

This written submission of the City of Melville Residents and Ratepayers Association (MRRRA) is in response to the Acting Director Planning, Mr Tony Free's, report on item UP25/77 New Council Policy – State Administrative Tribunal (Policy) as included in the [Agenda for the August 19, 2025 Ordinary Meeting of Council](#).

**The MRRRA asks Council to reject the Policy**, on the grounds that the Policy:

1. Restates the State Administrative Tribunal (SAT) legislation, rules, and discretionary powers, and may be perceived as Council attempting to usurp SAT's jurisdiction.
2. May limit a party's right to full transparency, procedural fairness, justice, and holding the City to account.
3. Has no demonstrated capacity to achieve the stated objectives but may generate disputations.
4. Is not aligned with legislation; for example, it is not consistent with section 2.7 (3) of the Local Government Act 1995 (as of 01 Feb 2025) which prescribes a clear separation between Policy and Procedures.
5. Does not address section 1.3 (2) of the Local Government Act 1995 (as of 01 Feb 2025) which prescribes how, "*the general function of a local government is to provide for the good government of persons in its district*" (section 3.1(1)) is delivered. The prescribed implication is of an intention of a Local Government to engage the community to prevent or resolve differences before matters are escalated to SAT.
6. Does not address how the Policy is aligned with the provision of "good government" if and while this policy is concerned with controlling but not preventing or resolving secondary level or extended dispute.
7. Placement of Policy "ownership" does not align with legislation where section 2.7 (3) of the Local Government Act 1995 (as of 01 Feb 2025) prescribes "*determining the local government's policies*" as Council ownership as opposed the Director Planning being assigned the Policy owner.
8. Should be addressed as a consistent and integrated component part of a singular Community Engagement, Compliance, Complaint and Enforcement Policy (which does not exist) to generally and specifically minimise conflict, confusion, external reviews or legal actions.
9. Does not address recording, reporting success or failure of the Policy for future Policy improvement.
10. Has no intrinsic value if its application cannot be demonstrated to reduce financial or managerial cost.

### Reasons

- While section 3.1(1) of the Local Government Act 1995, prescribes "*the general function of a local government is to provide for the good government of persons in its district*", section 1.3 (2) of the Local Government Act 1995 (as at 01 Feb 2025) identifies that "*good government*" it is not achieved with the City "*undertaking a comprehensive review of all Local Planning Policies (LPPs)*" in exclusion of comprehensive engagement of the community.
- To give as a "purpose" the proposing of a "NEW [stand-alone] COUNCIL POLICY" is highly indicative of an existing failure in the competence of the City's current and existing policies and system of Policy management.
- If escalation to Sat is necessary then the City's existing Policies, processes and procedures are measurable in their management failure to prevent the need for that escalation.
- It is not clear why the Chief Executive Officer (CEO) assigned responsibilities "*to ensure consistency across directorates, impartiality and appropriate transparency in dealing*"; are being reassigned by this policy.
- It is not clear why this Policy does not reference its impact on other Council Policy as exemplified that City, Elected Members, and City officers are obligated to comply with the State and other laws and Court or Tribunal summons and orders. For example, the City's Code of Conduct for employees (<https://www.melvillecity.com.au/our-city/publications-and-forms/corporate-services/code-of-conduct-employees>) requires officers to, amongst other things, ...
  - b) act with honesty and integrity;
  - c) act lawfully;
  - d) avoid damage to the reputation of the City of Melville;
  - e) be open and accountable to the public and in their dealings with the City as their employer;
  - f) base decisions on relevant and factually correct information;
  - g) treat others with respect and fairness;
  - h) follow all reasonable and lawful directions given to you by the City of Melville....

- The report does not contain a tangible business case (clarity vs inter-policy conflict) to justify the necessity of the Policy to supplement existing laws and codes of conducts. No examples are provided in the report as to why past events, failures or issues have driven the City officers to spend time and effort to prepare yet another segregation Policy.
- Another conflicting and segregational Policy is not productive use of resources in our opinion. A much greater priority for Council policy development and maintenance would be reviewing a singular “system of model Policy” as was provided to the City in 2021 to replace the current 130 plus list of inter-conflicting Policy adopted by the City.
- Much of the Policy appears to be regurgitating SAT legislations, rules and discretionary powers in the absence of professional managerial imperative. SAT has an informative public website (<https://www.sat.justice.wa.gov.au>) Elected Members could obtain training from independent entities such as Local Government Elected Members Association (LGEMA, <https://lgema.asn.au>).
- The Policy covers matters which are all dealt with in SAT legislation, rules and are within discretionary powers.
- There is no clear assessment in the report that identifies parts of the Policy which may conflict with SAT legislation, rules or discretion, or expressly requires a Council policy.
- There is nothing in the Policy for reporting to Council on execution and performance of the Policy for success/failure analysis.
- Policy provisions that may be perceived as misrepresentation, obfuscation or conflict with SAT legislation, rules or discretion include:

- **Applications for costs.** The Policy states: *“The City will not seek an order relating to costs against an applicant, unless the applicant behaves in a dishonest, frivolous or vexatious manner in the SAT proceedings.”* SAT is generally a ‘no costs’ jurisdiction, meaning parties usually bear their own costs in proceedings. The ability for parties to represent themselves in proceedings, rather than engaging legal representation, is an important element in minimising their costs.

