



City of **HOBART**

Memorandum: Lord Mayor
Deputy Lord Mayor
Elected Members

Response to Question Without Notice

REPRESENTOR CONCERNS

Meeting: City Planning Committee

Meeting date: 19 April 2021

Raised by: Lord Mayor Reynolds

Question:

In correspondence received from Mr Neil Shephard there were 3 suggestions for solutions to council policy to make the process for parties joined to appeals more palatable and transparent. Is there a mechanism for us to consider these points?

Response:

On 1 March 2021, Don Neil, Graeme Corney and Neil Shephard addressed the City Planning Committee in a closed meeting. The resolution states:

That the deputations be received and noted and the presenters be encouraged to put their concerns in writing to the Council and to lobby the State Government.

Mr Shephard put his concerns in writing to the Council by letter dated 5 March 2021.

While the concerns about the Tribunal process are noted, the Council is restricted in its ability to change the processes under the *Land Use Planning and Approvals Act 1993* and the *Resource Management and Planning Appeal Tribunal Act 1993*.

Mr Shephard's letter suggests that representors and joined parties lose rights when an application is amended through the appeals process. This statement is not correct. Representors have clear rights to be heard in relation to proposed applications. The Council is meticulous in ensuring that representors' views are taken into account when making a decisions on all planning applications. After the decision, representors have the right to appeal or participate in an appeal by a developer. Once they are a party then they are entitled to be involved in all formal processes in the appeal. For example, if there is an application to amend a proposal then the joined parties will be served with a copy of the application and given an opportunity to be heard. So the comment in the letter about joined parties being left out of that process is not accurate.

The Council has made submissions to the Tribunal about the need for ongoing public involvement in the amendment of applications. In the recent decision about the amendment of the proposal for Lenna (*Lenna Motor-Inn Pty Ltd v Hobart City Council and Ors* [2021] TASRMPAT 5), the Council made the following submission:

Council has submitted that the passage of time that has elapsed since the filing of the appeal and the making of this application is a relevant factor affecting the interests of the public insofar as they inform an assessment of whether the changes to the proposal can properly be regarded as a 'modification' because members of the public may hold a legitimate expectation of a right to be heard with respect to an alternative form of development upon the subject site that was to proceed some two years after the matter was first refused by Council.

That submission was not accepted by the Tribunal and the application to amend was approved without any further public involvement.

Given that the Council is a party to the proceedings, it is bound by Tribunal decision to allow an amendment, just like other parties. If the Council decides to agree to an amended proposal then it must act in an appropriate way to minimise the risk of being exposed to a costs order.

As a party to the proceedings, the Council's primary role is to provide the Tribunal on guidance about what it considers is the correct interpretation of the planning scheme and how it applies to the particular proposal. It is not invested with trying to promote a particular development or, conversely, it is not providing a role of protecting joined parties or representors who decided not to participate in the appeal. The Council must act as a model litigant and behave in a neutral way towards both applicants and joined parties / representors.

The proposals made by Mr Shephard in his letter, along with a response, are as follows:

(a) Council to notify all Representors to the original proposal and invite them to state their support or opposition to the amended proposal (ie make fresh representations)

This process is not part of the existing legislative framework. However, the Council has the flexibility to seek input from representors for a particular appeal if Elected Members consider that this is warranted.

As an example, further input was sought for the appeal relating to the Lenna due to the ongoing high level of interest from representors who were not parties to the appeal and it was considered appropriate for the Council to take those views into account.

Given that each appeal will unfold differently, the Council should be cautious about creating a rigid process to introduce steps that may be unnecessary for all appeals.

(b) Council officers to assess the amended proposal and report to CPC with a recommendation (ie. the present situation), together with an assessment of any fresh representations

Currently, Council officers do assess amended proposals and report to the CPC. In doing so, Council officers would usually include a report on the attitude of any representors who are a party to the appeal.

Council officers do not seek further input from representors who are not parties to an appeal. This process is not part of the existing legislative framework. The only time further representor feedback would be sought would be at a meeting of the City Planning Committee through deputations if Elected Members considered that this was appropriate in the circumstances of a particular appeal.

(c) The Representors and Applicant be allowed to make presentations/deputations to CPC as they would be for any other Discretionary planning application

The response to suggestion (a) is repeated here.

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



Karen Abey
ACTING DIRECTOR CITY PLANNING

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