JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
ACT	**:**	PLANNING AND DEVELOPMENT ACT 2005 (WA)
CITATION	**:**	SATTERLEY PROPERTY GROUP PTY LTD and WESTERN AUSTRALIAN PLANNING COMMISSION [2025] WASAT 17
MEMBER	**:**	JUDGE H JACKSON, DEPUTY PRESIDENT
HEARD	**:**	4 FEBRUARY 2025
DELIVERED	**:**	21 FEBRUARY 2025
FILE NO/S	**:**	DR 189 of 2020
BETWEEN	**:**	SATTERLEY PROPERTY GROUP PTY LTD Applicant AND WESTERN AUSTRALIAN PLANNING COMMISSION Respondent SHIRE OF MUNDARING Interested Party SAVE PERTH HILLS (INC) Interested Party

Catchwords:

Planning and Development - Review of a refusal of a structure plan - Third party application to intervene in a proceeding - Application to intervene by a community group - Application to make submissions by a local government -

Construction of s 242 *Planning and Development Act 2005* (WA) and s 37 of *State Administrative Tribunal Act 2004* (WA) - Factors relevant to an application for leave to intervene and for leave to make submissions - 'Sufficient interest' in a matter - Relationship between the applicant and subject matter - Necessity of the intervention - Exceptional circumstances warranting leave to intervene - Exercise of discretion - Conditions where leave to intervene is granted

Legislation:

Bush Fires Act 1954 (WA)
Planning and Development (Local Planning Schemes) Regulations 2015 (WA)
Planning and Development Act 2005 (WA)
State Administrative Tribunal Act 2004 (WA)

Result:

Save Perth Hills Inc to have leave to intervene subjection to conditions
The Shire of Mundaring to have leave to make written opening submissions

Category: B

Representation:

Counsel:

Applicant	:	Mr P McQueen
Respondent	:	Mr I Repper
Interested Party	:	Mr C Slarke
Interested Party	:	Ms M Logie

Solicitors:

Applicant	:	Lavan
Respondent	:	State Solicitor's Office
Interested Party	:	McLeods
Interested Party	:	Logie Legal

Case(s) referred to in decision(s):

Argyle v State Administrative Tribunal [2022] WASC 317

Coast Ward Ratepayers Association (Inc) v Town of Cambridge [2016] WASC 239

DCSC Pty Ltd and Presiding Member of the Regional Joint Development Assessment Panel [2022] WASAT 68

Gnarabup Beach Pty Ltd v Shire of Augusta-Margaret River [2004] WASCA 8; (2004) 137 LGERA 129

ING Development Australia Pty Ltd v WAPC [2008] WASAT 104; (2008) 59 SR (WA) 184

Pitt v Environment, Resources and Development Court (1995) 66 SASR 274

Purser and City of Nedlands [2022] WASAT 51

Re State Administrative Tribunal; Ex Parte McCourt (2007) 34 WAR 342

Rpoint Land Pty Ltd and Western Australian Planning Commission [2020] WASAT 92

Shire of Augusta-Margaret River v Gray [2005] WASCA 227; (2005) 143 LGERA 55

South East Forest Rescue Inc v Forestry Corporation of New South Wales (No 2) [2024] NSWCA 113

Steve's Nedlands Park Nominees Pty Ltd and City of Nedlands [2006] WASAT 54

VicForests v Kinglake Friends of the Forest Inc [2021] VSCA 195; (2021) 248 LGERA 28

WA Plantation Resources and City of Bunbury [2005] WASAT 194

Water Conservation and Irrigation Commission (NSW) v Browning (1947) 74 CLR 492

Wattleup Road Development Company Pty Ltd and Western Australian Planning Commission [2014] WASAT 29

Yum Restaurants International and City of Rockingham [2008] WASAT 136

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 These reasons concern applications by two third parties to the primary proceedings.

2 The primary proceedings concern an application by the applicant (**Satterley**) for the review of a decision by the respondent (**WAPC**) to refuse to approve Amendment No. 1 to the *North Stoneville Structure Plan No. 34.*

3 The *North Stoneville Structure Plan No. 34* was approved in 1998 and will cease to have effect on 18 October 2025.

4 While described as an amendment, Amendment No. 1 is, in reality, a new structure plan and in these reasons Amendment No. 1 is described as *the* **Structure Plan**.

5 Satterley is the proponent of the Structure Plan. WAPC has refused to approve the Structure Plan for reasons which include concerns regarding traffic, bushfire risk and environmental matters.

6 The two third parties which seek involvement in the primary proceedings are:

(a) the Shire of Mundaring (**Shire**), which seeks leave to make submissions under s 242 of the *Planning and Development Act 2005* (WA) (**P&D Act**); and

(b) Save Perth Hills Inc (**SPH**), which seeks leave to intervene under s 37(3) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**) and, in the alternative, to make submissions under s 242 of the P&D Act.

7 For the reasons which follow, I will grant leave to the Shire to make submissions and grant leave to SPH to intervene, subject to certain conditions.

History of the Proceedings

8 There is some considerable history to these proceedings.

9 The initial decision by the WAPC to refuse approval of the Structure Plan was made on 14 July 2020 after which Satterley applied for review of that decision.

10 On 4 November 2022, the Tribunal invited the WAPC to reconsider its decision, ahead of which Satterley provided a revised version of the Structure Plan.

11 On 7 December 2023, the WAPC affirmed its decision to refuse to approve the Structure Plan, that decision being a refusal to approve the second/revised version of the Structure Plan.

12 A third version of the Structure Plan was filed on 14 June 2024. It is that version of the Structure Plan which is the subject of review in the primary proceedings.

13 Since the commencement of these proceedings, the parties have participated in numerous mediation sessions but have been unable to resolve the matter by consent. As a result, the primary proceedings have been listed for a hearing that will occupy 21 days spread across September 2025.

Application for Intervention by SPH

14 As noted above, SPH seeks leave to intervene pursuant to s 37(3) of the SAT Act. That section relevantly provides as follows:

> …
>
> (3) The Tribunal may give leave at any time for a person to intervene in a proceeding on conditions, if any, that the Tribunal thinks fit.

The Relevant Test for Intervention

15 It is readily apparent that s 37(3) of the SAT Act is silent as to both: (1) the relevant criteria to be applied in assessing an application for leave to intervene in a proceeding; and (2) when (and what) conditions should be applied if leave to intervene is granted.

16 Where a statute does not place any explicit limits on the exercise of a discretion granted by that statute, certain limits are to be implied. Specifically, the discretion must not be exercised in an arbitrary manner and the matters to which regard may be had in exercising the discretion are controlled only by the subject matter, scope and purpose of the statutory provisions.[1]

[1] See, for example, ***Water Conservation and Irrigation Commission (NSW) v Browning*** (1947) 74 CLR 492, 505 (Dixon J).

17 Despite the very narrow compass of those implied limits, previous decisions of this Tribunal have imposed more onerous criteria of which the Tribunal should ordinarily be satisfied before it grants leave to intervene.

18 The seminal Tribunal decision in this regard is that of ***ING*** where Judge Chaney, after reviewing various 'authorities and statutory provisions', reached the conclusion that:[2]

> in relation to applications [for intervention] under the PD Act:
>
> (i) to be granted leave to intervene, a person must demonstrate at least an interest sufficient to meet the test for standing identified in *Australian Conservation Foundation*;
>
> (ii) merely demonstrating a sufficient interest does not by itself enliven a right to intervene;
>
> (iii) an incorporated or unincorporated body will not gain standing to intervene just because it has constitutional objects directed to promoting outcomes relevant to the matter under a review. Similarly private citizens will not gain standing to intervene merely because they have strong beliefs or emotions concerning the matter under review;
>
> (iv) although the third party's interest may not necessarily be a legal interest (although it commonly will involve a legal interest), merely demonstrating any of the other matters referred to in s 38 of the SAT Act will not usually be sufficient to secure leave to intervene under s 37;
>
> (v) the third party will generally need to demonstrate that its intervention is necessary to enable the Tribunal to meet the objectives of the SAT Act (including minimising cost and avoiding delay …), and the PD Act. Factors which the Tribunal will take into account when considering an application for leave to intervene will include:
>
> - the contribution which the applicant for joinder is likely to be able to make to the proper disposition of the issues before the Tribunal;
>
> - whether the interest which the applicant for intervention represents and the material to be advanced by that person will be adequately dealt with by the parties already before the Tribunal, [sic]

[2] ***ING Development Australia Pty Ltd v WAPC*** [2008] WASAT 104; (2008) 59 SR (WA) 184 (***ING***) [28]. Citations omitted.

