CITY OF Fremantle

Local Planning Policy 1.4

Applications for Review of Planning Decisions and Written Directions

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Applications for Review of Planning Decisions and Written Directions

Citation

This is a local planning policy created under Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations). It may be cited as Local Planning Policy 1.4 – Applications for Review of Planning Decisions and Written Directions (LPP 1.4)

Purpose

This policy provides guidance to officers in responding to applications for the review of a planning decision made by the Council and direction notices issued by the City under Part 13 of the Planning and Development Act 2005 that are lodged with the State Administrative Tribunal.

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. Upon the Tribunal accepting an application for the review of a decision, the Council is not able to vary or set aside the original decision as the powers of the Council are restricted under section 26 of the State Administrative Tribunal Act, 2004.

The Council recognises that where a decision made by the Council that is substantially inconsistent with an officer recommendation becomes the subject of an application for review, it is not appropriate that officers are required to respond on behalf of the Council.

Objectives

The objective of this policy is to provide guidance to officers in responding to applications for the review of planning decisions and direction notices.

Application

This policy applies to all enforcement and legal proceeding actions under Part 13 of the Planning and Development Act 2005 including State Administrative Tribunal (the Tribunal) reviews and direction notices.

Policy statement

1. Council Decision Inconsistent with Officer Recommendation

Where an application is made for the review of a decision that is substantially inconsistent with a recommendation made by City officers, then in the interests of the Council and City officers, an independent town planning consultant will be engaged to represent the City.

However, where the applicant has retained legal representation, the City will be legally represented.

In such cases, officers may represent the City at the mediation sessions, as far as practicable, with Elected Members being able to attend on a voluntary basis as observers.

City officers may receive a subpoena requiring them to appear as a witness at the Tribunal and this is most likely to occur where a Council decision is inconsistent with an officer's recommendation. Any officer receiving a subpoena is legally compelled to attend the hearing to give evidence and Council acknowledges that in these circumstances, an officer's evidence to the Tribunal may be contrary to Council's decision with respect to the development that is the subject of review.

2. Council Decision Consistent with Officer Recommendation

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 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. Where the applicant has retained legal representation, the City will also be legally represented.

3. Parties not legally represented

Where the applicant elects that neither party will be legally represented, a consultant may be retained to represent the City at the hearing and appear as an expert planning witness giving evidence to the Tribunal.

4. Legal Representation

The City will engage professional legal representation in defending decisions as follows:

(a) In Class 1 applications where the applicant elects that no party be legally represented, the City is prevented from engaging a solicitor to represent it. In this case, a solicitor may be engaged to check witness statements and provide advice as to the conduct of the matter and any issues that may arise as deemed necessary by the Manager Development Approvals;

(b) Where an applicant is legally represented in either a class of application, the City shall engage legal representation to conduct all aspects of its defence.

(c) Where the applicant elects not to have legal representation in a Class 2 application, the City will engage legal representation where it is considered appropriate in the opinion of the Manager Development Approvals, because the proceedings raises a matter of law.

5. Expert Witnesses

Expert witnesses shall generally be engaged in cases where it is necessary to refute the evidence of expert witnesses to be used by the applicant. Expert witnesses shall be

selected on the merits of the individual matter based on their knowledge or experience for use as evidence in proceedings or giving an opinion in a proceeding.

6. Notification of Interested Parties of an Application for Review of a Decision

Upon receipt of written advice that an application for a review of a decision has been lodged, the City will advise all parties who made a submission with regard to the original decision that such an application has been received. The notification shall be made in writing once only within ten (10) days of the City receiving such advice and shall only contain information regarding the reviewable decision, the Tribunal's reference number and contact details.

The City shall not provide updates as to the progress of any application for review.

7. Involvement of Third Parties

(a) Submissions

Where submissions from interested parties relating to the development or proposal that is the subject of an application for review are received during the course of the assessment process, those submissions shall form part of the City's evidence to the Tribunal.

(b) Witnesses

Third parties who made submissions to Council during the assessment of a proposed development will not be invited to appear as a witness on the City's behalf unless any person can provide evidence of factual matters relevant to an issue arising in the proceeding that cannot be provided by the City's officers.

Third parties who are called to appear as a witness on the City's behalf before the Tribunal will be provided with assistance in preparing witness statements. The City will not pay a witness fee and witnesses appear before the Tribunal at their own cost.

(c) Other

Neighbours, nearby Landowners or other third parties may also 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 Council on the matter under s242 of the Planning and Development Act 2005.

It is a matter for the Tribunal to determine whether an application referred to above is accepted and the third party will be notified by the Tribunal of its decision. The City will not ordinarily object to an application by a neighbour to make a submission to the Tribunal.

8. Mediation

The City acknowledges the Tribunal's desire to resolve matters by mediation where possible and will agree to participate in mediation as proposed by the Tribunal.

Discussions occurring for the purposes of mediation are conducted by the Tribunal on a "without prejudice" basis and the Council acknowledges that the content of this discussion cannot be referred to beyond the mediation session. A third party may only be present during a mediation session by invitation from the Tribunal.

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.

9. Referrals under s31 of the State Administrative Tribunal Act

The Tribunal may refer a matter to Council under s31 of the Act inviting Council to reconsider the decision. Upon receipt of this information, the officer shall assess the proposal and refer it to Council to affirm the decision, vary the decision or set aside the decision and substitute a new decision.

Where submissions relating to the original proposal were received, the City shall notify those submitters of the meeting at which the item will be considered however, it will not seek further submissions on the proposal.

10. Adjournment of Proceedings

Where an officer is responsible for conducting a proceeding on behalf of the City, that officer may request, or agree to, an adjournment of the matter in cases where they consider that operational needs of the City are assisted by this. It is acknowledged that the granting of an adjournment is a discretionary matter for the Tribunal to determine and that such an adjournment may not be granted.

Generally, an adjournment should not be sought or agreed to in relation to reviews of a direction notice issued under Part 13 of the Planning and Development Act, 2005.

11. Application for Review lodged while a Direction under s214 of the Planning and Development Act is in Force

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 City will defer enforcement of the direction notice until such time as the application before the Tribunal is determined. In the event that the application is dismissed, the City will enforce the direction notice immediately without further consideration by Council.

12. Appeals against Decisions of the Tribunal

The City 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 City or local government in general.

13. Costs

The City will not generally 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.

Responsibility and review information	
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