

# Policy

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**Title:** Planning Appeals

**Category:** Environment, Planning and Development Control

**Date Last Adopted:** 15 February 2022

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## 1. Objectives

To provide a position with respect to the Council's participation in appeal proceedings against a decision of the Council under the provisions of the *Land Use Planning and Approvals Act 1993* ('the Act').

## 2. Background

Section 14 of the *Resource Management and Planning Approvals Act 1993* provides that Council, as the body who made the decision, is automatically a party to an appeal to the Resource Management and Planning Appeal Tribunal (the **Tribunal**).

Council has an obligation to act as a model litigant in the conduct of litigation. The Council's overriding duty is to assist the Tribunal and ensure that the Tribunal has all the necessary information to make the correct decision.

Participation by the Council in planning appeal proceedings brings a significant cost to the ratepayer. Section 28 of the *Resource Management and Planning Appeal Tribunal Act 1993* establishes a general rule that each party to planning appeal proceedings is to pay their own costs. Only in exceptional circumstances will the Tribunal grant an application for a costs order.

While planning permits are granted in particular circumstances at the discretion of the Council, the decision to pursue planning permission is the role of the applicant. Under ordinary circumstances, if an applicant abandons pursuit of a planning permit at any stage during the planning application process, the Council is under no obligation to determine the application and no permit is granted.

In almost all circumstances applicants will participate in appeal proceedings on the basis that the applicant's interests and Councils are not aligned. While the Council is required to assist the Tribunal in reaching the correct decision, it is not Council's role to actively advocate for the development.

### 3. Policy

That:

- 1 All Council decisions made in relation to planning matters are to be defended in the event of an appeal to the Resource Management and Planning Appeals Tribunal except for:

In circumstances where an applicant does not seek to participate in appeal proceedings with respect to their application for planning permission the Council will determine whether to continue to participate in the appeal. It is recognised that if both the applicant and Council discontinue participation in the proceedings the decision of the Council is almost certainly to be overturned. Without limiting the matters to be taken into account, regard will be had to the following:

- The nature of the planning application and the circumstances of council's approval
- Any special or exceptional circumstances affecting the capacity of the applicant to defend their application at a hearing.
- The cost to the public of participation in the appeal proceedings

It is considered that if special or exceptional circumstances do not apply then the applicant, by failing to participate in the appeal proceedings, has effectively abandoned their pursuit of planning permission. In such circumstances it is not the role of the Council at the expense of the rate payer to advocate for the development on the applicant's behalf.

- 2 The Chief Executive Officer, in consultation with the Director City Planning, is to determine the most appropriate means of defending the Council's decision
- 3 Unless called in by an Elected Member, the Director City Planning is to determine the Council's participation in an appeal where an applicant does not participate in proceedings.

### 4. Legislation, Terminology and References

*Land Use Planning and Approvals Act 1993*

*Resource Management and Planning Appeal Tribunal Act 1993*

<b>Responsible Officer:</b>	Director City Planning
<b>Policy first adopted by the Council:</b>	26/10/1992
<b>History</b>	
Amended by Council	8/7/2002
Amended by Council	7/3/2016
Approved by Council	23/9/2019
Amended by Council	15/2/2022
<b>Next Review Date:</b>	September 2023
<b>File Reference:</b>	F16/65276