# When is a council determination notified to an applicant?

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With the impact of covid, many local governments are moving to an online streaming environment with councillors attending meetings remotely and ratepayers observing with a click of a button. In an online environment the question arises as to whether council determinations have been sufficiently communicated by being broadcast and whether such determinations may be subsequently rescinded. The recent case of *Richardson and the City of Swan* [2022] WASAT 17 (***Richardson***) considered the degree of flexibility or formality required, with respect to notification of council determinations.

In relation to development applications, clause 70 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (Deemed Provisions) establishes a proscriptive two-step regime where a determination is to be made and the applicant given notice of it. In ***Richardson***, the State Administrative Tribunal (**Tribunal**) determined both steps were required to be completed and until notice of the determination was given, council's determination was not beyond recall and would remain vulnerable to being rescinded. This remained the case even where a council had been invited to reconsider its decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* (SAT Act).

In holding that a council's ability to revoke a determination was dependent on whether notice of the determination had been given, the Tribunal considered *Ex parte Renouf (1924) 24 (SR) NSW 463* and agreed that it was necessary for the communication coming from council to have some formal character, as being authenticated by the council.

The Tribunal's reasoning that informal communication was insufficient was supported by *Shanahan v Strathfield Municipal Council* [1973] 2 NSWLR 740; (1973) 28 LGRA 218, where it was held that information obtained from live streaming, text messaging and telephone conversations, (in the absence of evidence of the content of the communication and confirmation that the sender was authorised to make the communication) was insufficient to constitute notice. Observing a live stream of a meeting may be sufficient to determine that a council had made a determination but fell short of constituting the giving of notice of it.

The Tribunal noted, although there was a degree of flexibility concerning the manner in which notice may be given, a 'meeting of the minds' was required notwithstanding any informality in the manner of delivery. Clause 70(2) of the Deemed Provisions simply required notice to be 'given,' which the Tribunal took to mean that sufficient notification may occur where the communication is made by someone authorised by the council to do so and the decision made is unequivocally communicated.

In ***Richardson***, the council had been invited by the Tribunal to reconsider its decision, which it did in terms favourable to the applicant. However, the applicant was simultaneously notified of the determination and a subsequent motion to rescind. Although there was some suggestion that the applicants may have become aware of the determination through the local newspapers, the Tribunal concluded that the simultaneous notification of the determination and motion to rescind was not unequivocal, as the status of the determination remained in doubt. The Tribunal made orders extending the period available to the council to reconsider its determination.

The decision is a surprising one given the context in which the communication occurred. It

undoubtedly had a degree formality. The notification was made in the context of review proceedings by a person authorised by the council and directed to the applicant's lawyer who, one might think, would have been well placed to satisfy the required 'meeting of the minds' and advise the applicant with respect to the nature of the reconsidered decision and about the future conduct of the review proceedings.

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