- the impact on the proceeding of the intervention;
- the interests of the parties before the Tribunal as of right and the public interest in the prompt and efficient dispatch of proceedings [sic]
- any other matter that, in the particular circumstances of the case, justifies leave to intervene;

(vi) an intervenor, unlike a party, will ordinarily be allowed only to support or oppose a decision contended for by one or other of the parties to the proceedings and will not be permitted to expand the issues to be decided …; and

(vii) intervention will generally not be permitted where the third party simply seeks to argue on the very same basis as an existing party to the proceedings …; [sic]

19 Judge Parry in ***Wattleup***, having recited the above principles, identified the following as the two principal elements in the exercise of discretion under the sub-section:[3]

1) The proposed intervenor must demonstrate at least an interest sufficient to meet the test of standing to seek judicial review, as stated in the decision of the High Court of Australia in ***Australian Conservation Foundation Inc v Commonwealth of Australia*** (1980) 146 CLR 493 (***ACF***) and

2) The proposed intervenor will generally need to demonstrate that its intervention is necessary to enable the Tribunal to meet the objectives of the SAT Act and of the relevant enabling Act - in this case, the PD Act.

20 In applying the test for standing as stated by the High Court in ***ACF*** to the question whether a third party should be allowed to intervene under s 37(3) of the SAT Act, Judge Chaney in ***ING***[4] relied upon the Court of Appeal's decision in ***Gray***.[5]

21 ***Gray*** concerned an application for joinder under s 62 of the previous *Town Planning and Development Act 1928* (WA). Pullin JA (with whom Le Miere J agreed) adopted various passages from the

[3] ***Wattleup Road Development Company Pty Ltd and Western Australian Planning Commission*** [2014] WASAT 29 (***Wattleup***) [11].
[4] ***ING*** [26].
[5] ***Shire of Augusta-Margaret River v Gray*** [2005] WASCA 227; (2005) 143 LGERA 55 (***Gray***) [131].

reasons of Doyle CJ in ***Pitt***,[6] which concerned a very similar provision. Doyle CJ said:

> … It appears to me that his Honour [i.e. the judge at first instance] envisaged joinder only in exceptional cases. For the reasons which I have indicated that is not the correct approach. As I have already explained, it would be equally wrong to make an order for joinder simply on the basis of an interest which would give standing for judicial review or an interest which would pass the test for standing approved by the High Court in *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493.

22 It was on that basis that Chaney J held in ***ING*** that the test for intervention should be 'at least' as onerous as that for joinder.[7]

23 Pullin JA in ***Gray*** also turned his attention to the test in s 242 of the P&D Act. I will address this test in more detail below, but it is necessary at this stage to say that that section expressly provides that an applicant for leave to make submissions must demonstrate a 'sufficient interest in the matter'. Pullin JA said:[8]

> In my opinion, the expression "sufficient interest" in s 62 means that the Tribunal must be satisfied that the applicant had an interest which would give standing for judicial review and which would pass the test for standing approved by the High Court in ***Australian Conservation Foundation Inc v Commonwealth*** (*supra*). That must be shown before the Tribunal's discretion is enlivened under s 62.

24 At the hearing before me, some considerable time was spent on this latter passage of Pullin JA in ***Gray*** in the context of SPH's application for intervention. Mr McQueen submitted that the passage provided for two limbs, both of which must be satisfied: the applicant for intervention must demonstrate that it has a sufficient interest to warrant standing in judicial review proceedings *and* that it satisfies the test for standing in ***ACF***.

25 I disagree. As is apparent from the above passages from ***ING*** and ***Wattleup***, Judges Chaney and Parry both read the passage by Pullin JA in ***Gray*** as providing a single test.

26 In ***Wattleup***, Judge Parry expressed it neatly by describing the test as requiring the applicant to 'demonstrate an interest sufficient to meet the test of standing to seek judicial review, as stated in the decision of

---

[6] ***Pitt v Environment, Resources and Development Court*** (1995) 66 SASR 274, 276.
[7] ***ING*** [27] and [28(i)].
[8] ***Gray*** [139].

the High Court of Australia in ***Australian Conservation Foundation v Commonwealth of Australia***…'.[9]

27 In my view their Honours were correct to do so. Pullin JA did not intend to create a two limbed test. Rather, His Honour intended to say that the test of 'special interest' in ***ACF*** is the test to be applied when determining whether the interest of the applicant would be sufficient to satisfy the test for standing for judicial review. His words 'and which would' provide an explanation of what he means by the phrase 'sufficient interest to warrant standing in judicial review proceedings' rather than providing an additional criteria that must be met. Given that the rules of standing for judicial review can depend on a variety of circumstances,[10] the reference to the test in ***ACF*** is more likely to qualify rather than to provide an additional criteria.

28 Mr McQueen also submitted that the test for 'sufficient interest' under s 37 of the SAT Act for intervention should be 'stricter' than that applied under s 242 of the P&D Act, given that a submitter under s 242 has rights that are confined more narrowly than those of an intervenor.[11]

29 I agree with that submission, which is consistent with Judge Chaney's decision in ***ING***, where he held that: [12]

> the interest which must be shown to support an application for intervention must be at least equivalent to an interest which would amount to a sufficient interest for the purposes of s 242.

30 On behalf of Satterley, Mr McQueen forcefully submitted that SPH lacked a 'sufficient interest' to justify intervention.

31 In particular he focused on the difference between the association (SPH) and its members, noting that the Tribunal had only granted leave to intervene to one 'non-individual', being Alcoa in ***Wattleup***.

32 He submitted that an association of residents must demonstrate that it has a sufficient interest that is separate and distinct from that of the collective interests of its individual members.[13]

---

[9] ***Wattleup*** [11(1)].
[10] See the below discussion of Pritchard J in ***Coast Ward Ratepayers*** at para [34]*ff*.
[11] By s 3 of the SAT Act, an 'intervenor' is a 'party' and, therefore, has the right to call evidence and cross-examine opposing witnesses.
[12] ***ING*** [26].
[13] Applicant's Submissions To Oppose Application From Save Perth Hills For Leave To Intervene Pursuant To Section 37(3) Of The State Administrative Tribunal Act, 31 January 2025, (**Applicant's Submissions**) paras 26 - 27.

33 He further submitted to the effect thatthe fact that an association's constitution establishes that its concerns are closely concerned with the subject-matter of the dispute in question does not mean that its interest will be 'sufficient', as those interests do not rise above 'strongly held views'.[14]

34 Those submissions were expressly based on well-known passages in ***ACF***, which were quoted and relied upon by Judge Chaney in ***ING***.[15]

35 As set out above, in ***ING***, Judge Chaney said that:[16]

> an incorporated or unincorporated body will not gain standing to intervene merely because it has constitutional objects directed to promoting outcomes relevant to the matter under review. Similarly private citizens will not gain standing to intervene merely because they hold strong beliefs or emotions concerning the matter under review.

36 But the fact that an association's constitutional objects focus on the issues relevant to the matter does not *preclude* a finding that the association lacks a sufficient interest, it is merely the case that such objects are an insufficient basis *of themselves* to ground a finding of sufficient interest.

37 Pritchard J (as her Honour then was) undertook a comprehensive review of the law of standing in judicial review proceedings in ***Coast Ward Ratepayers***.[17] Her Honour noted that the law of standing as to judicial review differs depending on the nature of the relief sought. Her Honour described as the 'prevailing' view, taken from recent (to that point in time) High Court cases, that a stranger to a decision (i.e. someone with *no* 'special interest') will be entitled to bring (i.e. has standing in) an action for *certiorari*.[18]

38 Her Honour then went on to consider whether the applicant association had standing to seek declaratory relief. She said:[19]

> 78 Given the absence of a standing requirement in relation to an application for certiorari, it is somewhat incongruous that in the public law arena, an applicant for a declaration must establish

[14] Applicant's Submissions, paras 16 - 17.
[15] ***ING*** [22] - [25].
[16] ***ING*** [28(iii)].
[17] ***Coast Ward Ratepayers Association (Inc) v Town of Cambridge*** [2016] WASC 239 (***Coast Ward Ratepayers***).
[18] **Coast Ward Ratepayers**, [73] - [77].
[19] **Coast Ward Ratepayers**, [78] - [88] (citations omitted).

