

# Council Policy

## 2.29 State Administrative Tribunal

### Introduction

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The State Administrative Tribunal (SAT) is an independent body that reviews and makes decisions on a broad range of administrative, commercial and personal matters. These decisions span human rights, occupational or employment regulations, commercial and civil disputes, and development and resource issues.

Of direct relevance to Council, SAT reviews decisions made by local governments including planning and development, subdivision applications, infringements, rating, animal management and land conservation.

### Purpose

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This Policy is designed to clarify the role, responsibility and accountability of Council and Shire Officers concerning Council decisions (made directly by Council or under Delegated Authority by Shire Officers) which are the subject of a review to the State Administrative Tribunal.

### Policy statement

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1. The Chief Executive Officer (CEO) is delegated authority to determine the most appropriate manner to deal with matters relating to the SAT. The CEO or an Officer delegated by the CEO is to inform the Shire President and/or all Councillors of the lodgement of reviews to the SAT and advise of the manner in which the review is to be addressed.
2. Where a Council decision, the subject of a review to the SAT is the same or essentially the same as an Officer's Recommendation in the Council agenda item, then in the interests of the Council and Officers:
  - An Officer nominated by the CEO shall provide a written response to an appeal on behalf of Council or attend a mediation or tribunal hearing as an expert witness to represent Council's position; and
  - When considered necessary by the CEO to defend a Council decision, Council will be represented by an independent legal representative or consultant and where relevant expert witnesses appointed by the CEO;

The officer nominated to best represent the Shire shall be the most appropriate officer based on technical skill and capacity, positional authority and case experience.

3. Where a decision of the Council is the subject of a review to the SAT and that decision is contrary to the Officer's Recommendation in the Council agenda item, then in the interests of the Council and Officers:
  - Council will be represented by an independent legal representative or consultant and where relevant expert witnesses appointed by the CEO;

- Officers will represent the Shire at mediation sessions that may include legal representation and/or expert witnesses involvement; and
  - In the event of an Officer being subpoenaed, Council acknowledges that the Officer may be required to give evidence at a SAT hearing in support of the Officer's Recommendation in the original Council agenda item, acknowledging that the evidence given may be contrary to the Council decision on the subject of the appeal.
4. Where a decision of the Council has been made under Delegated Authority by Shire officers is the subject of a review to the SAT, POLICY STATEMENT 1. and 2. of this policy shall apply.
  5. Councillors attending mediation sessions do so on a voluntary basis as community members and observers, not as representatives of Council unless invited by the SAT.
  6. Councillors are not able to lawfully give instructions to the appointed independent legal representatives, consultant and/or expert witnesses on behalf of the Shire.
  7. Where a matter is referred to mediation, the Councillor, Officer and / or independent legal representative, consultant and/or expert witnesses shall participate constructively in the mediation in an attempt to reach a satisfactory compromise solution. A satisfactory compromise solution shall:
    - not be beyond the scope of the officer's delegated power;
    - be referred back to Council for decision; and
    - be in the best interests of the Council and at the very least, cause no harm.
  8. When the SAT invites or requests Council to nominate a Councillor to attend a mediation hearing, compulsory hearing or final hearing in respect to an application for a review lodged against a Council decision, then that Council representative shall be the President or the Deputy President where the President is unable to attend.
  9. The SAT may refer a matter back to Council inviting 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.
  10. The Shire will not lodge a review of a SAT Decision unless Council considers, following legal advice, that the Tribunal has made an error of law and/or the issue has significant implications for the Shire of Capel.
  11. The final decision will be communicated in writing to Council, the applicant and any other affected party.

## Application

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This policy applies to all employees and Councillors of the Shire of Capel.

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