

## State Administration Tribunal

### What is the State Administrative Tribunal (SAT)?

The State Administrative Tribunal (SAT) is the primary place for the review of decisions made by Government Officials and industry boards and is also where a wide variety of original decisions are made. SAT's approach is informal, flexible and transparent. SAT:

- aims to make the correct and preferable decision based on the merits of each application;
- is not a court and, therefore, strict rules of evidence do not apply;
- encourages the resolution of disputes through mediation;
- enables parties to conduct the proceeding themselves, or with the assistance of a lawyer or a person with relevant experience;
- holds hearings in public in most cases; and
- provides reasons for all final decisions and publishes written reasons on its website: [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au).

### Can a JDAP application be reviewed at SAT?

DAP decisions, either relating to development approval or applications for amendment of a DAP decision, are open to review by the SAT. A person who has applied to a DAP for development approval, or sought amendment to a decision made by a DAP, can request that the SAT review:

- a DAP's refusal to grant development approval or amendment to a DAP decision;
- any approval conditions imposed by a DAP; and
- a deemed refusal of a DAP application.

Only the owner can request the SAT review a decision by a DAP. There is no third party rights of review; for example, a local government that disagrees with a DAP determination has no right to apply for SAT review.

However, SAT 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. This may include landowners of adjoining properties to the relevant development site.

In an application for review, the DAP will be considered the 'decision-maker' for the purpose of review. Therefore, the DAP will be the respondent in any review sought by a DAP decision, or deemed refusal (a 'deemed refusal' is an application not decided in time).

Review of a DAP-related matter will fall into 'Class 2 Proceedings'. Class 2 proceedings are reserved for larger scale development matters and parties may elect to be represented by a lawyer.

A DAP has no separate legal personality of its own (like a company). Rather, a DAP is an entity created by Ministerial Order and formed from time to time by a meeting of sufficient members to form a quorum. For this reason, the appropriate person to attend SAT hearings will be the DAP presiding member – or if they are unavailable, the deputy presiding member.

The DAP secretariat will manage the administrative matters raised by the appeal for any DAP reconsideration meetings required under section 31 of the *State Administrative Tribunal Act 2004*. As the review will be a Class 2 proceeding, a solicitor will appear for and with the DAP presiding member at all SAT proceedings

## What happens after an application is lodged?

SAT will set a time, date and place for a first directions hearing and send notice to the parties. Parties include the applicant and the respondent (the decision maker).

There is no requirement for either party to provide any further information until the first directions hearing.

The first directions hearing is held about three weeks after the application is lodged.

SAT adopts a hands-on approach to identify the key issues in dispute and to determine the most appropriate method to achieve a quick and just resolution with minimum cost to the parties.

The merits of the application are not generally explored in detail, but matters are often referred to mediation or a compulsory conference for this to occur.

If it is appropriate to determine a preliminary issue it is listed for hearing or determination entirely on the documents, and orders are made for the filing of agreed facts and documents and the filing and exchange of written submissions.

If mediation or a compulsory conference is not appropriate the matter is listed for a final hearing or a final determination entirely on the documents, and orders are made for the filing and exchange of documents and other evidence.

## What is mediation and compulsory conference?

The purpose of mediation is to resolve a dispute by settlement between the parties or to narrow the issues in dispute. Mediation is a confidential co-operative problem-solving process designed to help the parties find constructive solutions to their dispute with the assistance of a trained mediator.

If a mediation does not result in settlement the Member who conducted the mediation cannot take any further part in the proceedings unless all the parties agree.

A compulsory conference is similar to a mediation but usually involves the Member taking a more interventionist approach. If a compulsory conference does not result in settlement the Member who conducted the compulsory conference cannot take any further part in the proceedings.

A SAT member trained in mediation will act as mediator.

Mediation is a confidential process. With very few exceptions, evidence cannot later be given of anything said in mediation. No record is kept on the SAT file of what is said, unless the parties agree, or unless details of the agreement are embodied in SAT's orders made following mediation.

## What happens after mediation?

As a result of mediation the applicant is likely to ask SAT for permission to amend the application. In such cases, SAT often invites the respondent (the JDAP) to reconsider its decision under section 31 of the *State Administrative Tribunal Act 2004* having regard to the amended application.

Section 31(1) of the *State Administrative Tribunal Act 2004* enables SAT to invite the original decision-maker to reconsider the decision that is the subject of review proceedings before SAT.

SAT can invite the original decision-maker to reconsider the decision at any time prior to SAT's final decision. If SAT invites the original decision-maker to reconsider the decision, it will usually specify a time frame within which the reconsideration is to take place.



This means the amended plans and information would be re-considered by the City, re-advertising would be undertaken and then the item would then be presented back to the DAP for re-consideration.

After reconsidering a decision, the DAP decision-maker may:

- Affirm the decision. (Refusal)
- Vary the decision. (Refusal subject to some modifications)
- Set aside the decision and substitute a new decision. (Approval)

If the original decision-maker varies or substitutes the decision, then the next step depends on the applicant. If the applicant is happy with the varied or substituted decision, they can withdraw the SAT proceedings, and the new decision comes into effect. If the applicant is not happy with the new decision, the proceedings are resolved before SAT and the new version of the decision is reviewed.