> standing to apply for that relief. But that remains the law at present.
>
> 79 The law in relation to standing is capable of reduction to general principles, but many and vexing questions arise in its application. Important policy considerations underlie competing views about the liberality with which standing requirements should be applied in the public law context. As Murray J observed in ***Bridgetown-Greenbushes Friends of the Forest*** the rules of standing in the public law context seek to strike a:
>
> > balance so as not to unduly fetter the capacity of interested citizens to bring public law issues before the courts, whilst at the same time, again in the interests of the community as a whole, preventing a multiplicity of actions for which no particular justification can be seen.
>
> 80 Where that balance should be struck is a matter over which reasonable minds may differ, and many judges have expressed the view that legislative reform is necessary and desirable in this area.
>
> 81 For present purposes, it suffices to say that in so far as the Association seeks declaratory relief, a party seeking equitable relief to prevent or correct the violation of a public right, or to compel the performance of a public duty, must have standing to do so. Absent a statutory right of action, a plaintiff will have no standing to bring an action for such relief if he or she has no interest in the subject matter of the action beyond that of any other member of the public. <u>If no private right of the plaintiff is interfered with, the plaintiff must have a 'special interest' in the subject matter of the action.</u> It is not necessary that that interest be unique to the plaintiff.

39 I interpose here to say that the underlined sentence concludes with a footnote which references the ***ACF*** decision as the source of the authority for the 'special interest' test for standing, which (as I have noted above) has been adopted in this Tribunal as the basis for demonstrating a 'sufficient interest' under s 242 of the P&D Act and s 37(3) of the SAT Act.

40 Her Honour went on:

> 82 The requirement for a 'special interest' is a flexible one. It is a matter of fact and degree, and will depend on the nature and subject matter of the litigation, including the legislation relevant to the decision. It will involve an assessment of the importance of the concern held by the plaintiff with regard to a particular subject matter and the closeness of the plaintiff's relationship to

that subject matter. Consequently, what is a sufficient interest in one case may be less than sufficient in another.

83 Associations representing people with shared interests may be able to demonstrate a special interest sufficient to give rise to standing in some cases. In ***Ex parte Helena Valley/Boya Association (Inc)***, an incorporated association comprised of ratepayers and electors within particular localities, who were concerned to protect the environmental condition of the land in the vicinity of their properties, was found to have a special interest sufficient to give it standing to challenge to a planning decision affecting the development of that land. Ipp J (with whom Pidgeon J agreed) took into account the representative character of the association, its history, the purpose for which it was formed, and the special interests of its members. Similar factors were also taken into account in ***Re MacTiernan; Ex parte Coogee Coastal Action Coalition Inc***.

84 Similarly, in ***Onus v Alcoa of Australia*** the interest of a particular Aboriginal community in the preservation of relics of cultural and spiritual significance to the members of that community was held to constitute a 'special interest' sufficient to give rise to standing to bring an action for injunctive relief to preserve the relics.

85 However, a 'special interest' does not mean a mere intellectual or emotional concern about a particular issue. Nor will a belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, be sufficient to give rise to a 'special interest' for this purpose.

86 Some other factors will not, on their own, be sufficient to give rise to standing: the fact that a plaintiff is an incorporated body with particular objects, the fact that an association has voluntarily provided comments or concerns on a particular proposal, or the fact that some members of an incorporated body or unincorporated association have a special interest does not mean that the association itself will necessarily have a special interest. However, those factors may still be relevant to an overall assessment of whether a plaintiff has standing. After all, a special interest is no less sufficient if it is accompanied by an emotional or intellectual concern, for example.

87 The fact that an organisation has been provided with government funding, and accorded recognition to speak in respect of particular issues, may be a factor that signals that the association has a special interest, beyond a mere emotional or intellectual concern, in that issue although others have understandably cautioned against linking standing to the provision of government funding.

> 88 In so far as its application for declaratory relief is concerned, having regard to the evidence, I am satisfied that the Association has a reasonable prospect of establishing that it has a 'special interest' over and above that of the community generally.

41 Her Honour's finding that the association in the ***Coast Ward Ratepayers*** case had a 'special interest' was based on six factors which included that:[20]

(a) the association had a 'lengthy history of involvement' in major issues affecting the residents and ratepayers;

(b) the Town of Cambridge (the respondent to the application for judicial review) 'appears to recognise' the association as a body representing the residents and ratepayers by referring to it in its website as a 'Community Group' and, over many years, in its Annual Report;

(c) there was evidence to the effect that the association limited its activities to 'major issues', which included the matter at hand, which her Honour said supported the view that it was not a 'busybody';

(d) there was evidence that the subject matter of the litigation was of real concern to the association's members; and

(e) the association had raised funds to address the issue at hand and had engaged a variety of consultants, which demonstrated that it was 'seriously pursuing the issue'.

42 Her Honour's analysis of the law of standing appears, with respect, to be entirely consistent with that carried out more recently by the Victorian Court of Appeal in ***Kinglake***.[21]

43 In that case, the Court described the submissions of VicForests as, in effect, that the Court was bound by ***ACF***, which could not be distinguished, and that the association in question had sought to achieve standing by arguments which were not materially different to those relied upon by ACF, which the High Court had dismissed.

---

[20] ***Coast Ward Ratepayers***, [95] - [99].

[21] ***VicForests v Kinglake Friends of the Forest Inc*** [2021] VSCA 195; (2021) 248 LGERA 28 (***Kinglake***) [20] - [64]. That analysis was, in turn, heavily relied upon by Griffith JA, with whom Adamson JA agreed in ***South East Forest Rescue Inc v Forestry Corporation of New South Wales (No 2)*** [2024] NSWCA 113. [121].

44 Accordingly, the Victorian Court of Appeal in ***Kinglake*** carried out a comprehensive review of the ***ACF*** decision, after which it said:[22]

> 61 An important aspect of the reasoning in ***ACF*** is that the application of the special interest test is fact and context specific. Gibbs J made that point expressly by his reference to Mason J's judgment in ***Robinson*** and by his statement that he would not deny that a person might have a special interest in the preservation of a particular environment. Ultimately, ***ACF*** was decided on the basis that the two interests ACF relied on, when considered in the light of the specific statutory scheme, were insufficient to give it standing.
>
> 62 The importance of the specific context can be seen from the decision of Davies J in ***ACF v Minister for Resources***. In that case, ACF sought, under the *ADJR Act*, to challenge a decision by a Commonwealth Minister to grant an export licence for the export of 850,000 tonnes of woodchips per annum. The woodchips were sourced from logging of two State forests that formed part of the National Estate under s 31 of the *Australian Heritage Commission Act 1975* (Cth). Davies J held that ACF was a "person aggrieved" under the ADJR Act. Central to that conclusion was that the issue was not a local issue, and the State forests were part of the National Estate which gave them national significance. Davies J concluded:
>
> > While the Australian Conservation Foundation does not have standing to challenge any decision which might affect the environment, the evidence thus establishes that the Australian Conservation Foundation has a special interest in relation to the South East Forests and certainly in those areas of the South East Forests that are National Estate. The Australian Conservation Foundation is not just a busybody in this area. It was established and functions with governmental financial support to concern itself with such an issue. It is pre-eminently the body concerned with that issue. If the Australian Conservation Foundation does not have a special interest in the South East forests, there is no reason for its existence.
>
> 63 As already noted, ***ACF v Minister for Resources*** was decided under the *ADJR Act*. However, in ***North Coast*** Sackville J observed that there is nothing in the reasoning of Davies J in ***ACF v Minister for Resources***, so far as the standing of the ACF is concerned, that is inconsistent with the decision of the High Court in ***ACF***. With respect, we agree. Once it is acknowledged that the issues are heavily fact and context specific, and given the very obvious differences between the local issues in ***ACF*** and the

[22] ***Kinglake*** [61] - [63]. Citations omitted.

> national issues in ***ACF v Minister for Resources***, the two decisions sit comfortably together.

45 For these reasons, I do not accept the suggestion that the passage in ***ING*** quoted above at [35], or the passages in ***ACF*** from which it is drawn, represents an insurmountable obstacle to community groups wishing to intervene under s 37 of the SAT Act.

46 I also reiterate that the test for intervention is not 'exceptional circumstances'. While Mr McQueen did not suggest that that was the appropriate test, he did describe the outcome in ***Wattleup*** in those terms.

47 I have no reason to doubt that he is correct to say that that decision is the only time a non-individual has been granted leave by this Tribunal to intervene under s 37 of the SAT Act. If so, the decision might therefore be reasonably described as exceptional. But as Pullin JA held in ***Gray*** (above at [21]), that is not the test and there is nothing in either the statutory regime or the authorities to suggest that a grant of leave to non-individuals should in any way be an exceptional result.

