

Planning Appeals Policy

GOV-DEV 005

Authority and Other Information	
Date of approval	28 September 2016
Source of approval	Council Resolution No. 15.041/16*
Date of commencement	28 September 2016
Source of authority	<i>Resource Management and Planning Appeals Tribunal Act 1993</i> <i>Planning Use and Approvals Act 1993</i>
Legislative Reference	<i>Land Use Planning and Approvals Act 1993</i> <i>Resource Management and Planning Appeals Tribunal Act 1993</i>
Delegations	Delegation No. 13(17)
Strategic Plan Reference	1F
Date of review	At least once every four years but not later than September 2020 or as required as a result of any legislative change
Previous policies withdrawn or amended	<i>Planning Appeals Policy, June 2011</i> adopted 10 August 2011 by Resolution No. 18.062/11*
Department responsible for implementation	Regulatory and Development Services
Department responsible for policy	Regulatory and Development Services
Publication of policy	A copy of the Policy be placed on Council's website and copies be made available for inspection at and free of charge from Council's Customer Service Centre.

1. Purpose and Background:

1.1 Background

The State Government has established the Resource Management and Planning appeal Tribunal to hear appeals made in respect of decisions of Council acting as a Planning Authority under the *Land Use Planning and Approvals Act 1993* (LUPAA).

Specifically Section 61 of LUPAA provides that:

- An applicant for a permit may appeal against a requirement for additional information.
- A representator may appeal a decision in respect of a minor amendment.
- An applicant may appeal a decision to impose conditions on a permit or a decision to refuse a permit.
- A representator may appeal a decision to grant a permit.
- A person served with an Enforcement Notice may appeal the issue of that Notice.
- A person may appeal a decision to cancel a permit.

Appeals are heard and dealt with by the Appeal Tribunal in accordance with the *Resource Management and Planning Tribunal Act 1993*.

1.2 Purpose

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

2. Definitions:

In this Policy:

“Consent Memorandum” means 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

“LUPAA” means the *Land Use Planning and Approvals Act 1993*”

“Party to an appeal” mean active participants in an appeal as determined by the Resource Management and Planning Appeal Tribunal pursuant to Section 14 of the RMPAT Act

“Planning Appeal” means an appeal lodged pursuant to Section 61 of LUPAA

“Planning Appeal Tribunal” means the Tribunal established under the RMPAT Act

“RMPAT Act” means the *Resource Management and Planning Appeal Tribunal Act 1993*

3. Policy Statement:

The Council will represent and defend its decisions made under LUPAA in respect of any planning appeal taking into account the following principles:

3.1 The Role of the Resource Management and Planning Appeal Tribunal

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

The Council will respect decisions made by the 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.

3.2 Delegations

The Council will ensure that the General Manager and Council Officers have adequate delegations to allow planning 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.

3.3 Provision of information

The Council recognises that in a planning 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 Planning Appeal Tribunal and all relevant parties to the appeal.

3.4 Should an individual be a party to the appeal?

The Council recognises that the RMPAT Act provides requirements for whether an individual can be a party to an appeal. The Council recognises that, from time to time, it is proper for Council to challenge an individual's request to be a party to the appeal to:

1. ensure a party meets with requirements of the RMPAT Act;
2. assist with the timely and effective conduct of an appeal; and
3. limit potential cost liability.

3.5 Notification of representors

The Council recognises that the Planning Appeal Tribunal will only notify the Council and the applicant of the lodgement of an appeal and will otherwise advertise the first hearing date.

Council shall attempt to contact any representor or other relevant party and advise them that an appeal has been lodged regardless of whether that representor supports or opposes the Council decision. Contact may be by any appropriate and efficient means including by letter, email or phone call.

3.6 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 the Officer who made the recommendation 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 3.8 applies. Council will seek to engage the best representation for the Council's interest.

The Council recognises that external consultants may decline to represent the Council and where this occurs the matter will be brought back to Council for reconsideration.

3.7 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.

3.8 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.

3.9 Costs applications

The Council recognises that in accordance with section 28 of the RMPAT Act, the default position is for each party to pay its own costs.

The Council will seek that the 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.

4. Application:

The Policy will apply to all planning appeals and Council Officers who may, from time to time, be required to represent the Council or present evidence to or otherwise appear before the Planning Appeal Tribunal.

The Policy will also apply to external expertise engaged to represent the Council before the Planning Appeal Tribunal.

5. Procedures:

5.1 Councillor Briefing

Upon lodgement of an appeal, the General Manager 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. The Briefing Paper 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, the General Manager will prepare a further Briefing Paper providing a short summary of the mediation and whether a Consent Agreement may be likely.

Following a final decision of the Planning Appeal Tribunal on a hearing the General Manager will prepare a Briefing Paper attaching the decision and providing a brief comment on that decision.

5.2 Appeal procedure

Appeals will be conducted in accordance with the RMPAT Act and directions from the Planning Appeal Tribunal.