



Brighton Council

POLICY NAME: PLANNING APPEALS

POLICY No: 7.5

PURPOSE:

Part 8, clause 7(1)(b) of the *Tasmanian Civil and Administrative Tribunal Act 2020* provides that Council, as the body who made the decision, is automatically a party to an appeal to the Tasmanian Civil and Administrative Tribunal – Resource and Planning Stream.

This policy serves to clarify the roles and responsibilities of Council staff, Council and external contractors during a planning appeal.

DEFINITIONS:

In this policy:

Planning Authority means Council acting as a Planning Authority under the *Land Use Planning and Approvals Act 1993*.

TASCAT means Tasmanian Civil and Administrative Tribunal – Resource and Planning Stream.

Planning Appeal means an appeal lodged pursuant to Section 61 of the *Land and Use Planning and Approvals Act 1993*.

SCOPE:

The Policy applies to:

- a. all appeal proceedings against a decision of the Council under the provisions of the *Land Use Planning and Approvals Act 1993* ('the Act').
- b. the Planning Authority and Council officers who may, from time to time, be required to represent the Council or present evidence to or otherwise appear before the Resource and Planning Stream
- c. external expertise engaged to represent the Council before TASCAT.

POLICY:

Where a Council decision is the same as Officer recommendation

- Where a Planning Appeal is lodged against an officer's decision under delegation, or a decision of the Planning Authority in accordance with an officer's recommendation, the Chief Executive Officer will appoint legal representatives.
- Council's planning staff will provide planning advice to the appointed legal representatives and assist to defend Council's decision at TASCAT.
- The Chief Executive Officer may appoint other external consultants as required.

Where a Council decision is contrary to Officer recommendation

For the purposes of this policy, the Planning Authority's decision will be 'contrary to' an officer's report and recommendation where:

- the recommendation is for a refusal and the Planning Authority decides to grant a permit;
- the recommendation is to grant a permit and the Planning Authority refuses to grant a permit; or
- the recommendation is to grant a permit subject to certain conditions, and the Planning Authority decides to grant a permit subject to different conditions.

Where the Planning Authority passes a motion relating to land-use planning which is contrary to the report and recommendation prepared by Council's Officers:

- the Planning Authority must include within the motion all reasons for its action. Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- the Chief Executive Officer will appoint legal representation, and any external consultants as recommended by the legal representative.
- The Planning Authority will not require the Planning Officer who made the recommendation to represent the Planning Authority at a full appeal hearing.
- Council's Director Development Services will be included in all communication relating to the Planning Appeal for the purposes of good record keeping.

Mediation

- Mediation is considered the most appropriate way to achieve timely and cost effective resolution of matters. In all Planning Appeals, the Planning Authority and/or Council officers will actively seek to engage in mediation, prior to progressing to a hearing.
- The Planning Authority delegates to CEO/Council officers as appropriate to mediate an appeal on its behalf.
- Final approval to enter a consent agreement sits with the Chief Executive Officer.

Provision of Information

- Council's Director Development Services will be responsible to prepare and lodge initial documentation required by TASCAT and provide copies to all parties on its behalf.
- The Planning Authority 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.

REFERENCES:

Land Use Planning and Approvals Act 1993

Tasmanian Civil and Administrative Tribunal Act 2020

Tasmanian Planning Scheme – Brighton

Judicial Review Act 2000

Local Government (Meeting Procedures) Regulations 2015

ADMINISTRATIVE DETAILS:

Policy compiled: May 1993

Adopted by Council: 03/05/1993; 21/02/2023; 18/02/2025

Reviewed: February 2025

To be reviewed: February 2029

Responsibility: Director Development Services



CHIEF EXECUTIVE OFFICER

Being the General Manager as appointed by Brighton Council pursuant to Section 61 of the *Local Government Act 1993*