

Policy P677 State Administrative Tribunal

Strategic Direction	Leadership
Responsible Business Unit/s	Development Services
Responsible Officer	Manager Development Services, Chief Executive Officer
Affected Business Unit/s	Development Services

Policy Objectives

On occasions, there will be instances where the Council makes a decision that is inconsistent or contrary to an Officer recommendation. This policy provides guidance for ensuring that such Council decisions are appropriately defended in the event of an application for review being lodged with the State Administrative Tribunal.

Policy Scope

This Policy is relevant to the officers responsible for appointments of external consultants and lawyers to represent the City of South Perth (the City) at the State Administrative Tribunal. The policy is also relevant to those officers and Elected Members attending matters.

The appointment of legal representation in accordance with this Policy does not apply to Class 1 appeals (development with a value less than \$250,000) where the applicant has elected that neither party be legally represented in accordance with s.239 of the *Planning and Development Act 2005*.

Policy Statement

This policy provides guidance in responding to applications for the review of a decision made by the Council that are lodged with the State Administrative Tribunal.

APPOINTMENT OF CONSULTANT / LAWYER

Where an application is made for the review of a decision that is inconsistent or contrary to a recommendation made by an Officer, an independent consultant / lawyer will be engaged to represent the Council's best interests. The consultant / lawyer shall be selected and engaged by the City administration to represent the resolution of Council and its best interests.

ELECTED MEMBER ATTENDANCE

The Elected Members that moved and seconded the Council decision may be requested to attend meetings with the engaged consultant / lawyer as well as attend mediation sessions and hearings as far as practicable, to defend the Council's decision. Elected Members are not able to lawfully give instructions to the engaged consultant / lawyer on behalf of the City, nor should they contact them directly

OFFICER ATTENDANCE

The City will ensure an Officer is present at any meeting, mediation or hearing involving Elected Members, the engaged consultant / lawyer and the State Administrative Tribunal. Officers may also wish to voluntarily attend to represent the City, as far as practicable. Officers are able to issue instructions on behalf of the City to the engaged consultant / lawyer at any meeting, mediation or hearing, which may take into consideration Councillors input.

OFFICER SUBPOENA

There may be instances where an Officer receives a subpoena requiring them to appear as a witness at the State Administrative Tribunal. The Council acknowledges that in these circumstances, an Officer's evidence to the State Administrative Tribunal may be contrary to Council's decision with respect to the decision that is the subject of review.

MEDIATION

Where a matter is referred to mediation, the Elected Member, Officer and engaged consultant / lawyer shall participate constructively in the mediation. Any outcome of mediation shall not be agreed to beyond the scope of the Officer's delegated power. Any outcome arising out of mediation shall be referred back to the Council for decision. Matters discussed during mediation remain confidential.

STATE ADMINISTRATIVE TRIBUNAL

The State Administrative Tribunal may refer a matter to the Council inviting the Council to reconsider a decision. In this instance, 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.

JUDICIAL REVIEW

The City will not generally seek a judicial review of a State Administrative Tribunal decision unless, the Council following legal advice, considers that the Tribunal has made an error of law and / or the issue has significant implications for the City and / or local government.

COSTS

The City will generally not seek an order relating to costs against an applicant, unless they have behaved in a dishonest, frivolous or vexation manner in conducting the proceeding. The City may seek legal advice as to the likelihood of being awarded costs prior to making a decision to seek an order relating to costs.

Legislation / Local Law Requirements

Nil.

Other Relevant Policies / Key Documents

City of South Perth Strategic Community Plan 2021-2031