

Planning Appeals Policy

June 2011

Authority and Other Information	
Date of approval	10 August 2011
Source of approval	Council Resolution No. 18.062/11*
Date of commencement	11 August 2011
Source of authority	<i>Resource Management and Planning Appeals Tribunal Act 1993</i>
Legislative Reference	<ul style="list-style-type: none"> • <i>Land Use Planning and Approvals Act 1993</i> • <i>Resource Management and Planning Appeals Tribunal Act 1993</i>
Delegations	Delegations No. 13 (17), 13 (19)
Strategic Plan Reference	1.2
Date of review	To be reviewed every 5 years, with the first review on or before 30 June 2016 or following relevant legislative reform
Previous policies withdrawn or amended	N/A
Department responsible for implementation	Planning and Legal Services
Department responsible for policy	Planning and Legal Services
Publication of policy	On Council website and for inspection at and free of charge from the Council Customer Service Centre

1. Purpose and Background:

The purpose of the Policy is to set out a set of principles to guide the representation of Council before the Resource Management and Planning Appeals Tribunal to ensure that this is fair, consistent, equitable for all parties and best serves the public interest.

2. Policy statement:

2.1 Principles

(a) The Role of the Resource Management and Planning Appeal Tribunal

The Council recognises and supports the independent role of the Resource Management and Planning Appeal Tribunal and the statutory rights of individuals to lodge appeals.

The Council will respect decisions made by the Resource Management and Planning Appeal Tribunal and will not offer public criticism. The Council will only challenge decisions where the Council is of the opinion that there has been an error in law.

(b) Delegations

The Council will ensure that Council officers have adequate delegations to allow appeals to be resolved in a timely and cost effective manner.

In accordance with delegations, the Council will only consider a proposed Consent Memorandum where it is proposed that the Council decision is to be overturned or a proposed Consent Memorandum has significantly different implications for funding and development of new or improved Council assets.

(c) Provision of information

The Council recognises that in an appeal a copy of the application documentation, Council reports, internal and external referrals and other information relevant to the application must be circulated to the Resource Management and Planning Appeals Tribunal and all relevant parties to the appeal.

(d) Should an individual be a party to the appeal?

The Council recognises that the *Resource Management and Planning Appeal Tribunal Act 1993* provides requirements for whether an individual can be a party to an appeal.

The Council recognises that, from time to time, Council officers will challenge an individuals request to be a party to the appeal to (1) ensure a party meets with requirements of the *Resource Management and Planning Appeal Tribunal Act 1993* (2) assist with the timely and effective conduct of an appeal and (3) limit potential cost liability.

(e) Notification of representors

The Council recognises that the Resource Management and Planning Appeal Tribunal will only notify the Council and the applicant of the lodgement of an appeal.

Council officers shall attempt to contact any representor or other relevant party by phone and advise them that an appeal has been lodged regardless of whether that representor supports or opposes the Council decision.

(f) Where Council decision is contrary to officer recommendation

The Council will recognise the ethical implications where the decision of the Council is contrary to the officer recommendation. The Council will not require its officer to represent the Council at a full appeal hearing but will recognise that officers may take part in mediation.

The Council recognises that in such situations external consultants will need to be engaged to represent the Council unless clause (h) applies. Council's officers will seek to engage the best representation for the Council's interest and the Council recognises that external consultants may decline to represent the Council.

(g) Mediation as a means to resolve appeals

The Council recognises that mediation is a means to achieve timely and cost effective resolution of matters. The Council's officers will actively seek to engage in mediation during an appeal.

(h) Council representation

The Council recognises that its resources are best directed towards ensuring it can provide representation including legal representations and external consultants where an appeal is likely to be determined by legal interpretation or argument or where the particular proposal is likely to have a significant effect on the economic and social development of the municipal area.

The Council recognises that all other parties to an appeal should engage expert consultants to pursue their respective position and no party should rely upon the Council to ensure that such expertise is provided.

(i) Costs applications

The Council recognises that in accordance with section 28 of the *Resource Management and Planning Appeals Tribunal Act 1993*, the default position is for each party to pay its own costs.

The Council will seek that the Resource Management and Planning Appeal Tribunal direct other parties to pay all or some of the Council's costs only where Council's costs have been unreasonably increased by the actions of other parties during the appeal process or the appeal is considered to be frivolous or vexatious.

3. Application:

The Policy will apply to Council officers who may, from time to time, be required to represent the Council or present evidence to or otherwise appear before the Resource Management and Planning Appeal Tribunal.

Typically those officers will be planning officers however this may also apply to engineering officers, environmental health officers, natural resource management officers and compliance officers.

The Policy will also apply to Council officers who may, from time to time, engage external expertise to represent the Council before the Resource Management and Planning Appeal Tribunal.

This Policy should be read in conjunction with other Council policies and procedures.

4. Definitions:

Consent Memorandum: A written agreement signed by all parties that sets out an agreed resolution of the appeal that is then proposed to the Resource Management and Planning Appeal Tribunal.

Party to an appeal: Active participants in an appeal as determined by the Resource Management and Planning Appeal Tribunal pursuant to section 14 of the *Resource Management and Planning Appeal Tribunal Act 1993*.

Planning Appeal: An appeal lodged pursuant to section 61 of the *Land Use Planning and Approvals Act 1993*.

5. Procedures:

Upon lodgement of an appeal, Council officers will prepare a briefing paper to Councillors advising that an appeal has been lodged, the parties to that appeal and the nature of the grounds of appeal. Council officers will indicate whether or not Council officers will

- (1) represent the Council in person should the matter proceed to a full hearing,
- (2) engage external consultants, or
- (3) not represent the Council or engage external consultants.

Following mediation, Council officers will prepare a briefing paper providing a short summary of the mediation and whether a Consent Agreement may be likely.

Following a final decision of the Resource Management and Planning Appeal Tribunal, Council officers will prepare a briefing paper attaching the decision and providing a brief comment on that decision.