48 Rather, as the above authorities emphasise, each case must be considered on its facts and circumstances to understand 'the nature and extent of the relationship between [the applicant for intervention] and the subject matter of the litigation'.[23]

49 Plainly, the facts and circumstances relevant to an application under s 37 of the SAT Act to intervene in a merits review of a decision made under the P&D Act include the applicable statutory regime, including:

(a) section 38 of the SAT Act, which provides a broad power to join a person as a party but which is specifically excluded by s 243 of the P&D Act 'for a review in accordance with' Pt 14 of that Act; and[24]

(b) the absence of any operative[25] provisions by which third parties have the right to appeal against decisions which affect their interests.[26]

---

[23] ***Kinglake*** [21].

[24] Section 236(2) provides that Part 14 of the P&D Act applies 'if a written law or a planning scheme … gives the … Tribunal jurisdiction to carry out a review in accordance with this Part. The right to seek review is granted by cl 76 of the deemed provisions which, by s 257B(2) of the P&D Act form part of the relevant scheme.

[25] It may be that some schemes provide for third party appeal rights, but they would be inconsistent with the relevant aspects of the deemed provisions and therefore ineffectual.

[26] ***Purser and City of Nedlands*** [2022] WASAT 51 (***Purser***) [43].

50 Traditionally the absence of third-party rights has been seen as working against a broad right of intervention.

51 In ***ING***, Chaney J noted that:[27]

> Unlike in some other jurisdictions in Australia, no third party rights of review exist under the PD Act. Section 243 of the PD Act, and its predecessor, s 63 of the TPD Act, suggest a clear legislative intent to limit the rights of third parties in the planning process.

52 SM Willey put it as follows in ***Purser***:[28]

> … there are no third-party planning appeals in Western Australia and joinder to a planning review is expressly excluded by s 243 of the PD Act. It is not for me, as the Tribunal, to manufacture, in effect, a broad third-party appeal right under the device of intervention. While the discretion may be broad, s 37(3) of the SAT Act must also be read and applied in the context of SAT Act as a whole, together with consideration of the enabling Act (the PD Act).

53 Ms Logie, who appeared for SPH, sought to draw a distinction between the right of a third party to apply for review of a decision (which does not exist in this State) and an application for leave to intervene in merits review proceedings already commenced, which is what SPH seeks here.

54 There is some force to the submission. While, as Chaney J noted in ***ING*** (above at [51]), s 243 of the P&D Act suggests an intent to limit third party participation, in my view one must be careful not to overplay the significance of that provision and the lack of third party rights to apply for review. The reality is that s 37(3) empowers the Tribunal to give leave to intervene without any explicit or express limits on its exercise. While s 243 of the P&D Act is relevant, it must not unduly narrow the scope of the power in s 37(3) of the SAT Act.

55 Mr McQueen submitted, correctly in my view, that the circumstances relevant to the application for intervention also include the nature of the proceedings.

56 More specifically he drew a distinction, which I accept, between circumstances where community groups seek standing in judicial review proceedings which challenge the lawfulness of the exercise of executive

[27] ***ING*** [21].
[28] ***Purser*** [43].

power and circumstances such as the present, which concerns the exercise of the Tribunal's review jurisdiction.

57 There are various aspects to that distinction. Most obviously, in the former there may not be any challenge at all to the decision unless standing is granted, with the risk that an unlawful decision goes uncorrected. In contrast, in its review jurisdiction, the Tribunal is concerned with ensuring the correct (lawful) and preferable decision.

58 However, I disagree with Mr McQueen's characterisation of the Tribunal's review jurisdiction as being concerned with the resolution of a 'private' dispute between his client and the WAPC.

59 Unlike an application for approval to subdivide or develop, a structure plan does not determine, in any final sense, the development rights that ultimately attach to land. It is a planning instrument that is strategic in outlook.[29] In ***WA Plantation Resources***, SM Parry (as his Honour then was) stated that: [30]

> The consideration and adoption of a structure plan involves a process of strategic planning which is conceptually and temporally distinct from the process of development assessment.

60 Further, while not the case here, a structure plan may well involve multiple landowners.[31]

61 In addition, the process for the development and approval of a structure plan is a very public one. It is established by the deemed provisions and includes: public advertising; the receipt and consideration of public submissions; the review and recommendation by the local government; and the decision of the WAPC.[32]

62 As well, of course, the implementation of the structure plan may have considerable impacts on the public at large. Certainly, it could not be suggested that that is not the case here.

63 In my view those matters strongly militate against a conclusion that a dispute between the WAPC and a proponent is 'private'.

---

[29] ***Gnarabup Beach Pty Ltd v Shire of Augusta-Margaret River [***2004] WASCA 8; (2004) 137 LGERA 129 at [15]; ***Rpoint Land Pty Ltd and Western Australian Planning Commission*** [2020] WASAT 92 [60] (***Rpoint***).
[30] ***WA Plantation Resources and City of Bunbury*** [2005] WASAT 194 [50].
[31] ***Rpoint,*** [78] - [79].
[32] *Planning and Development (Local Planning Schemes) Regulations 2015* (WA), Pt 4 of Sch 2.

64 I see nothing in the subject nature of the review (i.e. the Structure Plan) that should weigh against the grant of leave to SPH. Indeed, in my view, the contrary view has some force. That is, the strategic focus of a structure plan may well, at least in some contexts, encourage a broader view to be taken of the question whether a third party should participate, than may be the case in the context of subdivision or development assessments.

65 Having identified the legal test and the principles for its application, I turn to the facts relied upon by SPH in support of its application.

The Issues as Identified by the Parties in Which SPH Seeks to Intervene

66 In its statement of issues, facts and contentions (**SIFC**), the WAPC identifies the following as the relevant issues to be determined by the Tribunal:[33]

> 13. [**Issue A1**]: Whether the [Traffic Impacts Assessment report] is reliable and accurately assesses the effects of development pursuant to the Structure Plan on the road network;
>
> 14. [**Issue A2**]: Whether development pursuant to the Structure Plan will necessitate upgrades to the local or regional road networks, in addition to those identified in the Structure Plan;
>
> 15. [**Issue B1**]: Whether, in the event of a bushfire, people within the Structure plan area will be able to safely evacuate to a suitable destination;
>
> 16. Issue B1 involves consideration of the following sub-issues:
>
> (a) **Sub-issue B1(a):** Whether the bushfire simulations detailed in the Bushfire Simulation Report, and the bushfire simulations utilised in the Microsimulation Modelling, are reliable and accurate and represent reasonable worst-case scenarios for a bushfire evacuation.
>
> (b) **Sub-issue B1(b):** Whether the methodology utilised in the Microsimulation Modelling is appropriate for determining whether people will be able to evacuate safely.
>
> (c) **Sub-issue B1(c):** Whether the modelling undertaken and inputs utilised in the Microsimulation Modelling are appropriate and reliable.

[33] Respondent's Updated Statement of Issues, Facts and Contentions, 25 October 2024, paras 13 - 24.

(d) **Sub-issue B1(d):** Whether the assumptions about road upgrades utilised in the Microsimulation Modelling are appropriate.

17. [**Issue B2**]: Whether development pursuant to the Structure Plan will increase the risk to persons, property and infrastructure in the surrounding area in the event of a bushfire;

18. Sub-issues B1(a), B1(c) and B1(d) also apply to Issue B2.

19. [**Issue B3**]: Whether the conclusions reached in the [Bushfire Management plan] in relation to the post-development Bushfire Hazard Levels (**BHLs**) within the Structure Plan area are reliable and accurate;

20. [**Issue B4**]: Whether the Asset Protection Zones (**APZs**) proposed in the Structure Plan are of sufficient size and appropriately located;

21. [**Issue B5**]: Whether the Structure Plan is consistent with the policy objectives, outcomes and measures in the State Planning Framework, in particular [the 2015 and 2024 versions of SPP 3.7] … and the guidelines supporting those policies;

22. [**Issue B6**]: Whether, having regard to the precautionary principle, refusal of the Structure Plan is warranted given the bushfire risks associated with development pursuant to the Structure Plan;

23. [**Issue C1**]: Whether the environmental outcomes proposed by the creation of the 'conservation reserves' are likely to be achieved, given the uncertainty as to who will own and/or manage the reserves;

24. [**Issue C2**]: Whether, given the environmental constraints of the Site and the extent of the proposed conservation reserves, the Structure Plan provides for sufficient active public open space (**POS**).

25. [**Issue C3**]: Whether, given the scale of development proposed and having regard to the State Planning Framework, the Structure Plan as a whole strikes an appropriate balance between managing bushfire risk and the protection of the environment.

67 In its SIFC, Satterley seeks to reframe some of those issues[34] but the hearing progressed on the basis that the issues so identified were those relevant to the question as to whether SPH had a 'sufficient interest'.

[34] Applicant's Statement of Issues, Facts and contentions, 29 November 2024, paras 4 - 29.

