

Owner	Planning and Sustainability
Implementation	DRAFT
Next Scheduled Review	DRAFT

PART 1 – POLICY OPERATION

Policy Development

This Policy is prepared under the provisions of Clause 8.11 of the City of Wanneroo District Planning Scheme No. 2 (DPS 2).

Purpose

The purpose of this Policy is to establish a transparent process when responding to the State Administrative Tribunal (SAT).

Application

This Policy applies when the SAT reviews a planning decision made or direction notice issued by the City under the Planning & Development Act 2005 by Council or by Administration under delegated authority.

Objective

This Policy seeks a balance in the use of financial resources, community involvement and level of impact on the operational activity of Administration in responding in a consistent, impartial and transparent manner to decisions and directions under review by the SAT.

Provision

Procedures set out in **Part 2** shall be applied to ensure consistency. Information has been included for clarity and ease of reference.

PART 2 – POLICY PROCEDURES

1. Engagement of Professional Services

- 1.1 An independent planning consultant will be engaged to represent the City in SAT proceedings where a Council decision is significantly different and fundamentally reverses Administration's recommendation and the decision is at the heart of the reason for the SAT review. An independent planning consultant shall be selected on the merits of the individual matter based on their qualifications, knowledge or experience.
- 1.2 Professional legal services will be engaged to represent the City in any review unless the matter is a Class 1 review where the applicant elects that no party be legally represented. Legal representation shall be selected from the City's legal panel on the merits of the individual matter based on their qualifications, knowledge or experience unless otherwise determined by the City Lawyer.
- 1.3 Independent expert witnesses will be engaged in cases where it is necessary to refute the evidence of expert witnesses used by an applicant for use as evidence in proceedings or giving an opinion in a proceeding where skills are not available by a City Officer. Independent expert witnesses shall be selected on the merits of the individual matter based on their qualifications, knowledge or experience and shall not have any impartiality or pecuniary interest in the matter under review and are to be paid appropriate professional rates by the City.
- 1.4 Where an Officer of the City receives a subpoena to appear as a witness at the SAT, an Officer has an obligation to provide a professional opinion with respect to any decision that is the subject of review.

2. Notification and Involvement of Elected Members

- 2.1 Elected Members shall be provided with progress updates and notified of hearing dates of any review that was the subject of a Council decision as soon as practical.
- 2.2 Elected Members may attend public hearings of the SAT to observe proceedings.

3. Notification and involvement of community members

- 3.1 The City will advise all parties who made a submission on an application that is the subject of review in writing as soon as practical of the City receiving such advice and shall contain information regarding the reviewable decision, reference number and contact details of the SAT.
- 3.2 Submissions received during the course of an assessment process of an application that is subject to review form part of the City's evidence to the Tribunal.
- 3.3 A community member who made a submission on a proposal that subsequently becomes the subject of a SAT review will be invited to appear as a witness on the City's behalf only to provide evidence of factual matters relevant to an issue arising in the proceeding that cannot be provided by a City Officer.
- 3.4 Community members who are called to appear as a witness on the City's behalf before the SAT will be provided with assistance from the City in preparing their witness statements. The City will not pay a witness fee, but will reimburse essential out of pocket expenses of appearing before the SAT.

- 3.5 Community members may also make an application to the Tribunal to:
- (a) Seek leave to intervene in the matter under s37(3) of the State Administrative Tribunal Act, 2004; or
 - (b) Seek leave to make a submission independent of the Council on the matter under s242 of the Planning and Development Act, 2005.

The City will not object to an application by a community member to make a submission to the SAT or intervene in a review, unless the submission or the intervention is inconsistent with an established position of the City.

4. Mediation

4.1 The City will agree to participate in mediation where this is proposed by the SAT. Discussions held as part of mediation are conducted on a without prejudice basis and the content of this discussion shall not be used in a subsequent hearing. A third party may only be present during a mediation session by invitation from the SAT.

4.2 Where a matter is referred to mediation, the City's Officers / representatives shall:

- (a) 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;
- (b) Not agree to any solution at the mediation beyond any delegated power; and
- (c) Present any potential solutions, implications, results, process and position arising out of the mediation for any review that was the subject of a Council decision back to Council.

4.3 The City's representative will seek sufficient time to allow advertising of an amended proposal which was originally advertised as part of a Request for Reconsideration under Section 31 of the SAT Act 2004. Where the SAT allows sufficient time for advertising, the City will advertise the amended proposal to those who made a submission on the original proposal and include any responses as part of a report for Reconsideration.

5. Adjournment of Proceedings

5.1 The City's representative may request or agree to an adjournment of the matter in cases where it is considered that operational needs of the City are not compromised except in cases of planning compliance where adjournment shall not be sought or agreed.

6. Appeals against Decisions of the SAT

6.1 The City shall 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 City and/or local government in general.

7. Costs

7.1 The City shall not seek an order relating to costs against an applicant, unless the applicant behaves in a dishonest, frivolous or vexatious manner in conducting the proceeding. In this case, the City will seek legal advice as to the reasonable chance of success if this avenue were pursued prior to making a decision to seek such an order.