



Clarence City Council

POLICY AND PROCEDURES FOR APPLICATIONS TO AMEND SEALED PLANS

The following provides an outline for the benefit of all parties associated with the amendment process, of the legislative background and Council's policy and procedures associated with applications to amend Sealed Plans.

APPLICATIONS TO AMEND SEALED PLANS

Local Government (Building and Miscellaneous Provisions) Act (1993)

An applicant makes application to the Council by petition seeking consideration of their request to amend a Sealed Plan. In making application the applicant party is to notify (by serving a copy of the petition) all interested parties on the Sealed Plan.

An interested party has 28 days to indicate if they wish to be heard in respect to a petition to amend. As there are matter of statutory compliance in relation to this process, all applications to amend a Sealed Plan that are submitted to Council for consideration are also to be accompanied by details of service of the interested parties (ie details of the interested parties shown on the Seal Plan at time of service; details/evidence of which parties have been served with a copy of the petition; the date(s) of service; and, the method of service).

COSTS ASSOCIATED WITH APPLICATIONS AND HEARINGS

Application Fee

Council has established a fee for applications made to Council to approve amendments to sealed plans. A portion of the fee is applicable at time of lodgement of the petition to amend the Sealed Plan. If, as a consequence of the petitioning process, the matter is to be heard, then the applicant party will be required to pay the balance fee of \$1000. This fee is reflective of the extensive work and legal and other professional advice that Council may need to obtain in order to facilitate the amendment and hearing process.

Council recognises that the primary party that is responsible for seeking an amendment to a Sealed Plan is the petitioning party. Notwithstanding whether it is the petitioner or a representor that asks the Council for a Hearing to be conducted, the party responsible for payment of the Council fees associated with conducting a Hearing is in every case to be the petitioning party.

APPLICATIONS AND PROPOSED AMENDMENTS WHERE NO REQUESTS TO BE HEARD HAVE BEEN RECEIVED

Applications to amend Sealed Plans are routinely received by Council and Council may also on occasions, seek to amend sealed plans. These are assessed and considered under delegated authority:

- where there are no objecting parties;
- where the parties have agreed to the amendment; or
- in the event that no requests to be heard have been received during the petitioning process.

Although parties to an application to amend a Sealed Plan may be in agreement with the amendment being sought, the Council is under no obligation to approve such requests. All applications will be assessed on their merit and Council will exercise its discretion under the Act in this regard.

REQUESTS TO BE HEARD

General Entitlement to be Heard

Only those parties shown on the Sealed Plan are entitled to participate in the Hearing process as they are recognised as having a legal estate or interest in the land subject to the Sealed Plan.

Agreement of the Parties

The Act enables Council to consider the approval of an amendment to a Sealed Plan where there is an agreement between the parties. This agreement can be reached at any stage during the process.

Where there are objecting parties who seek to be heard Council will encourage the applicant to make every endeavour to reach some form of agreement with the other parties and in so doing this will avoid additional imposition of time, fees and resources associated with the Hearing process.

The nature of the parties' objections will be provided to the applicant party to facilitate this outcome unless Council is expressly requested not to do so.

CONDUCT OF HEARINGS

Pre Hearing Matters

- Only those parties shown on the Sealed Plan are entitled to be part of the Hearing process as they are recognised as having a legal estate or interest in land subject to the Sealed Plan.
- Based on principles of procedural fairness, requests or submissions provided by other parties not shown on the Sealed Plan are not able to be considered by Council as part of the Petitions to Amend Hearing process.

- Prior to the Hearing the General Manager may arrange for the disclosure and exchange of documentation between the parties and to the Council or appointed Council Committee.
- Documentation provided by either party to the Council as part of these arrangements will form part of the agenda papers for the Hearing and will be distributed to all parties.

General Hearing Provisions

- Council or its appointed Council Committee will hold formal Meetings to conduct Hearings for Petitions to Amend. As the subject matter of the petition and the representors' submissions relate to the personal affairs of the parties, the Hearings for Petitions to Amend will be conducted in Closed Meeting in accordance with the provisions of Regulation 15 of the Local Government (Meeting Procedures) Regulations 2005 (the Regulations).
- In addition, as the Petition to Amend Hearings will be conducted either by Council or the appointed Council Committee, these proceedings will be conducted within a formal meeting process and as such will be subject to the provisions of the Regulations, and the provisions of Council's policy for Council meetings.
- The Hearings are not bound by the rules of evidence and the Council or the appointed Council Committee may inform itself on any matter in any way it considers appropriate.
- The Council or the appointed Council Committee must observe the rules of natural justice in the conduct of Hearings.
- Where the meeting Chairperson or General Manager (or nominated principal Council officer attending), considers necessary, key/important details of professional officer advice will be recorded.
- In any other respect, the procedures of a Hearing are within the discretion of the Council or the appointed Council Committee.

