

**INTRODUCTION**

This policy outlines the approach by which Elected Members and the Town's Administration shall deal with applications for review made to the State Administrative Tribunal (SAT) to ensure consistency, impartiality and transparency. This Policy also seeks to balance the use of financial resources, community involvement and level of impact on the operational activity of the Town.

The Town recognises that it is inappropriate for the Administration to respond on behalf of the Council in relation to an application for review by the SAT of a Council decision that was substantially different to the officer recommendation. External representation for the defence of such Council decisions is appropriate.

**OBJECTIVES**

- (a) Establish a transparent and consistent process when responding to the State Administrative Tribunal (SAT) on review matters;
- (b) 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;
- (c) To set out appropriate guidelines for representation of Council where a Council decision is substantially different to an officer recommendation, which becomes the subject of an application for review by the SAT; and
- (d) To avoid a conflict of interest and ensure impartial representation at SAT where a development application decision or direction notice is the subject of a review by the SAT.

**POLICY SCOPE**

This Policy applies when an application is made to the SAT for review of a development application decision or direction notice issued by Council or the Town's Officers under delegated authority, as per the *Planning and Development Act 2005*.

**POLICY REQUIREMENTS****1. Independent representation**

- (a) An independent planning consultant will be engaged to represent the Town in SAT proceedings of an application for review of a development application decision or direction notice made by Council, where:
  - i. it is substantially different to and/or fundamentally reverses an officer

- recommendation to the Council; and
- ii. the Council's decision (to the extent of the inconsistency with the officer recommendation) is central to the reason(s) for the SAT review;
- (b) An independent planning consultant shall be selected on the merits of the individual matter based on their qualifications, knowledge or experience, at the discretion of the Manager Development Services or Chief Community Planner;
  - (c) Professional legal services may be engaged to represent the Town in any review unless the matter is a Class 1 review where the applicant elects that no party be legally represented. Notwithstanding, legal services may be engaged to provide advice to the Town as to the conduct of the matter, any issues that may arise and the checking of witness statements, as deemed necessary by the Manager Development Services or Chief Community Planner;
  - (d) Legal services and/or legal representation shall be selected on the merits of the individual matter based on their qualifications, knowledge or experience, at the discretion of the Manager Development Services or Chief Community Planner;
  - (e) An independent expert witness(es) may be engaged in cases:
    - i. to refute the evidence of an expert witness(es) used by an applicant for use as evidence in proceedings; or
    - ii. to give a professional opinion in a proceeding where skills are not available by a Town Officer; or
    - iii. where it is considered appropriate in the particular circumstances as determined by the Manager Development Services or Chief Community Planner;
  - (f) Independent expert witnesses shall:
    - i. be selected on the merits of the individual matter based on their qualifications, knowledge or experience; and
    - ii. shall not have any impartiality or pecuniary interest in the matter under review; and
    - iii. be paid appropriate professional rates by the Town; and
  - (g) The procurement and selection of legal and other professional services is to occur in accordance with the Town's adopted policies relating to legal advice and procurement.

## **2. Notification and involvement of Elected Members**

- (a) Elected Members will be provided with updates and notified of hearing dates of any review that was the subject of a Council decision as soon as practical; and
- (b) Elected Members may attend public hearings of the SAT to observe proceedings.

## **3. Notification and involvement of community members**

- (a) The Town will advise parties who made a submission on an application that is the subject of a review by the SAT in accordance with *Local Planning Policy 37 'Community Consultation on Planning Proposals'*;



- (b) Submissions received during the course of an assessment process of an application that is subject to review will form part of the Town's evidence to the SAT;
- (c) A community member who made a submission on a proposal that subsequently becomes the subject of a SAT review may be invited to appear as a witness on the Town's behalf only to provide evidence of factual matters relevant to an issue arising in the proceeding that cannot be provided by a Town Officer. In such circumstances the Town will not pay a witness fee but will reimburse essential out of pocket expenses of appearing before the SAT;
- (d) Community members may make an application to the Tribunal to:
  - i. seek leave to intervene in the matter under s37(3) of the *State Administrative Tribunal Act 2004*; or
  - ii. seek leave to make a submission independent of the Town on the matter under s242 of the *Planning and Development Act 2005*; and
- (e) The Town will not object to an application by a community member to make an independent submission to the SAT or intervene in a review, unless the submission or the intervention is inconsistent with an established position of the Town.

#### **4. Mediation**

- (a) The Town will generally agree to participate in mediation where this is proposed by the SAT;
- (b) Discussions held as part of mediation are conducted on a without prejudice basis and the content of such discussions shall not be used in a subsequent hearing;
- (c) Third parties may only be present during a mediation session by invitation from the SAT;
- (d) Where a matter is referred to mediation, the Town's Officers/representatives shall:
  - i. participate constructively in the mediation in order to attempt to reach a mediated solution, whilst giving due regard to any particular issues or concerns raised in making the decision under review;
  - ii. not agree to any solution at the mediation beyond any delegated power, although such a solution may still be discussed on the proviso it is communicated as a potential solution only, subject to the agreement of the relevant Town Officer with delegated power to agree to that solution; and
  - iii. present any potential solutions, implications, results, processes or positions arising out of the mediation for any review that was the subject of a Council decision back to the Council;
- (e) Where an application for review relates to a decision of the Council, one or more Elected Members may be invited to participate in the mediation session;
- (f) As part of a Request for Reconsideration under Section 31 of the *State Administrative Tribunal Act 2004*, the Town shall seek sufficient time to allow advertising of an amended proposal:



- i. that introduces new, or increases the extent of, any proposed non-compliances that would ordinarily require consultation to be carried out in accordance with *Local Planning Policy 37 'Community Consultation on Planning Proposals'*; and/or
  - ii. where deemed appropriate by the Manager Development Services or Coordinator Urban Planning; and
- (g) Where the SAT allows sufficient time for advertising, the Town will advertise the amended proposal to those who made a submission on the original proposal as well as any additional owners or occupiers affected by any new or more extensive non-compliant aspects of the amended proposal, as determined in accordance with *Local Planning Policy 37 'Community Consultation on Planning Proposals'*.

## 5. Appeals against decisions of the SAT

- (a) The Town will generally not seek to further review a decision of the SAT except where following legal advice, it is considered that the SAT has made an error of law and/or the issue at stake has significant implications for the Town and/or local government in general.

## 6. Costs

- (a) The Town will generally not seek an order relating to costs against an applicant, unless they have behaved in a dishonest, frivolous or vexatious manner in conducting the proceeding; and
- (b) The Town will seek legal advice as to the reasonable chance of success prior to making a decision to seek an order relating to costs.

## RELATED DOCUMENTS

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

*Policy 003 Legal Advice*

*Policy 301 Procurement*

*Planning and Development Act 2005*

*State Administrative Tribunal Act 2004*

Date Initially Adopted :	Former Policy PLNG10 'Independent Representation for Appeals Against Council Decisions on Applications for Planning Approval' adopted 18 March 2003.
Date(s) Amended:	1. Amended by Council resolution to PLNG2 at Ordinary Council Meeting 19 July 2013. 2. Adopted as Local Planning Policy 28 at Ordinary Council Meeting 9 February 2016. 3. Amended by Council resolution at Ordinary Council Meeting 17 March 2020.

