Planning and Sustainability Local Planning Policy 4.17 - State Administrative Tribunal

1.0 CITATION

This Local Planning Policy (Policy) has been prepared under Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This Policy may be cited as Local Planning Policy 4.17 (LPP 4.17) – State Administrative Tribunal.

2.0 INTRODUCTION

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

3.0 OBJECTIVES

When a planning decision is under review at the SAT, this Policy seeks for the City to:

- Balance the use of financial resources, community involvement and level of impact on the City's administrative operations; and
- Respond in a consistent, impartial and transparent manner to decisions and directions of the SAT.

4.0 APPLICATIONS SUBJECT OF THIS POLICY

The Policy applies when the SAT reviews a planning decision made or informed by the City (either by Council or Administration under delegated authority). The principles contained in this policy could also guide the City in dealing with proceedings in other courts and tribunals where planning considerations are being made.

5.0 APPLICATION REQUIREMENTS

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 PROVISIONS

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 the planning consultant's qualifications, knowledge and experience.

1.2 Professional legal services may be engaged to represent the City where the applicant elects to be legally represented. Legal representation should be selected from either

the City's internal legal staff or the City's legal panel.

1.3 Independent expert witnesses will be engaged by the City to:

(a) Refute the evidence of expert witnesses used by an applicant; and/or

(b) Give an expert opinion on matters that are not within City Officer skillsets.

1.4 Independent expert witnesses:

(a) Should be selected on the merits of the individual matter based on their qualifications, knowledge and experience;

(b) Should not have any impartiality or pecuniary interest in the matter under review; and

(c) Are to be paid appropriate professional rates by the City.

1.5 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 Council Members

2.1 The City's Administration is to provide Council Members with progress updates, as well as mediation and hearing dates relating to any SAT review as soon as practicable.

2.2 Council 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 submitters of a proposal, should a respective decision of the City be subject to an application for review at the SAT. In providing such advice, the City will provide information regarding the reviewable decision, reference numbers and contact details of the SAT.

3.2 The City will advise submitters of planning proposals subject to a SAT review that they may also make an application to the SAT to:

(a) Seek leave to intervene in the matter under s37(3) of the *State Administrative Tribunal Act 2004*; or

(b) 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.

3.3 The City may call on submitters and other interested community members to appear as witnesses to provide evidence on factual and relevant matters that cannot be provided by a City Officer.

3.4 Community members appearing as witnesses before the SAT on the City's behalf will be provided assistance in preparing witness statements. The City will not pay a witness fee, but will reimburse essential and reasonable out of pocket expenses for witnesses appearing before the SAT.

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. 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 or representatives will:

(a) Participate constructively 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 to Council any potential solutions, implications, results, process and position arising out of the mediation of any review of a Council decision.

4.3 If permitted by the SAT, potential mediated outcomes should be advertised prior to any formal consideration of the City under s31 of the *State Administrative Tribunal Act 2004.* Advertising should be carried out in a similar manner that the planning proposal was advertised.

5. Adjournment of Proceedings

5.1 The City's representative may request or agree to an adjournment of SAT matters in instances where operational needs of the City are not compromised.

5.2 Adjournments of SAT matters involving planning non-compliance should not be sought or agreed by the City.

6. Assistance to Other Planning Agencies

The City's officers may provide assistance the Western Australian Planning Commission or a Development Assessment Panel, where these agencies are respondents for SAT reviews pertaining to their planning decisions. Assistance offered by the City should be limited to matters correlating with the content of a referral

response, Responsible Authority Report or any other advice prepared by City Officers.

7. Appeals against Decisions of the SAT

The City shall not seek to further review a decision of the SAT except where:

(a) It is considered that the SAT has made an error of law; and/or

(b) The issue at stake has significant implications for the City and/or local government in general.

8. Costs

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.

Owner	Planning and Sustainability	**Document Reference**	26/208418
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