

Development Proposals before the State Administrative Tribunal Policy

City Policy

Responsible Directorate: Planning and Community Development

Objective: To ensure that development matters that are brought before the State Administrative Tribunal and involve the City of Joondalup, are dealt with in an open and accountable manner.

1. Statement:

In accordance with the *State Administrative Tribunal Act 2004* and the *Planning and Development Act 2005*, an applicant who is dissatisfied with the decision of the City or the Council on a Development Application, may seek a review of this decision by the State Administrative Tribunal (SAT).

The City has standard practices for dealing with these matters, which reflect the values of honesty, transparency and inclusiveness. This Policy deals with the high level principles under which development proposals before the State Administrative Tribunal should be considered by the City to inform administrative processes and procedures.

2. Details:

The City will deal with development proposals before the State Administrative Tribunal in a manner that is consistent with the following principles:

- Matters should be heard in public where all parties consent.
- Where permitted by the State Administrative Tribunal, public comment should be obtained on amended plans or modified proposals, if the changes result in the development being likely to impact nearby landowners and affected stakeholders.
- The use of external advocates is supported for complex or controversial matters, and/or where independent assistance would be considered beneficial to the process.
- Where City officers or appointed external advocates attend for the purposes of defending a decision made by the Council, other than a decision made under delegated authority, any outcome achieved through mediation must be referred back to the Council for approval.
- Council should be regularly advised of matters currently before the State Administrative Tribunal and the status of these matters.

Creation Date: October 2005

Formerly:

- *State Administrative Tribunal – Mediation and Revised Development Proposals Policy*

Amendments: CJ206-10/05, CJ093-05/12, CJ163-08/12, CJ254-11/12, CJ027-02/18

Related Documentation:

- *State Administrative Tribunal Act 2004*
- *Planning and Development Act 2005*

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1. Authority:

This policy has been prepared in accordance with Schedule 2, Part 2 of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* which allows the local government to prepare local planning policies relating to planning and development within the Scheme Area.

2. Application:

This policy applies to a planning decision that is subject to review by the State Administrative Tribunal.

1.3. Statement:

In accordance with the *State Administrative Tribunal Act 2004* and the *Planning and Development Act 2005*, an applicant aggrieved by a planning decision ~~who is dissatisfied with the decision of the City or the Council on a Development Application~~, may seek a review of this decision by the State Administrative Tribunal (SAT).

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2.4. Details:

4.1. Engagement of Professional Services

- a. External professional services will be engaged to represent the City in State Administrative Tribunal proceedings where a Council decision is significantly different to the Administration's recommendation.
- b. External professional services may also be engaged. The use of external advocates is supported for complex or controversial matters, and/or where independent assistance would be considered beneficial to the process.

4.2. Notification and involvement of Elected Members

Elected Members shall be notified of matters before the State Administrative Tribunal and the status of these matters.

4.3. Notification and involvement of community members

- a. The City will advise all parties who made a submission on an application that is the subject of a review as soon as practical of the City receiving such notification. The advice provided to parties shall contain information regarding the reviewable decision and relevant information on the State Administrative Tribunal process.
- b. Where a proposal is amended and the decision maker is invited to reconsider its decision, the City will seek sufficient time to allow community consultation on the amended proposal where consultation was undertaken by the City as part of the original decision. Consultation will be in accordance with the *Planning Consultation Local Planning Policy*.
- c. Submissions received during the assessment process will form part of the City's evidence to the State Administrative Tribunal.
- d. Where a community member makes a submission to the State Administrative Tribunal or applies to intervene in a review, the City will not oppose community members participating in the process.

4.4. Matters before the State Administrative Tribunal where the City or Council were not the decision-maker

Where the City or Council was not the decision-maker but is invited to participate in the State Administrative Tribunal process, the City will have regard to this policy.