SAT can use its discretion to make orders to determine costs payments for a wide range of reasons. The City has had costs applications for costs refused by SAT in the past. The SAT objectives set out in Section 9 of the SAT Act include: *“To act as speedily and with as little formality and technicality as is practicable and minimise the costs to parties;”* SAT substantially does not require any legal representation to reduce any exposure to costs. In 2023/2024 only 30-40% of proceedings had legal representation.

- **Elected Member participation at a Party’s request.** Existing SAT legislation and rules defines allowable participation in proceedings. SAT can use discretion to allow Elected Member participation, Third Party intervention, issue orders or summons as they relate to the City or other Third Parties. SAT has the jurisdiction and full discretion to deal with such matters on a case-by-case basis.

Council and City officers should not make any policies that may be perceived as an attempt to usurp SAT’s jurisdiction. For example, in SAT’s mediation information sheet states: *“All parties involved in the matter and their representatives, if representatives are allowed, and any relevant expert witnesses may attend the mediation. Generally, other people may not attend the mediation unless all parties agree. In particular circumstances, other people, such as officers of relevant government authorities, may be invited or permitted to attend the mediation. In review matters in the development and resources area, SAT may invite the Mayor or President of a local government to attend or nominate one or more councillors or the Chief Executive Officer of the local government to attend the mediation.”* ([https://www.sat.justice.wa.gov.au/files/Info\\_Sheet\\_10.pdf](https://www.sat.justice.wa.gov.au/files/Info_Sheet_10.pdf)).

The Policy states: *“Direct communication between a proponent and Elected Members should be avoided for the duration of a review before the SAT unless the City has been invited to reconsider the decision.”* In our opinion we see this statement may conflict with SAT’s jurisdiction, Local Government Act (LG Act) s. 1.3 content and intention, ...

*“(2) This Act is intended to result in —*

- (a) better decision-making by local governments; and*
- (b) greater community participation in the decisions and affairs of local governments; and*
- (c) greater accountability of local governments to their communities; and*
- (d) more efficient and effective local government.”*

and a s 2.10 Role of Councillors which includes:

*“(1) A councillor — (a) represents the interests of the electors, ratepayers and residents of the district and takes account of the interests of other persons who work in, or visit, the district;”*). As SAT review proceedings are substantially SAT Members *“standing in the shoes of the original decision maker”*.

So, Council cannot lawfully inhibit in any way councillors’ obligations to represent elector, ratepayers, residents etc are also applicable to SAT Review proceedings.”

- **Third Party SAT application to intervene.** SAT has legislation (including section 37 of the SAT Act), rules and discretionary powers to determine who participates in proceedings. The Policy states: *“The City will not object to an application by a community member to make an independent submission to the SAT or intervene in a review, unless there is exceptional reason to do so such as the protection of City employees and Elected Members from unreasonable behaviour.”*

The City should not object to any applications for any reasons and leave any such decisions to SAT’s discretionary powers on a case-by-case basis. Any objections for such applications would most likely be perceived as a cover-up of inappropriate Council or City officer decisions. Further, the City has inappropriately declared persons “unreasonable” in the past. Objecting to a person’s right to freedom of speech may be contrary to the City, Elected Member and City officer requirements to be open, transparent and accountable to the public.

- Should Council consider a policy about SAT proceedings is necessary, Council should engage and consult with a specific focus group or community committee of informed persons that have knowledge and experience of SAT proceedings to identify the key policy provisions from the community’s perspective.
- A Council policy, should have a singular general Policy for “Community Engagement, Compliance, Complaint and Enforcement” to:
  - Endeavour to resolve all disputes in good faith or mediation to avoid SAT or other escalation, including referring disputes to a Council committee for directions.
  - Ensure best endeavours in any reviews of decisions, including providing all information in relation to the decisions and respond impartially.
  - Not expend any efforts and costs to produce further information post the decision, unless otherwise to comply with Applicant requests and SAT orders.
  - Not object to or make submissions in relation to Applicants requests to have Elected Member support, City officer sworn testimonies, interventions or the like.
  - Always act impartially, that is not to object or make submissions in relation any intervention applications. The City should defer to SAT for decisions on a case-by-case basis.
  - Avoid engagement of legal representation on any dispute proceedings, except where endorsement by Council to provide legal representation to any other parties.
  - The City will act as speedily and impartially, with as little formality and technicality, as is practicable and minimises the costs to parties.
  - The City will not make any costs applications against any parties.
- All comments and opinions expressed have been made in good faith and based on the information available in the interest of the public’s right for freedom of speech and participation in local government decisions and affairs.