



Operational Procedure – Council Functions and Obligations under the *Local Government (Building and Miscellaneous Provisions) Act 1993*

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Statutory Authority:

Local Government (Building and Miscellaneous Provisions) Act 1993

OBJECTIVE

To ensure that Council's functions and obligations pursuant to Part 3, Division 5 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* are conducted in accordance with legislative requirements.

PROCEDURE

This procedure establishes the steps Council will take in the implementation of its functions and obligations for consideration of amendments of sealed plans, pursuant to Part 3, Division 5 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

1. Amendment Initiation

- 1.1. Under Part 3, Division 5 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* ('the Act'), amendment to a sealed plan¹ can be initiated by Dorset Council ('Council') or on application by a person with an interest in the land.
- 1.2. Council may initiate amendment of a sealed plan of its own motion to:
 - (a) do anything that Council could do under any other power subject to any conditions precedent to the exercise of the power relied on; or
 - (b) to bring the plan into conformity with any change in the rights and duties of land owners made under a statutory power.

¹ A sealed plan is a critical document in conveyancing and property law, as it provides the legal basis for the division or alteration of land. Sealed plans are used to finalise and legally record changes to land titles, such as subdivisions or alterations to boundaries. A surveyor prepares the plan, which is then submitted to the relevant Council for review and approval. The Council ensures the plan adheres to any conditions of planning permits or other relevant regulations. Once approved, the council places their seal on the plan, indicating their acceptance and compliance with the relevant regulations. The sealed plan is then lodged with the LTO for registration, where it becomes the official record of the land title changes.

- 1.3. Where initiated by Council of its own motion, Council must serve a notice in writing to all persons appearing by the registers under the *Land Titles Act 1980* and the *Registration of Deeds Act 1935* to have an estate or interest at law affected by the proposed amendment.
- 1.4. Where initiated by any other person with an interest in the land subject to a sealed plan, that person is to:
 - (a) make an application by petition²; and
 - (b) serve a copy of the petition on all persons appearing by the registers under the *Land Titles Act 1980* and the *Registration of Deeds Act 1935* to have an estate or interest at law affected by the proposed amendment.
- 1.5. At the end of 28 days after the last notice is served or the last petition is served (as required by Section 103 of the Act), Council:
 - (a) may, if no person has asked to be heard in opposition, cause the amendment to be made³; or
 - (b) if a person has asked to be heard, is to appoint a day for hearing any petitioner and those persons who have asked to be heard.

2. Pre-Hearing Matters and Directions

- 2.1. Any person affected by a proposed amendment may ask to be heard in support or opposition of the proposed amendment.
- 2.2. Only parties with an interest at law affected by the proposed amendment are entitled to be part of the hearing for the amendment to sealed plan.
- 2.3. Requests to be heard or submissions made by parties that do not have an interest at law affected by the proposed amendment are not able to be considered by Council as part of a hearing process.
- 2.4. The hearing is to be held by Council (or a Council committee⁴), who may:
 - (a) hear persons who have asked to be heard (after the period referred to in Section 103 of the Act); and
 - (b) obtain the assistance of legal practitioners, architects, engineers and surveyors.
- 2.5. Prior to the hearing, Council officers will arrange for the disclosure and exchange of documentation between the parties and to Council for the conduct of the hearing.
- 2.6. A notice of preliminary directions will be issued to the parties, setting out the requirements for the filing of material with Council relevant to the hearing. These directions require that the material be filed with Council no less than 21 days prior to the hearing date.

² The petition should be prepared by a solicitor and include a Blank Instrument Form for lodgement at the Land Titles Office.

³ Council's existing delegation framework (as of 21 October 2024) provides for either (i) the Town Planner or (ii) the Director - Community and Development to cause an amendment to be made if no person with an interest at law affected by the proposed amendment has asked to be heard in support or opposition of the amendment.

⁴ Means a Council committee established under Section 23 of the *Local Government Act 1993*.

2.7. Documentation provided to Council by any person in opposition to the proposed amendment ('the objectors') and the petitioner, will form part of the agenda papers for the hearing and will be distributed to all parties.

3. General Hearing Principles

3.1. Council will hold a formal meeting to conduct the hearing for the petition to amend. As the subject matter of the petition to amend relates to the personal affairs of the parties, the hearing for a petition to amend will be conducted as a closed meeting in accordance with the provisions of Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015* ('the Regulations'). In addition, as hearings are conducted by Council, the proceedings are within the formal meeting processes of Council and as such are to be subject to the provisions of the Regulations.

3.2. The hearing is not bound by the rules of evidence and Council may inform itself on any matter and in any way it considers appropriate. However, only material that is relevant to the issues at hand will be considered. Council must observe the rules of procedural fairness and natural justice in the conduct of the hearing.

3.3. Council is to ensure that the decision resulting from the hearing is made in an unbiased and impartial manner. Each party has the right to a fair hearing and will be given an equal opportunity to put their case forward. In any other respect, the procedures of a hearing are within the discretion of Council. The hearing should be conducted so that proper order is kept, and irrelevant issues are avoided.

4. Rules for Petitioners and Representors

4.1. Speakers will be treated as a deputation in accordance with the provisions of the Regulations (i.e. there is no need to suspend standing orders to allow for discussion to occur on an interactive basis). Petitioners and objectors are permitted to be represented by a professional advisor or advocate at the hearing (the detail of any representation is to be provided to Council no later than fourteen (14) days prior to the hearing in accordance with the preliminary directions).

