



COUNCIL POLICY NO:-

SDev CP047 - STATE ADMINISTRATIVE TRIBUNAL (SAT) REPRESENTATION POLICY**GOVERNANCE INFORMATION**

Procedure Link:	NA	Administrative Policy Link:	NA
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ADMINISTRATION INFORMATION

History:	New	OCM	18/12/19	Res:	366-19	Synopsis:	Policy created	
Version	2	SDev CP047	OCM	30/09/20	Res:	270-20	Synopsis	Reviewed and Adopted by Council

1. RESPONSIBLE DIRECTORATE

Sustainable Development

2. PURPOSE OR OBJECTIVE

The objective of this Policy is to:

- (a) Outline the Shire's general position and approach to proceedings before the State Administrative Tribunal;
- (b) Support the Shire's continued efforts to achieve general community compliance with relevant statutory requirements;
- (c) Support the Shire's continued efforts to operate in an open and transparent manner; and
- (d) Support the Shire's continued efforts to operate in a financially responsible manner.

3. DEFINITIONS

None relevant

4. POLICY

This Policy applies to State Administrative Tribunal matters, which involves but is not limited to the Shire's Planning, Compliance, Building and Health Services.

This policy does not deal with the procedures involved in making an application for review or the process of the review as these matters are the subject of separate legislation and regulations.

4.1 Status

- (a) To the extent of any inconsistency between this policy and the SAT Act, the SAT Act shall prevail.
- (b) To the extent of any inconsistency between this policy and the provisions of TPS3, the Scheme shall prevail.

4.2 Policy Measures - Communication

4.2.1 In order to maintain the integrity of the SAT review process and uphold its obligation to the SAT, elected members and employees should avoid discussions or correspondence concerning an ongoing SAT review with third parties, except where necessary or appropriate:

- (a) to inform a person that a matter is before the SAT;
- (b) to make a person aware of their ability to access relevant information on the SAT website at www.sat.justice.wa.gov.au, including information concerning the role of third parties in SAT reviews;
- (c) to inform a person of the outcome of a step in, or the outcome of, the SAT proceedings; and
- (d) to assist the SAT or the Council in the SAT review (e.g. to obtain advice from an expert or government agency, or to obtain a witness statement).

4.2.2 In the interests of avoiding any later conflict and in maintaining integrity in the process, direct communication between a proponent and the Shire's elected members (individually or collectively) should be avoided for the duration of proceedings before the SAT. Should contact be made by a proponent, the elected member/s are encouraged to:

- (a) make the person aware of this Council policy; and
- (b) advise the applicant to contact the Shire’s responsible officer if they require any further information.

4.3 Policy Measures - Representation

- 4.3.1 Where the applicant has retained legal representation, the Shire will be legally represented.
- 4.3.2 Where an applicant has elected on their application for review to the SAT in a Class 1 planning matter to not have legal representation, the Shire shall be represented by either officers or appointed consultants.
- 4.3.3 Where a Council decision is the same or essentially the same as an officer’s recommendation, or corrects or improves the content of an officer’s recommendation, then officers shall generally provide a written response on behalf of the Council and/or attend a mediation or Tribunal hearing as an expert witness to represent the Council’s position. Decisions in respect of which officers are to attend proceedings shall be determined by the Chief Executive Officer.
- 4.3.4 Where an application is made for the review of a decision that is substantially inconsistent with a recommendation made by Shire officers, then in the interests of the Council and Shire officers, and to assist the SAT, independent consultants may be engaged to represent the Shire during the SAT process, and will usually be engaged if the matter proceeds to a final hearing. This does not preclude Officers from attending mediation to provide the SAT factual information on behalf of Council
- 4.3.5 The decision to engage, or not engage, independent consultants as described in 4.3.7 above, shall be made by the Chief Executive Officer.

4.4 Policy Measures - Mediation Proceedings

- 4.4.1 The Shire acknowledges the Tribunal’s desire to resolve matters by mediation where possible and will generally agree to participate in the SAT mediation process, provided there is a reasonable prospect of reducing or clarifying the issues in dispute, or achieving a negotiated outcome.
- 4.4.2 Discussions occurring for the purposes of mediation are conducted by the Tribunal on a “without prejudice” and confidential basis and the Council acknowledges that the content of this discussion cannot be discussed outside the mediation session.
- 4.4.3 Where a matter is referred to mediation, the consultant or officer with conduct of the matter:
 - (a) Shall participate constructively in the mediation in order to attempt to reach a compromise solution;
 - (b) Shall not agree to any compromise solution at the mediation beyond the scope of the officer's delegated power; and
 - (c) Shall refer any potential solutions arising out of the mediation back to the decision maker in the original application.
- 4.4.4 With respect to 4.4.3 (b) above, where the matter was originally considered by Council, any proposed compromise 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.
- 4.4.5 Where practical, officers shall provide regular updates on proceedings before the SAT to elected members. The updates shall, however, generally be limited to issues relating to the programming of proceedings, including timeframes and likely cost implications. Specific details in relation to the proceedings shall generally not be discussed and officers and elected members shall acknowledge that such meetings are not decision-making forums.

