

## Local Government Update

### A review of Local Government Law in Western Australia

#### PROVISIONS IN STANDING ORDERS REGARDING REVOCATION MOTIONS

Provisions are appearing in Standing Orders Local Laws which operate on the assumption that a Council can revoke a decision previously made to grant some authorisation or other form of approval, even where the decision to approve has been put into effect by the Council informing the applicant in writing of the decision.

The standard form of the Standing Orders provision seems to be in the following terms:

*“The Council shall not vote on a motion to revoke or alter a decision of the Council whether the motion to revoke or alter is moved, if at the time the motion is moved or notice is given –*

*(a) action has been taken to implement the decision; or*

*(b) where the decision concerns the issue of an approval or the authorisation of a licence, permit or certificate, and where the approval or authorisation of a licence, permit or certificate has been put into effect by Council in writing to the applicant or the applicant’s agent by an employee of the Council authorised to do so*

*without having considered a statement of impact prepared by or at the direction of the CEO of legal and financial consequences of the proposed revocation or alteration.”*

While there is no doubt that a Council has a general power to revoke a decision, there is a long line of judicial authority to the effect that where a Council is exercising a quasi-judicial power (such as determining an application for planning approval), a decision made on the application cannot be revoked, at least not after the decision has been acted upon by

*“...we do not think that it is open to a Council to resolve to revoke or amend a planning approval which has been communicated to an applicant...”*



communicating it to the applicant. This is an application of the *functus officio* principle where a person, or in this case a Council, is precluded from considering a matter for a second time even where new arguments or evidence are presented.

There is no express provision in the Local Government Act 1995 or the Local Government (Administration) Regulations 1996, which empowers a Council to revoke a resolution concerning some form of approval or authorisation in circumstances where the decision has been communicated in writing to the applicant. In our view, Standing Orders which are drafted on the assumption that there is such a power are likely to be invalid. Generally speaking, we would recommend against a Council purporting to revoke a decision made in those circumstances.

In particular, we do not think that it is open to a Council to resolve to revoke or amend a planning approval which has been communicated to an applicant, in the absence of a clear power to do so in the local government's planning scheme. That much was made clear in the decision of the Full Court of the Supreme Court of Western Australia in the case of *Aznavour Pty Ltd v. City of Mandurah* [2002] WASCA 320.

Please contact Craig Slarke or Neil Douglas if you have any queries regarding the issues raised in this article.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case