

Level 27, Exchange Tower  
2 The Esplanade  
Perth WA 6000 Australia

PO Box Z5025, St Georges Terrace  
Perth WA 6831

T +61 8 9404 9100  
F +61 8 9300 1338

Our ref JS:NF

8 August 2022

**Bruce.Taylor@melville.wa.gov.au**

Mr Bruce Taylor  
Manager Governance & Property  
City of Melville  
10 Almondbury Road  
BOORAGOON WA 6154

**Electronic**

Dear Sir

**Advice in relation to petitions and planning decisions**

I refer to your email dated 4 August 2022.

I understand that the Council has requested the City obtain legal advice as per the following resolution made at the Council meeting on 19 July 2022 –

*That the Council directs the CEO to obtain legal advice to clarify the Council's power and authority :*

- (a) *to consider and grant or refuse requests in Petitions and specifically including requests relating to planning related applications and refusals;*
- (b) *to review or alter planning decisions finalised by Officers but where the Applicant or Objector remains unsatisfied or seeks an internal review of the decision by the Council either by application to Council or by a Petition,*

*and to provide a report to the 20 September 2022 Ordinary Meeting of Council or prior.*

Following please find the advice as requested.

**Paragraph (a) of the Council resolution**

- 1 The Council's general powers in relation to requests contained in petitions are set out in clause 6.11 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022 (Local Law)*.
- 2 Clause 6.11(3) of the Local Law provides that, on presentation of a petition, the Council is required to acknowledge the petition, and then is to take one of the actions set out in paragraphs (a) to (d), which include giving due consideration to the petition when deliberating on the matter to which it relates (clause 6.11(3)(a)), through to taking no further action (clause 6.11(3)(d)). It is apparent from this that, subject to the following qualifications, the Council has broad powers to deal with the contents of a petition as it thinks fit.
- 3 One qualification to this broad power is contained in clause 6.11(4) of the Local Law. This appears to operate as a qualification to clause 6.11(3)(d) referred to above, and provides that if a

petition is presented at a meeting on a matter that is being voted on by the Council at that meeting, the Council is not to vote on the matter at that meeting unless the matter is the subject of a report included in the agenda for the meeting and the Council has considered the issues raised in the petition.

- 4 A further qualification to the broad powers in relation to petitions, is that the consideration of a petition cannot, of itself, invest the Council with any greater power in relation to the matter the subject of the petition than it would otherwise have under the law. For example, although a petition might request that the Council make a decision on a matter that is contrary to the provisions of the *Local Government Act 1995 (WA)*, the requirement to give "due consideration" to the petition cannot authorise or allow the Council to make such a decision.
- 5 This qualification applies equally to limitations on the Council's decision-making arising under the common law or from caselaw, as it does to limitations arising under legislation such as the *Local Government Act*.
- 6 One example is the requirement under administrative law, when making decisions (including decisions on applications for development approval), to have regard to relevant considerations, and not to have regard to irrelevant considerations. Although a petition might request that the Council not have regard to a relevant consideration, or that the Council have regard to an irrelevant consideration, the requirement to give "due consideration" to the petition does not authorise or allow the Council to do either of these.
- 7 A further particular limitation, which is directly relevant to the Council's request in paragraph (a) of the resolution, and which has recently been affirmed by the State Administrative Tribunal in ***Richardson and City of Swan*** [2022] WASAT 17, is that once a decision on an application for development approval has been made and notified to an applicant, the Council, as the decision-making authority, has no further power to exercise and cannot of its own motion either amend, cancel or revoke the decision. There is a separate process set out in the provisions of Schedule 2 to the *Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions)*, by which an owner of land may apply to amend or cancel a development approval, but that process is not relevant for the purposes of this advice. For the purposes of this advice, if a decision on an application for development approval has been made and notified to an applicant, the Council has no power to grant any request that might be contained in a petition to either amend or cancel the decision.

#### ***Paragraph (b) of the Council resolution***

- 8 The same advice provided in paragraph 7 above applies in response to paragraph (b) of the Council resolution. Where a decision on an application for development approval has been finalised by the officers of the City, in the sense of a decision having been made (either by the Council, or by the officers under delegated authority) and having been notified to the applicant, the Council has no further power to exercise and cannot, of its own motion, either amend, cancel or revoke the decision if either the applicant or an objector remains unsatisfied.
- 9 To address the further matters specifically mentioned in paragraph (b) of the Council resolution, in relation to decisions on applications for development approval, once the decision is made and notified to the applicant, there is no process for any "internal review" by the Council, either by way of an application to the Council or by a petition. As noted above, there is a process set out in the Deemed Provisions by which an owner of land can make an application to amend or cancel a development approval, but this is a separate and fresh application to the original application that was made for development approval. An applicant who is aggrieved by any decision in relation to an application for development approval also has a right of review in relation to that decision to the State Administrative Tribunal, but again this is a separate process. The only avenue for an objector who is unsatisfied with a decision on an application for development approval is to seek judicial review of that decision, by commencing proceedings in the Supreme Court.

If you have any queries regarding the above, or require any further advice on any aspect of the above, please contact me.

Yours faithfully  
**THOMSON GEER**



**Julius Skinner**

Partner

T +61 8 9404 9127

M +61 402 836 551

E [jskinner@tglaw.com.au](mailto:j Skinner@tglaw.com.au)