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Creation Datedate:	October 2005 (CJ206-10/05)
	Formerly:
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Amendments:	CJ206-10/05 , CJ093-05/12, CJ163-08/12, CJ254-11/12, CJ027-02/18, CJXXX-XX/XX
<u>Last reviewed:</u>	February 2023 (CJXXX-02/23)
Related <u>Documentation</u>documentation:	<ul style="list-style-type: none">State Administrative Tribunal Act 2004Planning and Development Act 2005
<u>File reference:</u>	101281

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**PROPOSED AMENDMENTS - DEVELOPMENTS BEFORE THE STATE ADMINISTRATION TRIBUNAL LOCAL PLANNING POLICY
SCHEDULE OF SUBMISSIONS FOLLOWING ADVERTISING**

NO	OVERALL POSITION	SUBMISSION SUMMARY	CITY COMMENT
1.	Neutral	1. Some parts are good, and some parts are bad.	1. Noted.
2.	Support	1. Proposed policy changes appear to improve transparency and community involvement in SAT matters.	1. Noted.
3.	Neutral	1. The Connolly Residents Association (CRA) is concerned with SAT arbitrarily overriding council decisions made in accordance with community wishes and sound local planning practice. 2. Significant parts of this proposal suggest Council is preparing residents for a future where its adjudications will be routinely overruled.	1. The ability for applicants aggrieved by a planning decision to seek a review of that decision by the State Administrative Tribunal (SAT) is established under the <i>State Administrative Tribunal Act 2004</i> and the <i>Planning and Development Act 2005</i> . The City's <i>Developments Before the State Administration Tribunal Local Planning Policy</i> sets out how the City will deal with SAT matters within the bounds of this legislation. 2. As above.
4.	Neutral	1. No comments provided.	1. Noted.
5.	Not stated – comment only	1. Proposed modifications add clarity to the process. 2. Informing Elected Members and submitters to a development application that a review application has been made to SAT is a logical step. 3. <i>Section 4.1(a) of the draft policy</i> : In regard to the proposal to engage external parties where a decision made by Council differs significantly from Administration's recommendation: <ol style="list-style-type: none"> a) Greater guidance is needed on what constitutes "significantly"; and b) Greater clarity is needed on the role of Council vs. Administration. 4. <i>Section 4.3(b) of the draft policy</i> : In regard to sufficient time being sought from the SAT to undertake community consultation on amended proposals, further guidance is required on what constitutes "sufficient time".	1. Noted. 2. Noted. 3. <ol style="list-style-type: none"> a) A further modification is proposed to 4.1(a) of the draft policy, to provide greater guidance in this regard, as detailed in the Report. b) This section refers to Administration's recommendation and Council's decision, which clarifies the role of each party. 4. The draft amended policy requires consultation to be undertaken in accordance with the City's <i>Planning Consultation Local Planning Policy</i> , which sets out differing consultation timeframes depending on the nature of the application, and whether the consultation period falls over public holidays. What constitutes "sufficient time" will

NO	OVERALL POSITION	SUBMISSION SUMMARY	CITY COMMENT
		<p>5. <i>Section 4.3(d) of the draft policy:</i> The proposal to not oppose community members participating in the SAT process implies that the City has a predisposition to oppose community involvement. Ultimately, this is a decision for the SAT to make.</p> <p>6. Local government is being increasingly undermined by State entities like SAT, the Western Australian Planning Commission, Development Assessment Panels and State Development Assessment Unit. Local governments therefore need to be more strategic and considered in their policy creation and decision making.</p>	<p>therefore vary and it is not considered possible to provide a specific timeframe in the draft policy. Ultimately, the SAT decide whether any additional time (and the timeframe) for community consultation will be granted, this may not always align with the City's request.</p> <p>5. The City does not oppose community involvement in the SAT process and this provision in the draft policy formalises this position. Regardless of the City's position, it is up to the SAT to decide if community members can participate in the process.</p> <p>6. The ability for applicants aggrieved by a planning decision to seek a review of that decision by the State Administrative Tribunal (SAT) is established under the <i>State Administrative Tribunal Act 2004</i> and the <i>Planning and Development Act 2005</i>. The City's <i>Developments Before the State Administration Tribunal Local Planning Policy</i> sets out how the City will deal with SAT matters within the bounds of this legislation.</p>