4.5 Section 31 Reconsiderations

- 4.5.1 The Tribunal may refer a matter to Council under section 31 of the SAT Act, inviting Council to reconsider the original decision. This regularly occurs following the mediation process, or where there has been a deemed refusal. In the interests of achieving time and cost-effective outcomes for all parties involved, officers shall generally seek to resolve matters through a section 31 reconsideration process.

- 4.5.2 The responsible Shire officer, in consultation with their Director, shall have the discretion to advise the SAT member during mediation proceedings as to whether or not a reconsideration under section 31 would likely assist with the resolution of matter in a timely and cost effective manner.
- 4.5.3 Upon receipt of an invitation from the SAT to reconsider the matter, the officer or consultant shall assess the proposal and refer it to the Council. The Council may then affirm the original decision, vary the decision or set aside the decision and substitute a new decision.
- 4.5.4 Reports presented to Council for consideration under Section 31 of the Act following mediation will be presented as confidential reports, except where, in the opinion of the Chief Executive Officer there are exceptional circumstances which justify a contrary position.
- 4.5.5 Where a proposal the subject of a SAT review has already been advertised by the Council, the proposal will not be re-advertised before the Council reconsiders the proposal pursuant to a section 31 invitation except where:
- (a) the SAT mediating member suggests re-advertising, or the applicant agrees; or
 - (b) the proposal to be re-considered is substantially different to the proposal in the form already advertised and may add planning issues not raised by the original proposal; or
 - (c) in the judgment of the officer or consultant with conduct of the matter, there are exceptional circumstances which justify re-advertising.
- 4.5.6 Following the Council's decision upon re-consideration, the Shire will inform persons who made a submission (whether on the original or amended proposal) of the Council's decision.

4.6 Involvement of Third Parties

- 4.6.1 The Shire may, however, raise awareness of the ability of a third party to make a submission to the SAT through the following methods:
- (a) making this policy publicly available through the Shire's policy manual, which is published on the Shire's website; and
 - (b) informing those persons who lodged a submission during the public advertising of a proposal of the lodgement of a SAT application for review. The Shire shall make all reasonable endeavours to contact, in writing, such persons within a fourteen (14) day period of the Shire's receipt of a copy of the application for review.
- 4.6.2 Upon receipt of a request by a third party to make a submission, the SAT must consider whether the person has 'sufficient interest' in the proposal to justify their involvement and whether the involvement of the person would aid the SAT in progressing the matter towards an ultimate determination. The involvement of a third party is generally limited to final hearings, which are usually only programmed where mediation proceedings have failed to reach an agreed outcome between the applicant and the Shire.

4.7 Appeals against Decisions of the Tribunal

- 4.7.1 The Shire will not generally appeal a decision of the Tribunal unless, in the opinion of the Council following legal advice, it is considered that the Tribunal has made an error of law, and the issue at stake has significant implications for the Shire or local government in general.

4.8 Parallel Direction Notice under s214 of the Planning and Development Act 2005

- 4.8.1 Where an application for review of a decision is lodged and the matter is also the subject of a direction notice under s214 of the Planning and Development Act 2005, the Shire will generally defer enforcement of the direction notice until such time as the application before the Tribunal is determined. In the event that the review application is dismissed, the Shire will enforce the direction notice immediately without further consideration by Council.
- 4.8.2 The Shire may however decide to continue with enforcement or prosecution if the matter is considered to have significant implications for the Shire or community in general.

4.9 Notifying parties of proceeding outcomes

4.9.1 Upon the conclusion of proceedings before the SAT, information about the outcome is notified in the following manner:

- (a) through the publication of a decision report by the SAT on the SAT website at www.sat.justice.wa.gov.au;
- (b) through written advice being sent to those persons who lodged submissions during the public advertising of the proposal;
- (c) through the inclusion of relevant details in the monthly 'Information Bulletin' presented to Council through relevant Committee and Council Meetings.

4.9.2 The information made available by the Shire will usually be limited to the decision outcome (e.g. approval or refusal) and shall not include information that is not generally publicly available – for example the nature of discussions before the SAT that were conducted in a confidential manner.

5. REFERENCE DOCUMENTS

- Local Government Act 1995;
- State Administrative Tribunal Act 2004 (SAT Act);
- State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (Conferral Act);
- Town Planning Scheme No 3 (TPS3);
- Planning and Development Act 2005;
- Planning and Development (Scheme) Regulations 2015
- Building Act 2011;
- Building Regulations 2012;
- Food Act 2008;
- Caravan Parks & Camping Ground Act;
- Caravan Parks & Camping Ground Regulations 1997;
- Health (Aquatic Facilities) Regulations 2007;
- Health (Asbestos) Regulations 1992;
- Health (Miscellaneous Provisions) Act 1911;
- Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974;
- Public Health Act 2016;
- Dog Act 1976.