4.2. Speakers are required to follow the directions of the meeting Chairperson. Prior to the commencement of the hearing, speakers are to be advised of:

- (a) the non-privileged nature of Council meetings and the hearing;
- (b) the need to take care regarding defamatory or derogatory remarks;
- (c) the need to take care regarding the disclosure of confidential and/or personal information; and
- (d) the arrangements and procedures for speaking at the meeting.

4.3. 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 by elected members of the Council. Interactive discussion during the hearing is to be limited to being between the members of the Council and the parties through the Chairperson.

5. Compensation

5.1. Pursuant to Section 105 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, a person adversely affected by an amendment is entitled to compensation. That entitlement to compensation arises if notice of the claim for compensation is given at or before the hearing, or within sixty (60) days if learning that they were affected by an amendment. In such cases, Council will need to consider and determine the validity, adequacy and form of any compensation.

- 5.2. Parties may wish to engage valuers to establish the validity and value of any compensation to be paid. The purpose of this would be to assist the Council in determining the amount of compensation (if any) that may reasonably be imposed should an amendment be supported.
- 5.3. Where a difference of valuation opinion exists, the parties are encouraged to reach a mediated outcome on this matter. Notwithstanding this, Council reserves the right to obtain its own valuation advice or other advice in respect to compensation matters.

6. Conduct of Hearing

- 6.1. The hearing is to be dealt with in four (4) parts:

- (a) Part 1 - Introduction;
- (b) Part 2 - Deputations;
- (c) Part 3 - Compensation; and
- (d) Part 4 - Conclusion.

Part 1 – Introduction

- 6.2. The Chairperson advises the parties as to the structure by which the hearing will be conducted (with reference to matters expressed within the 'Matters of Consideration' section of this procedure, below).

Part 2 - Deputations

Step 1 - the Petitioner:

- 6.3. The Chairperson will firstly invite the Petitioner to present its case for the petition. At the conclusion of the Petitioner's presentation, and subject to the direction of the Chairperson, Councillors may seek clarification and ask questions of the Petitioner or their representative.
- 6.4. Councillors may seek professional advice through the nominated principal Council officer attending on any options and points of consideration that arise from the Petitioner or their representative's presentations.

Step 2 - the Objectors:

- 6.5. The Chairperson will then invite each objector individually to make the case for their objection. At the conclusion of each objector's presentation, and subject to the direction of the Chairperson, Councillors may seek clarification and ask questions of each objector or their representative.
- 6.6. Councillors may seek professional advice through the nominated principal Council officer attending on any options and points of consideration that arise from the Petitioner or their representative's presentations.

Part 3 - Compensation

Step 1 - Objectors and claim for compensation:

- 6.7. The Chairperson will then invite each objector individually to make a representation in relation to a claim for compensation (if such a claim has been made in writing as directed by the notice of preliminary directions). At the conclusion of each objector's presentation, and subject to the direction of the

Chairperson, Councillors may seek clarification and ask questions of each objector or their representative.

- 6.8. Councillors may seek professional advice through the nominated principal Council officer attending on any options and points of consideration that arise from the Petitioner or their representative's presentations.

Step 2 - Petitioner's response to claim for compensation:

- 6.9. The Chairperson will then invite the Petitioner to make a presentation in response to the claims for compensation. At the conclusion of the Petitioner's presentation, and subject to the direction of the Chairperson, Councillors may seek clarification and ask questions of the Petitioner or their representative.
- 6.10. Councillors may seek professional advice through the nominated principal Council officer attending on any options and points of consideration that arise from the Petitioner or their representative's presentations.

Part 4 - Conclusion

- 6.11. The Chairperson will then conclude the hearing and the meeting, declare that the Council will consider the matter and state that it will 'reserve its decision'.

7. Matters of Consideration

- 7.1. The power of Council to amend a sealed plan under Section 104 of the Act is discretionary. The Act is silent on what factors are to be considered in relation to the exercise of its discretionary power⁵. A non-exhaustive list of matters the Council may consider are:
 - (a) that by changes in the character of the property or the neighbourhood or other circumstances of the case that may be relevant, the restriction has become obsolete;
 - (b) that the continued existence of the restriction prevents a user of the land from doing a thing that would otherwise be allowed under the planning scheme;
 - (c) that the continued existence of the restriction would prevent the reasonable use of the land for public or private purposes;
 - (d) that the persons entitled to the benefit of the restriction have agreed, either expressly or by implication, to the removal or modification of the restriction; or
 - (e) that the proposed removal or modification will not cause a loss to the persons entitled to the benefit of the restriction.

- 7.2. This is not an exhaustive list of the matters that Council may consider in determining the application but is rather an example of what may be considered 'relevant' matters. The Petitioner holds the burden of proof to establish that the amendment to the sealed plan should be made. If the amendment is to be made, it is expected that there is more evidence favouring in support of the amendment than against the amendment.

⁵ see Clarke v Burnie City Council (2008) TASSC 75.

8. Council Deliberations

- 8.1. Council will deliberate on the application and the evidence presented to it. Council is to then make a written decision detailing its decision and reasons following the hearing.
- 8.2. Council's decision 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.
- 8.3. All parties will then be notified in writing of Council's determination in respect of the application and provided with a copy of the decision.