68 SPH limits its proposed intervention to Issues B1(a)-(c), B2, B5 and B6.[35]

The Facts Relied upon by SPH

69 The relevant facts relied upon by SPH are set out in the written submissions filed on its behalf by Ms Logie.[36]

70 Mr McQueen, while acknowledging that I am not bound by the rules of evidence,[37] submitted that I should either not receive that evidence as 'from the bar table' or, alternatively, should give it no weight.

71 I agree with Mr McQueen that the facts upon which a party seeks to rely in an application for intervention should, as a general rule, be put on through a witness statement or affidavit of a witness, with the relevant documents attached. The recitation of facts in written submissions without, at least, attaching the documents from which they are sourced is not a proper way for facts relevant to an application of this nature to be put before the Tribunal.

72 Nonetheless, I am prepared to proceed on the basis that the SPH written submissions provide an accurate picture of the relevant facts. I do so for the following reasons, none of which should be taken as criticism of either SM Willey, who made the programming orders, or Satterley/its solicitors:

(a) The orders programming the applications for hearing did not provide for the filing of any evidence;

(b) On that basis, I assume that the issue of how SPH was to put the facts upon which it relied before the Tribunal was not raised by Satterley prior to or at the directions hearing at which the orders were made;

(c) Satterley's written submissions, which raise the issue, were not filed until the evening of Friday 31 January 2025, only one working day prior to the hearing; and

[35] Save Perth Hills' Submissions in Support of an Application for Leave to Intervene, 24 January 2025, para 53.
[36] Save Perth Hills' Submissions in Support of an Application for Leave to Intervene, 24 January 2025, paras 21 - 44.
[37] SAT Act, s 32(a).

(d) Satterley's written submissions do not dispute the accuracy of the facts as stated in SPH's submissions, rather they note merely that Satterley is unable to accept their accuracy.

73 The facts relied upon by SPH include the following:[38]

(a) it was established as an incorporated association in 1991;

(b) it has a membership of 694 people with the majority being ratepayers and residents of the Shire;

(c) its Rules of Association (2019) state that it is:

> dedicated to preserving the unique environment, heritage and social structures of the Perth Hills. We are currently working towards safe, sustainable and sensible planning for the proposed North Stoneville development in Shire of Mundaring informed by community consultation

(d) it has 'consistently' opposed the Structure Plan, by which I understand it to mean the existing structure plan approved in 1998 and the various iterations of its proposed 'amendment', for 33 years;

(e) its members and supporters have made 'hundreds of deputations to decision-making bodies, held rallies that have attracted approximately 10,000 attendees since 2019, provided over 3,500 formal public submissions to the [WAPC] between 2020 - 2023 and more than 1,000 submissions to the Shire';

(f) its membership includes many people who have lived through, and continue to live with the fallout and impacts of, multiple significant bushfire events in the locality and nearby areas. The submissions name six fires, one of which it is said 'burned close' to the subject land and another of which started on it;

(g) it has been engaged with other planning processes associated with nearby land;

(h) it has previously provided input by engaging with the Shire and relevant developer regarding a subdivision 'opposite' the subject

[38] Save Perth Hills' Submissions in Support of an Application for Leave to Intervene, 24 January 2025, paras 21 - 35.

land, which was amended to provide for 67 lots, down from the original ~750 lots, which SPH supported;

(i) in June 2020, together with the Shire, it initiated a proposed amendment of the Metropolitan Region Scheme (**MRS**) to rezone the subject land from Urban back to Rural;

(j) that rezoning proposal led to the WAPC asking the Department of Planning, Lands and Heritage (**Department**) to review three Urban zoned parcels of land (one of which is the subject land) into which review SPH provided 'feedback and submissions'; and

(k) it has already been involved, to some degree, in these proceedings including by making presentations at mediations and has, through that process, already demonstrated its utility by 'identifying relevant information not otherwise addressed by the parties'.

Resolution: SPH has a 'sufficient interest'

74 I am satisfied that SPH has a sufficient interest in Issues B1(a)-(c), B2, B5 and B6, all of which are concerned with bushfire risk, so as to satisfy the relevant test for intervention.

75 In doing so I have found the reasons of Pritchard J in ***Coast Ward Ratepayers*** to be particularly helpful in that they can be applied, with little variation, to the present case as follows:

(a) SPH has had 33 years of involvement with the proposed strategic development of North Stoneville;

(b) the Shire 'appears to recognise' SPH in that the proposed amendment of the MRS to rezone the subject land was initiated by 'SPH and the Shire'. In addition, SPH provided 'feedback and submissions' into the Department's review of three Urban zoned parcels of land, prompted by the joint proposal to rezone;

(c) the considerable focus of SPH on the strategic planning of the subject land and its surrounds through its zoning and structure planning, over a long period of time, supports the view that SPH is not a 'busybody';

(d) I am satisfied that the future of the Structure Plan, with its implications for the management of bushfire risk on the subject land and its surrounding area, is of very real concern to the members of SPH who I accept have lived through multiple

significant bushfire events in the locality and nearby areas and which, it is reasonable to infer, continue to live with the consequences thereof; and

(e) SPH wishes to participate in the proceedings in a real and meaningful way by engaging Ms Logie as its legal representative and proposing to call up to five lay witnesses and an expert in human behaviour in fire (**HBIF**). While it is unclear (and, in my view, unimportant) whether or not Ms Logie and the relevant expert will be paid for their time and efforts, it is clear that SPH are 'seriously pursuing the issue'.

76 In following the example of Pritchard J in the ***Coast Ward Ratepayers*** case, I should not be understood as suggesting that such an approach, or the factors relied upon, is or are the only way for the Tribunal to proceed in such matters. Each case is different and the facts and circumstances should be addressed accordingly.

77 Equally, in doing so, I am not blind to the fact that that case was concerned with judicial review, while the present case concerns merits review – see above at [55] - [57]. I accept that an interest which is sufficient in the former is not necessarily sufficient in the latter. However, I am satisfied that in this case, SPH's interest in the subject land and its strategic planning through the Structure Plan (in all its iterations) is 'sufficient' as that term is used and understood in ***ING*** and ***Wattleup***.

78 That is, I am satisfied and I find that SPH has an interest in the subject matter of the primary proceedings that goes well beyond the mere expression of its constitutional objects. In short, it is a long-standing organisation with members who have taken significant and sustained action over many years regarding the strategic planning of North Stoneville and particularly by opposing the Structure Plan and its predecessor. In doing so it appears to have been recognised by, at least, the Shire. At least at this stage I am satisfied that those actions are and have been motivated by its members' experience of several significant bushfires in the vicinity of the subject land which have threatened their lives and property, and their fear that the development of the subject land will exacerbate the risk of bushfire.

79 It is inherent in the above findings, but I will make explicit, that I do not accept Satterley's submission that a 'strategic planning instrument', such as the Strategic Plan, cannot or will not 'give rise to the types of apprehended harm as referred to by SPH'.[39]

80 The fact that plans of subdivision and, perhaps, applications for development approval will need to be prepared, lodged and approved before development actually occurs on the subject land does not mean that the Structure Plan cannot 'give rise' to increased bushfire risk.

81 As Ms Logie submitted, the Structure Plan 'clears the pathway' for future development. As the Structure Plan's Executive Summary puts it, the Structure Plan will 'guide development on the 534.8958 ha site …'[40] In that regard, cl 27(1) of the deemed provisions provides that decision-makers for applications for subdivisions and development approval must 'have due regard to' an approved structure plan.

SPH Should be Granted Leave to Intervene in the Exercise of Discretion

The Relevant Criteria Guiding the Exercise of Discretion

82 As noted above, Chaney J in ***ING*** held that a third party applicant will, in order for the Tribunal to exercise its discretion in favour of the application:[41]

> generally need to demonstrate that its intervention is necessary to enable the Tribunal to meet the objectives of the SAT Act (including minimising cost and avoiding delay …) and the PD Act.

83 That decision was based on the Court of Appeal's decision in ***McCourt***[42] where it held that the *Harding* test,[43] which had been applied to the question of joinder under s 38 of the SAT Act,[44] did not apply to applications for intervention under s 37.

84 Given that, and the Court's view in ***McCourt*** that the rights of intervenors 'may be a good deal more restricted than those of a party',

[39] Applicant's Submissions, 31 January 2025, paras 25.1.
[40] Structure Plan, page 7.
[41] ***ING*** [27] and [28(v)].
[42] ***Re State Administrative Tribunal; Ex Parte McCourt*** (2007) 34 WAR 342 (***McCourt***) [45] - [46].
[43] '… if the Tribunal thinks fit in order for it to adequately deal with the proper disposition of the appeal, then a party may be joined for that purpose': see ***Harding v Shire of Chittering*** (2003) 35 SR (WA) 229 , [20].
[44] At a time when that section was not ousted in planning matters by s 243 of the P&D Act.