Rules for Petitioners and Representors (Speakers)

- Speakers will be treated as delegations in accordance with the provisions of the Regulations (ie there is no need to suspend standing orders to allow for discussion to occur on an interactive basis).
- Petitioners and Representors are permitted to be represented by professional advisors at the Hearing. (The details of who will be representing as advisers are to be provided to Council prior to the hearing).
- Speakers are required to follow the direction of the meeting Chairperson.
- Speakers are to be advised regarding:
 - non privileged nature of Council or Council Committee meetings;
 - the need to take care regarding defamatory or derogatory remarks; and
 - the need to take care regarding the disclosure of confidential and/or personal information.
 - the arrangements and procedures for speaking at the meeting.
- Each party will be provided with reasonable time (as advised by the Chairperson) to put forward their respective presentation and may receive questions and requests for clarification on their representation if required.
- Interactive discussion during the Hearing is to be limited to being between the members of the Council or the appointed Council Committee and the parties only (i.e. not directly between parties and Council's expert advisors and

officers unless facilitated by the meeting Chairperson) unless otherwise directed by the Chairperson.

Conduct of Hearing

Each Hearing is to be dealt with in the following parts:

Part 1 - Deputations

- The meeting Chairperson will invite firstly the petitioner presentation and then representor representation.
- At the conclusion of each speaker presentation, and, subject to the direction of the Chairperson, Aldermen and the other parties or their representatives may seek clarification and ask questions of the speaker.
- Aldermen may seek professional advice through the General Manager (or nominated principal Council officer attending) on any options and points of consideration that arise from the speaker presentations.

Part 2 - Discussion of Options

- The Chairperson will invite the parties to give indication on any grounds that they consider may be appropriate/acceptable to achieve a common agreement on the proposed amendment.
- The Chairperson may elect to conduct this part of the hearing outside the rules of formal debate to facilitate an agreed outcome between the parties.
- The Committee may seek professional advice on any options and points of consideration put forward by the parties.
- If the parties are able to identify common ground upon which to resolve the petition matter then these grounds will be recorded.
- Where it is considered necessary, or at the request of the parties, the meeting Chairperson may adjourn the Hearing to a later date to enable the parties or the Council to obtain appropriate advice on matters arising from the hearing.
- If no agreement is reached between the parties, this is to be recorded.

Part 3 - Compensation

The Council, as part of its deliberative processes does have discretion to give consideration to the question of compensation that may arise in the event that an amendment to the Sealed Plan may be approved. In such cases, Council will need to give consideration to and determine on the validity, adequacy and form of compensation required.

Council expects in such instances for the parties to engage valuers to establish the validity and value of injury, to assist Council in determining the amount of compensation that may reasonably be imposed as a condition should an amendment be supported. Where a difference of valuation opinion exists, the parties will be encouraged to reach a mediated outcome on this matter.

Notwithstanding this, Council reserves the right to obtain its own valuation advice in respect to compensation matters or to make a condition requiring the appointment of an independent valuer to determine the compensation payable.

Part 4 - Conclusion

The Chairperson will determine the conclusion of the Hearing.

COMMITTEE DELIBERATIONS

- The Committee's will deliberate on the application and the evidence submitted.
- The Committee is to make a report, recommendations and reasons to the Council on its findings and the outcome of the Hearings as necessary.
- The Committee's report to Council will be confidential as it may contain details of a personal affairs nature and will therefore be dealt with in the Closed Meeting section of Council's Agenda.
- All parties will be notified of Council's determination in respect of the application.

COMPLETION OF AMENDMENT PROCESS

- All amendment, agreement and lodgement documentation is to be prepared by the applicant party.
- An amendment to a Sealed Plan approved by the Council on the condition that compensation is payable will not be executed by Council until such time as confirmation is received of the applicant party's agreement to pay the compensation and/or confirmation of the receipt of the compensation by the injured party.
- To facilitate this, the amount of compensation payable may be paid to Council for on-payment to the injured party in exchange for executed documentation to effect the amendment.