

MS L HOLLANDS, 2 MILLER AVENUE, REDCLIFFE

According to the budget on the website the Planning Department has a budget of \$240,000 per year of ratepayers' money for legal advice. Yesterday I received an email from the City in relation to an ongoing matter that I have had difficulty in resolving stating **that although 'it has been clarified that legally the executor does not have to sign a planning application, it remains good practice for the City to seek to ensure that an application for development approval of land vested in the executor of a deceased estate is signed by the executor. On that basis the City will continue to seek that such planning applications are signed by an executor unless the beneficiary of a Will refuses to do so in writing.'**

1. On what basis does the City think it has the right to not only get legal advice which costs the ratepayer but to flaunt the legal advice and make their own rules?

Response The Director Community and Statutory Services advised that the \$240,000 legal costs include a Supreme Court action on a matter being dealt with by the City. **The City certainly takes on board all legal advice received, however certain pieces of legislation can be conflicting.** Going to an Executor of an estate is considered best practice and future cases similar to Ms Hollands' will continue to be dealt with in this manner.

2. So the legal advice was not used?

Response The Director Community and Statutory Services advised that the legal advice received indicated that the City should consider other legislation. The City has not previously dealt with a case of this nature where the Executor has not signed an application.

3. How many times has the City got legal advice and decided not to take it on-board?

Response **The Director Community and Statutory Services advised that it is impossible to answer such an open ended question.**

4. When it is not up to the City to make the legislation only enforce it correctly, who makes the decisions to change the rules to suit themselves, how often does it occur and is this the reason for the poor strike rate of the City when they appear before SAT?

Response The Presiding Member advised that the City's record at the State Administrative Tribunal (SAT) is actually very good compared to other metropolitan Councils. The Director Community and Statutory Services advised that referring to strike rates in relation to SAT appeals is indicative that Ms Hollands is misunderstanding the SAT system. SAT's purpose is to resolve issues to produce the best planning outcomes overall, with a large part being mediation. A strike rate of wins and loses is not indicative of how SAT appeals work.

The email also stated as follows: 'The City issued the approval for your garage on the basis that you are beneficially entitled to be registered as the owner of the subject portion of the land. In doing so the approval does state that the approval constitutes an approval for planning purposes only and does not permit you to use the land under any statutory law or to enter/access the land as you are not currently registered as the owner of the subject land (and may not be permitted to enter onto the Land to legally carry out the construction of the garage). The issue of a planning approval by the City does not alter the position as to whether you may access the Land for the purposes of carrying out the proposed development. This is why a copy of the approval was sent to the Executor and the other stated beneficiary of the Will.'

5. The application clearly showed the property would be divided into two lots and which lot the proposed garage would be erected on. The Will stated who was the beneficiary of each

lot. The City's lawyers advised that I was the owner of the lot which related to the planning application under the Act. So on which piece of legislation, regulations or policy is the Shire seeking to rely on in sending a copy of the approval to both the Executor and more importantly to the other beneficiary. What grounds did the Shire think they had the right to do this and breach the privacy of the applicant?

Response The Director Community and Statutory Services advised the decision was made on the basis of legal advice received.