Chaney J held in ***ING*** that the test for intervention should be 'at least as strict, if not more onerous' than the test for joinder.[45]

85 I accept the logic in such a finding. I note, however, that the Court of Appeal in ***McCourt***, elsewhere in its reasons, might be said to have described a less restrictive test. At [42], the Court of Appeal held as follows:

> Consequently, in an ordinary case (where, unlike the present case, there is no statutory exclusion of the power to join parties), a decision whether to join a person as a party or as an intervener would depend very largely upon the nature of that person's interest and upon the nature and effect of the proceedings concerned. The decision will also be influenced by the objectives of the SAT Act, including those of minimising costs and avoiding delay.

86 That passage might be said to apply a lesser test than that of 'necessity' described by Judge Chaney in ***ING***. Rather, it appears to say no more than that, in an ordinary case, the likely impact of any intervention upon the ability of the Tribunal to achieve its objectives (particularly those in s 9 of the SAT Act) will be a relevant factor, as will be the strength of the interest of the proposed intervenor and the 'nature and effect' of the particular proceedings, all of which are to be weighed in the exercise of the discretion as to whether to allow intervention.

87 Ultimately, I don't need to revisit the 'necessity' test as described in ***ING***. That is because, for reasons described below, I am satisfied that there are exceptional circumstances in this case that warrant the intervention of SPH[46] even if it cannot be said to be 'necessary' for SPH to intervene in order for the Tribunal to achieve its objectives under the SAT Act and the P&D Act.

There are Extraordinary Circumstances and there will be no Material Adverse Impacts

88 As noted above, if granted leave to intervene, SPH intends to call up to five lay witnesses to speak of their direct experience of bushfires in the locality, including how people behave in an evacuation and an expert in HBIF.

---

[45] ***ING*** [27].

[46] The test described in ***ING*** is said to apply 'generally', which acknowledges that there will be cases where intervention is appropriate despite the test of necessity not being met.

89 For reasons set out in more detail below, I am satisfied that such evidence, both lay and expert, will assist the Tribunal reach the correct and preferable decision.

90 It may be that the evidence which SPH wishes to call could be called by the WAPC. Indeed, the WAPC has indicated that, if intervention status is not granted to SPH, it will call at least some of the lay witnesses proposed by SPH.[47] Mr Repper also indicated at the hearing that WAPC is open to reconsider its list of proposed expert witnesses so as to call SPH's proposed expert if SPH is not granted leave to intervene.

91 It was on that basis that Mr McQueen submitted that it is not 'necessary' for SPH to be given leave to intervene.

92 There is some force in that submission but, as I have foreshadowed, I am of the view that leave should be given to SPH to intervene due to the following factors:

(a) the extraordinary nature of the Structure Plan;

(b) the particularly strong relationship between SPH and the subject matter of the proceedings;

(c) my satisfaction that:

(i) the evidence which SPH proposes to call will assist the Tribunal reach the correct and preferable decision;

(ii) the Tribunal will be assisted by the WAPC having the right to cross-examine the SPH witnesses, particularly the expert; and

(iii) the intervention is unlikely to negatively impact in a material way on the Tribunal's pursuit of its objectives.

93 I will explain those factors in turn.

94 First, there can be no doubt that the Structure Plan is extraordinary. As noted previously, it covers 534 ha, which Ms Logie advised at the hearing is 140 ha larger than Kings Park.

[47] Respondent's Submissions on Applications by Save Perth Hills Inc and the Shire of Mundaring to Intervene and Make Submissions, 30 January 2025, para 9.

95 The WAPC's SIFC advises that it proposes 1001 lots to accommodate ~2803 people with 193 ha of conservation reserves and 36 ha of recreation reserves, as well as a local centre and two schools. It will be staged over 15 years.[48]

96 In these circumstances, it is not surprising that there was no challenge to the Shire's description of the Structure Plan as 'unusual - indeed unique in its scale and significance' to the Shire and its community.[49]

97 As an example of its unusual scale, the Shire says that the projected increase in population represents an increase of 6.8% of the Shire's total estimated 2023 population for its entire district.[50] Ms Logie advised that the Structure Plan will 'approximately' double the population of Stoneville.

98 The Shire further says that in both lot yield and geographic area the Structure Plan 'is far greater … than the combined total of all of the other approved structure plans' in the Shire's district.[51]

99 Those are, by any measure, characteristics of a structure plan properly described as 'extraordinary'.

100 Secondly, for the reasons I have already provided, I am satisfied that there is a particularly strong relationship between SPH and these proceedings. In particular, its large member base has taken significant and sustained action over many years regarding the strategic planning of North Stoneville and particularly by opposing the Structure Plan and its predecessor. Those actions appear to have been motivated by its members' experience of several significant bushfires in the vicinity of the subject land which have threatened their lives and property and those members' fears that the development of the subject land will exacerbate the risk of bushfire.

101 There is no doubt that bushfire risk is a key issue in these proceedings. Whether the development of the subject land in accordance with the Structure Plan will increase the bushfire risk to persons, property

[48] Respondent's Updated Statement of Issues, Facts and Contentions, 25 October 2025, para 8.
[49] Submissions by Shire of Mundaring in Support of Application for Leave to Make Submissions Pursuant to Section 242 of the Planning and Development Act, 24 January 2025, para 12.
[50] Shire's letter of 13 December 2024, para 18.
[51] [51] Submissions by Shire of Mundaring in Support of Application for Leave to Make Submissions Pursuant to Section 242 of the Planning and Development Act, 24 January 2025, para 13.

and infrastructure and, in particular, whether people will be able to safely evacuate, is central to the resolution of the primary proceedings.

102 In my view that amounts to a particularly close and strong relationship between SPH and the proceedings.

103 Thirdly, and consistent with what has just been said, at least at this stage I am satisfied that the Tribunal will be assisted by evidence of the lived experience of residents in relation to bushfires in the locality, including how bushfires have started and developed and how residents respond, including their behaviour in seeking to evacuate.

104 In reaching that view, I have given weight to the fact that bushfire policy in this State remains relatively unexamined and has recently gone through considerable change.

105 Evidence which brings to bear real-life (lived) experience as an input to, and a check on, relevant models relied upon by the parties in this regard appears, at least at this stage, likely to assist in the generation of a totality of evidence that will be an improvement on what would be generated without such evidence. The same applies to expert evidence on HBIF as a useful input into, and a check on, models that might assume certain behaviours.

106 In that regard it also seems to me preferable to have SPH call its own witnesses, particularly the lay witnesses, rather than the WAPC. Given the long history of SPH's involvement with the Structure Plan, the subject site and local bushfires I find it appropriate for SPH to brief its own witnesses rather than hand over responsibility for that task to another party with its own perspective and objectives.

107 Finally, I find it likely that the Tribunal will be assisted by having SPH's witnesses cross-examined by counsel representing the WAPC in order to test the extent to which that evidence feeds into, or is at cross-purposes to, the expert witnesses called by WAPC.

108 I also find it unlikely that the granting of intervention status to SPH will negatively impact on the Tribunal's ability to pursue its statutory objectives.

109 In that regard I agree with Mr Repper and Ms Logie who submitted that the calling of up to five lay witnesses will occupy less than a day of hearing.

110 I accept that less time will be taken if no intervention is granted, the WAPC calls some of the proposed lay witnesses and does not, therefore, cross-examine them. However, in the context of a 15 day hearing, an additional ~½ day of hearing is not such as to cause me undue concern, particularly given the strength of the other relevant factors.

111 Equally, the calling of an additional expert witness will not add much to the costs or time involved, particularly as each of Satterley and the WAPC will call bushfire experts who must confer, produce a joint report and will give their evidence concurrently. To add another expert to that conferral and expert 'conclave' will add time and costs, but I do not anticipate that any additional time and costs will be significant and certainly not such as would outweigh the benefit I am satisfied that the Tribunal will receive. In this regard, SPH advised through Ms Logie that, if leave to intervene is granted, it would not seek to cross-examine any other witnesses.

Limits on the Scope of Intervention

112 Satterley resisted SPH's application for intervention on four broad grounds – that its interest is insufficient,[52] that it seeks to expand the scope of issues for determination,[53] that intervention is unnecessary,[54] and that intervention will have a 'material adverse impact on the conduct of the proceeding, in terms of increased delays and costs'.[55]

113 Each of the first, third and fourth of those have been addressed explicitly in the foregoing. As to the second (the 'scope of issues' question), my previous findings are to the effect that the topics of lived experience and HBIF, about which SPH wishes to call evidence, fall comfortably within Issues B1(a)-(c), B2, B5 and B6.

