

5.6 RESCINDING OF POLICY NO. 4.1.23 - STATE ADMINISTRATIVE TRIBUNAL

Attachments: 1. **Draft State Administrative Tribunal Management Practice**

RECOMMENDATION:

That Council:

1. **RESCINDS Policy No. 4.1.23 – State Administrative Tribunal, pursuant to section 2.7 of *Local Government Act 1995*; and**
2. **NOTES the management practice, included at Attachment 1, to be managed and maintained by Administration.**

PURPOSE OF REPORT:

For Council to consider rescinding Policy No. 4.1.23 – State Administrative Tribunal (the Policy).

BACKGROUND:

Council adopted the Policy on 24 May 2005 (item 10.4.1). Since adoption, the Policy remains largely unchanged except for replacing references to the 'Town' with the 'City'.

The Policy development originally coincided with the creation of the State Administrative Tribunal (SAT). The SAT is responsible for hearing appeals from parties aggrieved by decisions of authorities such as the City and the Joint Development Assessment Panel, primarily in matters related to town planning applications.

Currently, only the decision-making authority and the applicant may be party to an appeal. Neighbouring residents, submitters, and interested parties are generally not involved in an appeal process through the SAT.

The primary purpose of the current Policy is to set out the process for reporting and responding to an application for a SAT review of a Council decision. Due to the Policy being created over 16 years ago, it is overdue for review and not in line with current practice.

DETAILS:

The existing SAT Policy acts as a procedure, in terms of setting out the manner in which certain actions should be undertaken.

In reviewing the Policy, Administration considered current practice and alternative mechanisms that could be used instead of a Policy. For those provisions that act as procedural instructions, these could be transferred to a management practice to be maintained and updated by Administration. **Attachment 1** sets out the proposed management practice.

Since the management practice is proposed to be maintained by the Administration, it is presented to Council for 'noting'.

The process outlined in the management practice is almost identical to the existing Policy except that it adds additional detail, and no longer requires the CEO to present a draft report to Council before responding to SAT appeals. The City has already been operating in this manner for some time due to the short turnaround time required by the SAT. The management practice proposes no changes to the current manner in which the City is operating.

CONSULTATION/ADVERTISING:

Pursuant to the City's Community and Stakeholder Engagement Policy, the proposal to rescind the SAT Policy is considered to fall into the 'inform' category. Since there is proposed to be no effective change to the operation of the City's SAT proceedings, consultation would be unlikely to influence the outcome and is not required.

LEGAL/POLICY:

Local Government Act 1995.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to rescind the SAT Policy and note a new management practice.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Sensitive Design

Our planning framework supports quality design, sustainable urban built form and is responsive to our community and local context.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

The costs of this proposal extend to publishing a notice of rescinding the SAT Policy. This cost will be met from the City's existing operating budget.

State Administrative Tribunal Management Practice

Previous Policy Requirements (Page 1)	Management Practice
CEO determines how to deal with SAT matters.	Administration determines how to deal with SAT matters.
Senior employees (with consultants as required) defend Council decisions.	<p>Administration represents matters at SAT for applications that have been determined either:</p> <ol style="list-style-type: none"> 1. Under delegated authority; or 2. By Council, consistent with Administration's recommendation. <p>Administration also represents Council where its determination was contrary to Administration's recommendation; however, staff members attending SAT will not be those who were involved in the assessment of the application or preparation of the recommendation.</p> <p>In all instances, planning consultants or legal representation may be engaged, depending on the complexity of the matter and the capacity of Administration to deal with the review.</p>
Confidential report submitted to Council with details of SAT appeal and proposed response, including whether a Council Member or resident should also appear as a witness.	Administration notifies Council Members through the monthly information bulletin of all SAT matters. In most instances, it would not be appropriate or feasible to provide Council with a confidential report prior to SAT directions hearing or mediation.
CEO authorised to respond directly to SAT if there is no time for a Council report.	In instances where a matter previously determined by Council is invited to be reconsidered, this would be scheduled based on the upcoming Council Meeting dates. Items previously dealt with under delegated authority are not presented to Council for determination.
Previous Procedures (Page 2)	Management Practice
The City will notify all submitters that an application is subject to SAT review and invite nominations for involvement in the process.	<p>Submitters are notified in writing of a SAT appeal and how this progresses.</p> <p>If submitters own land affected by the proposed development, Administration would request the SAT to allow those submitters to join as a party to the appeal. If SAT supports this, Administration would invite those submitters and support them in applying to SAT to join the appeal proceeding.</p>
All witnesses will be provided with assistance to prepare witness statements but will not be paid.	<p>Members of the Design Review Panel, or other consultants, are paid in accordance with their respective contract.</p> <p>Adjoining property owners and submitters called as witnesses, or participating as a party to the appeal, would not be paid for their time.</p>
Where the CEO responds directly to SAT, the draft response should be circulated to Council Members for comment first.	<p>Administration's approach to any SAT review of a Council decision would first be referred to Council Members for comment. Any reconsideration of such a matter would be considered and determined by Council.</p> <p>Any SAT review of a delegated authority decision would be dealt with by Administration and reported to Council through the monthly information bulletin.</p>
Once the SAT has made its final decision, the City's response will be included in the Council information bulletin.	Administration notifies Council of the outcome of the review through both an email and the Council information bulletin.