## Third Party Participation in the SAT process

A person who is not an applicant or a respondent can participate in a State Administrative Tribunal (SAT) planning matter. Such a person is known as a 'third party'. The applicant and the respondent are together known as 'the parties'

### Can a third party appeal to SAT?

There are generally no third party appeal rights in relation to planning decisions in Western Australia. Unless a local planning scheme or local law allows a third party to apply to SAT for review of a decision, only the applicant for planning approval or a person to whom a direction or notice is given by a planning authority may appeal to SAT.

### Can a third party be joined as a party?

Under section 243 of the Planning and Development Act 2005, SAT's general power to join a person as a party to a proceeding under section 38 of the State Administrative Tribunal Act 2004 is excluded in planning matters. In applications not under the Planning and Development Act 2005 SAT may join a person as a party if it considers that:

- the person ought to be bound by, or have the benefit of, SAT's decision in the proceeding;
- the person's interests are affected by the proceeding; or
- for any other reason it is desirable that the person be joined as a party.

### Are other ways in which a third party may participate?

There are four ways in which it may be possible for a third party to participate in a planning matter. These are:

- being called as a witness by the respondent;
- making submissions under section 242 of the Planning and Development Act 2005;
- intervening in a proceeding under section 37(3) of the State Administrative Tribunal Act 2004; and
- possible participation in mediation.

SAT may allow a third party who has a sufficient interest in the matter to make submissions in respect of a planning application under section 242 of the *Planning and Development Act 2005*. In order for SAT to allow a third party to make submissions, the third party must have a legal interest or some other direct, material and special interest in the outcome of the application that is unique to it and not shared by the public generally or a segment of the public. Generally it is not sufficient that the third party holds genuine and strong views or has taken an active interest in relation to the matter even where the third party is a body such as a community association that has objects directed to promoting outcomes relevant to the application. SAT must determine that it is appropriate to allow the third party to make submissions in respect of the application having regard to considerations such as:

- the nature and strength of the third party's interest;
- the contribution that the third party is likely to be able to make to the proper resolution of the issues;



- whether the interest which the third party represents and the matters they intend to address will be adequately dealt with by the parties;
- the impact on the conduct of the application, the interests of the parties and the public interest in the prompt and efficient finalisation of the application; and
- SAT's main objectives described in section 9 of the State Administrative Tribunal Act 2004 including 'to act as speedily and with as little formality and technicality as is practicable, and minimise the costs to the parties'.

As part of the mediation process, it is the City's position that the City will provide a written request to the SAT to allow persons who made a submission and the land on which the application is proposed adjoins that person's land (as defined by section 5.60B of the *Local Government Act 1995*) to participate in the mediation process.

The purpose of this is to ensure that the community are provided with an opportunity to voice their comments to the SAT regarding the development.

If SAT allows a third party to make submissions, then it will usually require the submissions to be in writing and filed with SAT and provided to the parties in advance of the hearing so that the parties can address the submissions at the hearing.

The status of a submission-maker does not give the third party the right to give evidence, call witnesses, ask questions of witnesses or appeal against SAT's decision.

If the parties reach agreement in relation to the resolution of the application and ask SAT to make orders by consent to give effect to their agreement, then SAT will usually not allow a third party to make submissions in relation to the application.

## Participating in Mediation

The purpose of mediation is to resolve a dispute by settlement between the parties or to narrow the issues in dispute. Mediation is usually a private and confidential process involving the parties only.

A third party may usually only participate in mediation if the parties agree. Sometimes the parties agree to a third party participating to a limited extent by explaining their concerns or by providing technical information not otherwise available. In rare cases, SAT may override the wishes of the parties and allow a third party to explain their concerns or participate in some other way.

A third party should usually first speak to the respondent or their representative if they wish to participate in a mediation.

If a third party wishes to ask SAT to allow them to participate in a mediation, they should do so at the directions hearing at which the matter is referred to mediation or by letter to SAT with copies to the parties, not at the mediation itself.

## What is a third party's role if the respondent is invited to reconsider its decision?

As a result of mediation the applicant may provide additional information or clarification to the respondent about a planning application or may ask SAT for permission to amend the application.

In such cases, SAT often invites the respondent to reconsider its decision under section 31 of the *State Administrative Tribunal Act 2004* having regard to the additional information or clarification or the amended application.

If SAT invites the respondent to reconsider its decision, then a third party should direct its submissions to the respondent, as the respondent has power to make another decision.

For further information about an invitation to reconsider a decision see SAT's Info Sheet 'Invitation by SAT for decision-maker to reconsider its decision'.



## Would any amended concept or proposal be re-advertised to the community?

With respect to any readvertising of modified plans resulting from a mediation process officers will seek that the JDAP request in any SAT orders provisions that amended plans are to be subject to a further consultation period where:

- a) The amended plans result in a significantly different proposal to that which was previously advertised; or
- b) The amended plans potentially have a greater impact upon the amenity of adjoining property owners and occupiers.
- c) The amended plans propose new variations which potentially have an impact upon the amenity of adjoining properties.

In supporting the above proposals it is acknowledged that the applicant and/or the JDAP may not be receptive to these requests. In these circumstances SAT may not be prepared to make the requested orders. Where this occurs the City will place this on the public record in the City's Responsible Authority Report (RAR) submitted to the JDAP.

## Do you have more questions?

A Duty Planner is available to talk to at the City's Administration Office Monday to Friday, 8.30am to 5.00pm, in person or on the phone.

**Phone:** 9273 6000

**Email:** [mail@vincent.wa.gov.au](mailto:mail@vincent.wa.gov.au)

**Address:** Main Administration Building, 244 Vincent Street, Leederville 6007, WA

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