114 There is one other matter which SPH seeks to agitate which I find does not fall within the existing scope of relevant issues. Before I identify it, it is useful to quickly express the relevant principle.

115 In ***McCourt***, the Court held as follows:[56]

> the importance of the distinction between ss 37 and 38 rests in another aspect of the concept of intervention, as that concept has traditionally been understood, being that, in the absence of any statutory intention to

[52] Applicant's Submissions, 31 January 2025, paras 10 - 30.
[53] Applicant's Submissions, 31 January 2025, paras 31 - 45.
[54] Applicant's Submissions, 31 January 2025, paras 45 - 54.
[55] Applicant's Submissions, 31 January 2025, paras 55 - 64.
[56] ***McCourt*** [41]. See, also, ***ING*** [28(vi)].

> the contrary, an intervener, unlike a party, will ordinarily be allowed only to support or oppose a position contended for by one or other of the parties to the proceedings and will not be permitted to expand the issues to be decided[.]

116 In addition to the topics of lived experience and HBIF, SPH has indicated in its written and oral submissions that it wishes to call evidence about what it describes as 'social amenity'. Its written submissions provide as follows:[57]

> 69. It is evident from the parties' SIFCs that the social amenity impacts on existing and future residents associated with the increased risk of, or occurrence of, bushfire events, will not be adequately canvassed in the absence of intervention by SPH.
>
> 70. Immediate and long-term impacts [of bushfire on individuals and the local community] are relevant and not well understood other than by those directly involved in an affected community. SPH is in a special position to adduce evidence as to the likely impacts of SP 34 on both the existing and future amenity of the locality. Community-wide impacts including on physical and mental health, livelihoods and financial security, homes and family stability, affect the social fabric of community. SPH members' experiences with, and witnessing of, these bushfire impacts offer valuable knowledge and evidence in the exercise of the proceedings.

117 In my view, para 69 of SPH's written submissions effectively acknowledges that the issue described in para 70 is not one which has been previously identified in the parties' SIFCs. I agree with that assessment.

118 At the hearing, Ms Logie sought to place the issue of social amenity within Issue B5,[58] which she said incorporated the full scope of 'relevant planning considerations' in s 241(1) of the P&D Act and 'appropriate planning principles' in cl 20(2)(d) of the deemed provisions.[59]

119 Self-evidently, those provisions cover an extraordinarily broad suite of matters and it might be said that 'social amenity' would ordinarily fall within their scope. But I do not accept that Issue B5 properly extends to

[57] Save Perth Hills Submissions in Support of Application for Leave to Intervene, 24 January 2025, paras 69 - 70.
[58] Ms Logie also acknowledged that Issue B6 was one about which evidence could not be given but was, rather, a matter for submissions.
[59] Save Perth Hills' Submissions in Support of Application for Leave to Intervene, 24 January 2025, para 63.

cover ‘social amenity’ as SPH has described it and I will not allow the intervention by SPH to extend so as to allow it to address that issue.

Conclusion on the Application to Intervene by SPH

120 For the foregoing reasons I will make orders granting leave to SPH to intervene on conditions. I will hear from the parties as to the orders which should be made so as to give effect to my reasons, but I anticipate that they will include the following, all of which should be prefaced by the phrase 'subject to further order':

(a) SPH has leave to intervene in relation to Issues B1(a)-(c), B2, B5 and B6 as those issues are identified in the Respondent's Updated Statement of Issues, Facts and Contentions, filed 25 October 2025 but only, in the case of Issue B5, in a manner consistent with my reasons above.

(b) SPH may file a Statement of Facts and Contentions and bundle of documents consistent with the scope of its intervention described above.

(c) SPH may file up to five lay witness statements by a date that will allow Satterley's experts to have regard to the lay evidence ahead of the completion of their reports for filing (currently required by 4 April 2025).[60]

(d) SPH may file an expert report on the topic of HBIF.

(e) Counsel for SPH may lead any of the witnesses called by it, but may not cross-examine any witness called by another party.

The Application by the Shire of Mundaring for Leave to Intervene

121 The Shire seeks leave to make submissions under s 242 of the P&D Act which provides:

> The State Administrative Tribunal may receive or hear submissions in respect of an application from a person who is not a party to the application if the Tribunal is of the opinion that the person has a sufficient interest in the matter.

[60] See order 6 of the orders made 20 December 2024.

122 That section provides for a two-step test. First, the person seeking leave must establish that they have a 'sufficient interest in the matter'. Second, they must persuade the Tribunal to exercise its discretion in their favour.[61]

Sufficient Interest

123 I have previously in these reasons expounded at length on the 'sufficient interest' test in the context of s 37(3) of the SAT Act.

124 As was described above, Chaney J in ***ING*** held that the test for sufficient interest should be less onerous in the context of an application under s 242 of the P&D Act than under s 37 of the SAT Act.

125 The Shire submits that it has a sufficient interest arising 'from its role as the responsible authority for implementing the Scheme pursuant to which the Structure Plan is required'.[62] Satterley accepts that the Shire has a 'sufficient interest'.[63] For the following reasons, I agree.

126 First, as I have previously identified, the Structure Plan proposes a very significant development within the Shire. Amongst other things, it proposes a ~6.8% increase in the total population of the Shire's district and covers an area, and will involve a lot yield, that is 'far greater … than the combined total of all of the other approved structure plans' in the Shire's district. That takes the matter beyond the interest that a local government will ordinarily have in a structure plan over land located within its district.

127 Second, the Shire has a clear and obvious interest in each of the three broad issues between the parties, as identified in WAPC's SIFC: traffic, bushfire risk, and conservation reserves and public open space.[64]

128 As noted above, Satterley seeks to reframe some of the traffic and bushfire related issues.[65] But there can be no doubt that the impact of the proposed development outlined in the Structure Plan on the local and regional road network and the bushfire risk to the people, property and

[61] ***Gray*** [139]; ***Yum Restaurants International and City of Rockingham*** [2008] WASAT 136 [9].
[62] Letter of 13 December 2024 from McLeods as application for leave, attached as annexure to Submissions by Shire of Mundaring in Support of Application for Leave ... 24 January 2025 and incorporated at para 3.
[63] Applicant's Submissions in response to Application from Shire of Mundaring for Leave To Make Submissions Pursuant to Section 242 of the Planning and Development Act, 31 January 2025, para 9.
[64] Respondent's Updated Statement of Issues, Facts and Contentions, 25 October 2024, paras 13, 14, 15, 17 and 19.
[65] Applicant's Statement of Issues, Facts and Contentions, 29 November 2024, paras 4 - 29.

infrastructure that will live and be located in that proposed development are key issues for determination.

129 In ***ING***, Barker J held that the City of Fremantle had a 'sufficient interest' in a proposed development located within the port area due to its interest in the 'management of traffic and parking, and the potential impact on the City's regulation of those matters ...'. That was because:[66]

> road and pedestrian systems link into systems controlled and managed by the City. The significant parking proposed in the development will undoubtedly impact on the City in its capacity as the body responsible for managing and controlling parking within its scheme area, including the subject site.

130 The same can be said in this case.

131 Equally, the Shire's various roles under the *Bushfires Act 1954* (WA) and associated local law, including its role as first responder and manager of firefighting activities, gives it a particular interest in the risk of bushfire on the land the subject of the Structure Plan.

132 I am also satisfied that there is a material possibility that the Shire will be called upon to own or manage one of the conservation reserves and that it has a material interest, as the relevant local government, in the sufficiency of public open space provided for in the Structure Plan.

133 While the same may be said of the relevant local government in relation to many structure plans, the scale of the Structure Plan in this case means that the Shire's interest in the Structure Plan rises above that which would ordinarily attach to a local government within whose district a structure plan is located.

Exercise of Discretion

134 As has been well established for some time, the factors relevant to the exercise of discretion under s 242 of the P&D Act are as follows:[67]

(a) the nature and strength of the interest of the proposed submitter;

---

[66] ***ING*** [36].

[67] ***DCSC Pty Ltd and Presiding Member of the Regional Joint Development Assessment Panel*** [2022] WASAT 68 [9]. At para [8] SM Willey cites several previous decisions which enumerate the same set of factors.

