Appeals Against Council Decisions on Applications for Planning Approval'

<b>Location</b>	Town-wide
<b>Reporting officer</b>	Leigh Parker
<b>Responsible officer</b>	Robert Cruickshank
<b>Voting requirement</b>	Simple majority
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Draft Revised LPP 28 'State Administrative Tribunal Applications for Review' [11.2.1 - 4 pages]</li><li>2. Existing LPP 28 'Independent Representation for Appeals Against Council Decision on Applications for Planning Approval' [11.2.2 - 1 page]</li></ol>

### Recommendation

That Council:

1. Approves advertising of the draft revised Local Planning Policy 28 'State Administrative Tribunal Applications for Review' (as contained in Attachment 1) for public comment for a minimum period of 21 days in accordance with deemed Clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*; and
2. Requests that the Chief Executive Officer provides a further report to Council summarising and responding to any submissions received during the public advertising period along with a recommendation on whether or not to adopt draft revised Local Planning Policy 28 'State Administrative Tribunal Applications for Review' with or without modifications.

### Purpose

To consider proposed amendments to the existing Local Planning Policy 28 'Independent Representation for Appeals Against Council Decisions on Applications for Planning Approval' (LPP 28).

To resolve whether to grant consent to advertise draft revised LPP 28 for public comment.

### In brief

- Council's Urban Planning service area have completed a review of LPP 28, as part of its comprehensive project to review all 37 Local Planning Policies (LPPs).
- The review has considered the adopted policies of a number of other metropolitan local governments.
- The draft revised policy has been internally reviewed with Urban Planning Officers and is considered to provide a comprehensive and straightforward policy position on how the Town's administration will deal with applications for review made to the State Administrative Tribunal (SAT).

### Background

1. LPP 28 was originally adopted as Council Policy PLNG10 'Independent Representation for Appeals Against Council Decisions on Applications for Planning Approval' on 18 March 2003.
2. At the Ordinary Council Meeting on 9 February 2016, Council resolved to adopt the planning policies contained within the former Town Planning Scheme No. 1 (TPS No. 1) Policy Manual, those adopted as Local Planning Policies prepared under the R-Codes, and those adopted as Administrative Policies (otherwise known as PLNG Policies) as Local Planning Policies. Former PLNG10 was thereafter adopted as LPP 28.

3. Council's Urban Planning service area are currently undertaking a comprehensive review of all 37 Local Planning Policies (LPPs). The LPPs are being progressively amended, adopted and/or revoked following their review and public advertising of any recommended changes.
4. A formal resolution of Council is required to grant consent for the public advertising of a new or revised LPP.
3. A review of LPP 28 has been undertaken by Council Officers, which has included consideration of:
  - (a) the effectiveness of the current policy including any issues of interpretation, application and gaps or deficiencies;
  - (b) like policies of other local governments;
  - (c) alignment with relevant State legislation, policy and/or guidelines (where applicable);
  - (d) greater clarity in the objectives of the policy; and
  - (e) improving the presentation of the policy.
4. The review of LPP 28 has identified the following shortcomings and/or opportunities for further improvement:

Existing LPP 28:	Opportunity/improvement:
<ul style="list-style-type: none"> <li>• Scope is limited to two matters – independent representation in matters where a Council decision has varied significantly from an officer recommendation; and the limitation of estimated expenditure to \$15,000 without prior Council approval.</li> </ul>	<ul style="list-style-type: none"> <li>• Expand and broaden scope of the policy to outline the Town's approach to SAT applications for review in general, including when the Town will seek independent representation, of both direction notices (issued under S. 214 of the <i>Planning and Development Act 2005</i>) and decisions on applications for development approval.</li> </ul>
<ul style="list-style-type: none"> <li>• The estimated expenditure provision of \$15,000 is both an inappropriate provision within a LPP, and is set at an unrealistic and outdated level.</li> </ul>	<ul style="list-style-type: none"> <li>• Remove provision, as expenditure on legal advice and independent representation is governed by budgetary and financial policies of Council, as for any other item of expenditure by the Town.</li> </ul>
<ul style="list-style-type: none"> <li>• The policy format is outdated and lacks a structured format consisting of numbered/lettered clauses.</li> </ul>	<ul style="list-style-type: none"> <li>• Update the policy format, consistent with other reviewed LPPs, including providing an Introduction, Scope and Objectives for the policy.</li> </ul>
<ul style="list-style-type: none"> <li>• Does not outline when and how Elected Members or community members may be involved or invited to participate in applications for review by the SAT.</li> </ul>	<ul style="list-style-type: none"> <li>• Insert new provisions dealing with matters, including the circumstances when Elected Members or community members will be notified/updated and/or invited to participate in the mediation process or to provide evidence as a witness on the Town's behalf. (Refer Clauses 2 and 3)</li> </ul>
<ul style="list-style-type: none"> <li>• Does not outline the Town's general approach to mediation, or outline the circumstances in which amended proposals will be publicly advertised.</li> </ul>	<ul style="list-style-type: none"> <li>• Insert new provisions related to participation in mediation and discussions/agreements made during mediation between parties (Refer Clause 4)</li> </ul>
<ul style="list-style-type: none"> <li>• Does not outline the Town's position with respect to appealing decisions of the SAT.</li> </ul>	<ul style="list-style-type: none"> <li>• Insert new provisions detailing that in general the Town will not seek to appeal the decision of the SAT, except in exceptional circumstances on the basis of legal advice that an error of law has been made (Refer Clause 5)</li> </ul>
<ul style="list-style-type: none"> <li>• Does not outline the Town's position with respect to seeking orders relating to costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Insert new provision that the Town will generally not seek an order relating to costs against an applicant, except in the circumstances that the applicant has behaved in a dishonest, frivolous or vexatious manner.</li> </ul>

## Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL06 - Finances are managed appropriately, sustainably and transparently for the benefit of the community.	Preparation of policies that clearly outline the circumstances in which legal and other forms of independent representation will be sought by the Town, to ensure responsible, consistent and transparent use of Council resources.
CL08 - Visionary civic leadership with sound and accountable governance that reflects objective decision-making.	Preparation and review of policies to ensure consistency, impartiality and transparency in decision-making.
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	The review of the Town's LPPs to ensure they remain relevant, effective and consistent with current legislative requirements and the State Planning Framework.

## Engagement

Internal engagement	
Stakeholder	Comments
Urban Planning	Has been workshopped with Urban Planning Officers with feedback informing the draft revised policy.
Place Planning	No implications for the Place Planning service area.
Governance	Has reviewed the draft revised policy and provided feedback to ensure alignment with the Town's adopted policies relating to procurement and legal advice.

## Legal compliance

- Planning and Development (Local Planning Schemes) Regulations 2015

The amendment of a LPP is to be undertaken in accordance with deemed clauses 4 and 5 of the Regulations, including:

- Community consultation for a period of not less than 21 days; and
- Consideration of public submissions and a Council resolution to proceed with the new or amended policy with or without modifications, or not to proceed.

As per deemed clause 4(5) and clause 6(b)(ii), the adoption of a new or revised local planning policy, or the revocation of an existing local planning policy, takes effect upon publication of a notice in a newspaper circulating within the Scheme Area.

- Local Planning Policy 37 'Community Consultation on Planning Proposals'

The proposed adoption, revocation or amendment of LPPs to be publicly advertised in accordance with LPP 37.

## Risk management consideration

Risk and consequence	Consequence rating	Likelihood rating	Overall risk analysis	Mitigation and actions
<b>Compliance</b> Application of policies which could contain clearer and more comprehensive provisions in order to more effectively achieve their intent and objectives.	Moderate	Likely	Low	Consent to public advertising of draft revised LPP 28.
<b>Compliance</b> Application of practices and procedures which are not underpinned by a Local Planning Policy or other adopted instrument within the Town's local planning framework to ensure consistency and transparency in decision making.	Moderate	Likely	Low	Consent to public advertising of draft revised LPP 28.

## Financial implications

<b>Current budget impact</b>	Sufficient funds exist within the annual budget to address this recommendation.
<b>Future budget impact</b>	The engagement of legal and other consultants to represent the Town in SAT proceedings does have budget implications, however there will be no additional budget impact relative to the current situation.

## Analysis

5. Draft revised LPP 28 provides an important outline of the manner in which the Town will consider applications for review by the SAT, addressing the level of involvement and expectations of the various parties that may be involved and helping to ensure consistency, impartiality and transparency.
6. The major changes proposed to the existing policy following its review include:
  - (a) Broadening the scope of the policy from dealing exclusively with independent representation for applications for review of Council decisions that varied significantly from an officer recommendation, to outline the Town's approach and consideration of applications for review generally.
  - (b) Introduction of new provisions relating to the notification and involvement of Elected Members and community members, the mediation process, appeals of SAT decisions and costs.
  - (c) Removal of the clause limiting estimated expenditure on representation to \$15,000 on a single matter, unless prior Council approval has been obtained, as the cap is unrealistically limited and the procurement of legal services is subject to Council Policies 003 'Legal Advice' and 301 'Procurement'.
  - (d) Updating of the policy format to be consistent with other revised LPP's, including clause numbering, and updating of outdated terminology.
7. Draft revised LPP 28 has been subject to internal review and refinement and it is recommended it now proceed to public advertising. A further report will be presented to Council in the future following the conclusion of the advertising period, reporting on any submissions received, and seeking a final decision from Council as to whether or not to adopt the draft revised policy, with or without modifications.

## Relevant documents

[State Administrative Tribunal Act 2004](#)