

PRACTICE DIRECTION 10: Statements of Facts and Contentions

10.1 OVERVIEW: The Tribunal will determine in individual cases whether Statements of Facts and Contentions will be required. These are intended to assist the Tribunal and parties in identifying those matters which are agreed, those matters which are disputed and the basis and nature of each disputed item. The Tribunal will normally require these statements in more complex hearings.

10.2 DIRECTION TO PREPARE STATEMENT AND CONTENT: The Tribunal may direct any or all parties to prepare a Statement of Facts and Contentions in accordance with paragraph 10.3 or any part of it. A party seeking to raise an issue of fact or law that precludes the approval of an application is to identify it in the Statement of Facts and Contentions where that Statement has been directed to be prepared.

10.3 ANNEXURE A: STATEMENT OF FACTS AND CONTENTIONS REQUIREMENTS

Requirements of Statement of Facts and Contentions by Planning Authority

10.3.1 The statement is to be as brief as reasonably possible.

10.3.2 The statement is to be divided into two parts – Part A Facts and Part B Contentions.

10.3.3 An authorised officer of the planning authority is to sign and date the statement.

10.3.4 In Part A - Facts, the planning authority is to identify:

- (a) **The proposal:** a brief description of the proposed development or modification of a development including any building, subdivision and/or land use and, where relevant, matters such as density, floor space ratio, setbacks and heights.
- (b) **The site:** a description of the site including its dimensions, topography, vegetation and existing buildings.
- (c) **The locality:** a description of the locality including the type and scale of existing surrounding development.
- (d) **The statutory controls:** details of the applicable planning instruments and the relevant provisions, including the applicable zone.
- (e) **Actions of the respondent consent authority (Council or planning authority):** date of application, application number, details of any advertising process and its results, details of any consultation and results, the decision of the respondent and the reasons for refusal.

Part A Facts is not to include matters of opinion.

10.3.5 In Part B – Contentions, the planning authority is to identify each fact, matter and circumstance it contends requires or should cause the Tribunal, in exercising its powers under Section 23 (1) of the Act to either refuse the application or to grant a permit subject to certain conditions.

10.3.6 In Part B - Contentions, the planning authority is to:

- (a) focus on issues genuinely in dispute;
- (b) have a reasonable basis for its contentions;
- (c) present its contentions clearly, succinctly and without repetition;
- (d) where it contends that the application must be refused, identify the factual and/or legal basis for that contention; any such contention is to be listed at the beginning of Part B - Contentions and is to be clearly identified as a contention that the application must be refused;
- (e) where the planning authority contends there is insufficient information to assess the application, list the information it contends is required;
- (f) where it contends that a proposal does not comply with provisions, of the applicable planning scheme or body of legislation, identify the standard or provision that is breached and quantify the extent of the non-compliance (if necessary, in a diagrammatic form), grouping together provisions or sections dealing with the same aspect (for example, height or density);
- (g) identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
- (h) identify any contentions that may be resolved by conditions of consent.

Requirements for Statement of Facts and Contentions by Applicant for Permit

10.3.7 The statement is to be as brief as reasonably possible.

10.3.8 The statement is to be divided into two parts – Part A - Facts and Part B - Contentions.

10.3.9 The Applicant for the Permit or its authorised officer or agent is to sign and date the statement.

10.3.10 In Part A - Facts, the applicant for a permit is to identify:

- (a) the relevant Application for Use or Development, its number and the date of determination;
- (b) if an Applicant for a Permit, the decision or conditions appealed against.

Part A - Facts is not to include matters of opinion.

10.3.11 In Part B - Contentions an Applicant for a Permit is to identify each fact, matter and circumstance that is contended require or should cause the Tribunal, in exercising its powers under Section 23 (1) of the Act, to grant a permit, or not to impose or to amend certain conditions

10.3.12 An Applicant for a Permit is to:

- (a) focus its contentions on issues genuinely in dispute;
- (b) have a reasonable basis for the contentions; and
- (c) present its contentions clearly and succinctly.

10.3.13 An applicant for a permit is to identify:

- (a) each condition that the applicant contends should be deleted; and
- (b) each condition that the applicant contends should be amended and, for each such condition, the amendment sought and the reason for seeking the amendment.