(b) the contribution which the [proposed submitter] is likely to be able to make to a proper resolution of the issues before the [Tribunal];

(c) whether the interest which the [proposed submitter] represents and the material to be advanced by that person will be adequately dealt with by the parties already before the [Tribunal];

(d) the impact upon the proceedings;

(e) the interests of the parties before [the Tribunal] as of right and the public interest in the prompt and efficient dispatch of proceedings; and

(f) any other factors particular to the case.

135 I will deal with them in turn.

136 First, as I have previously indicated, I consider the interests of the Shire to be strong in this case, and certainly stronger than that of the usual case of a local government regarding a structure plan located within its district.

137 Second, I am also satisfied that the Shire's submissions will assist in the proper resolution of the matter by bringing to the hearing the perspective of the Shire as the body with ongoing responsibility to ensure that the local road network is adequate, to manage bushfire risk within its district as well as to bring its perspective in relation to the question of the ongoing ownership/management of environmental reserves. That is, I am satisfied that the Shire's involvement will assist the Tribunal in reaching the correct and preferable decision.

138 Third, at least at this stage, I am satisfied that the Shire's involvement will be necessary for its interests to be addressed, in that the WAPC does not have the Shire's considered views as to the current version of the Structure Plan.

139 Pursuant to cll 17 - 20 of the deemed provisions, the Shire (as the relevant local government) appears to have:

(1) received the application for approval of the initial version of the Structure Plan from Satterley;

(2) facilitated its advertising;

(3) considered the application in light of the submissions received; and

(4) prepared a report to the WAPC as the relevant decision-maker, which included a recommendation that the WAPC should refuse to approve the Structure Plan.

140 But, as previously noted, two further versions of the Structure Plan have since been filed, with the WAPC formally refusing the earlier of the two and the latter being the version before the Tribunal.

141 The Shire has not, therefore, prepared a report pursuant to cl 20 of the deemed provisions in respect of the current version of the Structure Plan and, as a result, neither the WAPC nor the Tribunal has before it the Shire's considered position as to that version.[68]

142 Fourth (and fifth), I am satisfied that the Shire's involvement under s 242 will not unduly impact on the proceedings or the interests of the parties and the public interest in the prompt and efficient dispatch of proceedings. Given that the hearing has been listed for 21 days in September, the provision of submissions by the Shire is unlikely to materially impact on the duration of the hearing or unduly impact on the time and effort required by the parties to prepare for the hearing.

Satterley's Submissions

143 In addition to submissions opposing the grant of leave, Satterley made submissions which addressed the form, scope and timing of any submissions made by the Shire. There was a degree of overlap in those submissions which is reflected in the following.

Form

144 Relevant to the third, fourth and fifth of the above listed matters is Satterley's submission that: (1) the Shire's involvement should be limited to the provision of an updated version of its cl 20 report; (2) that the revised report should be provided ahead of the filing by the parties of expert evidence; and (3) the Shire should not be permitted to file further submissions after the evidence is filed.[69]

[68] *cf* ***ING*** [38].

[69] Applicant's Submissions in Response to Application from Shire of Mundaring for Leave to Make Submissions Pursuant to section 242 of the Planning and Development Act, 31 January 2025, paras 12 - 18, 24, 43 and 48.

145 Mr Slarke, who appeared for the Shire at the hearing, submitted that the scope of a report prepared under cl 20 of the deemed provisions is no narrower than any submissions filed in the ordinary manner would be. In that regard he refers to cl 20(d) and (e) of the deemed provisions which require that a local government's report on a proposed structure plan must include:

> (d) the local government's assessment of the proposal based on appropriate planning principles;
>
> (e) a recommendation by the local government on whether the proposed structure plan should be approved by the [WAPC], including a recommendation on any proposed modifications.

146 I agree. There is little, if anything, to be gained by an order limiting the Shire's submissions to a report in the form of a report prepared under cl 20 of the deemed provisions.

Timing

147 I also disagree with Satterley's submissions to the effect that the Shire's submissions should be made before the parties file their evidence.

148 As Mr Slarke submitted, there are several matters raised by the WAPC in its SIFC that raise matters to which Satterley has responded in its SIFC by saying that it will address the concern by way of expert evidence. Satterley also proposes to provide an updated bushfire management plan.[70]

149 To require the Shire to file its submissions before that evidence is filed would deprive the Tribunal of the Shire's considered view as to the evidence relied upon by the parties. That is particularly so where, as just noted, the Tribunal lacks a cl 20 report from the Shire regarding the current version of the Structure Plan. To accede to Satterley's submission would considerably reduce the benefit to the Tribunal of the Shire's submissions.

150 Satterley also submits in this context that the Shire intends to provide the Tribunal 'with a document that would be tantamount to expert evidence'.[71]

[70] Examples include Applicant's Statement of Issues, Facts and Contentions, 29 November 2024, para's 76, 78, 90, 99, 130.2, 136.4, 137.3 and 166.2.

[71] Applicant's Submissions in Response to Application from Shire of Mundaring for Leave to Make Submissions Pursuant to section 242 of the Planning and Development Act, 31 January 2025, para 26.

151 I do not accept that submission, which appears to be entirely without foundation.

152 As Satterley notes, the Court in ***Argyle***[72] made clear that leave to make submissions under s 242 does not permit the tabling of expert evidence.[73] As her Honour Smith J noted in that case, that principle was clear in Barker J's decision in ***Steve's***,[74] which was determined nearly 20 years ago. In that decision his Honour refused permission to intervene but allowed the making of submissions, saying:[75]

> The status however of a submission-maker does not give the interested person the right to give evidence, call witnesses, examine or cross-examine witnesses, or appeal against the Tribunal's decision.

153 Smith J in ***Argyle*** described Barker J's finding in that regard as 'clearly correct'.[76]

154 However, the prohibition on a party given the right to make submissions under s 242 from giving expert evidence does not prevent the making of submissions about what the Tribunal should make of expert evidence given by witnesses called by the parties.

155 The making of submissions of that nature is commonplace and does not blur the boundaries between submission and evidence and I see no reason why the Shire should be prevented from making such submissions.

Scope of Issues

156 Finally, Satterley submits that, as 'most of the […] issues for determination concern matters of technical expertise (for which there is no indication that the Shire holds the necessary technical expertise), it would respectfully [sic] be inappropriate for the Tribunal to grant the Shire unconstrained leave to make submissions in respect of all of the issues generally'.[77]

---

[72] ***Argyle v State Administrative Tribunal*** [2022] WASC 317 [169] (***Argyle***).
[73] ***Argyle*** [69].
[74] ***Steve's Nedlands Park Nominees Pty Ltd and City of Nedlands*** [2006] WASAT 54 (***Steve's***).
[75] ***Steve's*** [67].
[76] ***Argyle*** [69].
[77] Applicant's Submissions in Response to Application from Shire of Mundaring for Leave to Make Submissions Pursuant to section 242 of the Planning and Development Act, 31 January 2025, para 21.

157 I do not accept that submission, which appears to mistakenly assume (see above) that the Shire's submissions will be 'tantamount' to expert evidence.

158 The Shire will presumably wish to make submissions about both the statutory and policy framework as well as how the Tribunal should consider the expert evidence filed in this matter in the context of that framework. That can (and must) be done without exceeding the proper boundaries of what can be included in submissions (i.e. without expressing opinions of an expert nature). If those boundaries are exceeded, the offending 'submissions' can (and must *per* ***Argyle***) be disregarded.

Opening or Closing Submissions or Both

159 At the hearing, Mr Slarke's submissions as to the benefit to the Tribunal of submissions from the Shire that consider the evidence filed by the parties prompted me to enquire whether the Shire sought leave to file opening submissions (prior to the commencement of the hearing of any evidence) or closing submissions (after the completion of the evidence), or both.

160 I asked that question because the proposition (which I have accepted), that there will be a benefit accruing to the Tribunal from receiving submissions from the Shire after it has considered the evidence relied upon by the parties, is stronger if the evidence has been tested by cross-examination and the experts have given their evidence concurrently, allowing them to ask each other questions.

161 Having said that, for the Shire to give closing submissions will require Mr Slarke (or his substitute) to either attend the hearing or read the transcript, which obviously involves considerable costs.

162 Mr Slarke confirmed that his instructions went no further than to seek leave for the Shire to file opening submissions only but he foreshadowed the possibility that a further application may be made to file closing submissions.

163 Accordingly, I will make orders granting the Shire leave to file opening submissions only at this stage.

Orders

164 For the foregoing reasons, I will make orders granting leave to SPH to intervene and the Shire to make opening submissions at the time the parties file their opening submissions in advance of the hearing.

165 I have foreshadowed certain conditions on the grant of leave to intervene. I will hear from the parties and SPH as to the form of those orders.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

FA
Associate to Deputy President Judge Jackson

21 FEBRUARY 2025