State Administrative Tribunal Information Sheet

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1.0 Introduction to the State Administrative 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.

How do I apply?

To apply to SAT you must identify the relevant enabling law. You can do this by using the SAT Application Wizard on the SAT website at www.sat.justice.wa.gov.au.

Areas of jurisdiction

- Commercial and Civil (i.e. strata titles, retirement villages, commercial tenancy, building disputes, state tax matters);
- Development and Resources (i.e. applications concerning development, subdivision, local government notices, fisheries, water, rating, land valuation, land tax, local government approvals, soil and land conservation, compensation for compulsory acquisition of land and related matters under more than 30 Acts);
- Human Rights
- Vocational Regulation

2.0 Information about Class 1 Applications to the State Administrative Tribunal

Class 1 planning applications involve:

- Development with a value of less than $250,000;
- Single house on a single lot with a value of less than $500,000; and
- Subdivision of a lot into not more than three lots.

How do I make an application for review?

- Application forms can be created on the State Administrative Tribunal (SAT) website www.sat.justice.wa.gov.au by using the 'SAT Wizard'.
- An application must be lodged within 28 days of the date on which the original decision-maker gives notice of their decision.
- The application must be accompanied by a copy of the application to the original decision-maker and a copy of the decision to be reviewed, (where relevant).
- A copy of the application must be given to the decision-maker within seven days.
- The applicant may elect, at the time the application is made, that no party be represented by a lawyer.

What happens if my application is outside the 28 day time limit?

SAT has the power to extend the time for bringing an application even if the time limit has expired.

If the application is out of time you need to ask for an extension of time in the application and explain why an extension should be granted. SAT will consider whether or not to extend time at the first directions hearing.

What happens after an application for review is lodged?

- SAT will set a time, date and place for a first directions hearing and send notice to the parties.
- There is not usually a requirement for either party to provide any further information until the first directions hearing.
- Parties may attend a directions hearing by telephone if they live outside Perth or have difficulty in attending in person.
- If you need to attend by telephone, please contact SAT as soon as possible after receiving notice of the directions hearing by phoning (08) 9219 3111 or 1300 306 017 (regional callers) or by emailing at sat@justice.wa.gov.au.

What happens in a class 1 directions hearing?

- The first directions hearing is held about three weeks after the application is lodged.
- Class 1 directions hearings are usually held on Wednesdays, for an hour.
- A SAT member will be listed to deal with the matter.
- The setting is generally relaxed and usually involves:
    - explanation of the process;
    - identification of the issues; and
    - mediation of issues and consideration of alternative solutions.

- Directional orders may be given by SAT to progress the matter.
- If an agreed outcome is not possible, then the matter is listed for final hearing and orders will be made for the production of necessary documents. An alternative is to have the matter determined entirely on the documents under s 60(2) of the State Administrative Tribunal Act 2004.

What is mediation?

In class 1 directions hearing the member may proceed to deal with the matter as if it were mediation or refer the matter to a separate mediation.

The purpose of mediation is to resolve a dispute by settlement between the parties. Mediation is a co-operative problem-solving process designed to help the parties find constructive solutions to their problems.

Mediation can also be useful in narrowing the issues in dispute. If 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.

What documents will be required by SAT?

It is necessary to lodge with SAT the application to the original decision-maker and the decision to be reviewed. No other documents are generally required unless and until a matter is listed for final hearing. The types of documents that SAT may require the parties to produce include:

- Respondent's Statement of Issues, Facts and Contentions;
- Applicant's responding Statement of Issues, Facts and Contentions;
- Respondent's s 24 bundle of documents;
- Applicant's bundle of documents;
- Witness statements; and
- Where expert evidence is to be given, a joint statement from expert witnesses.

What do you need to do before a final hearing?

Before a final hearing you need to:-

- Comply with orders made by the Tribunal about filing and providing to the other party witness statements and other documents;
- Organise an agent (such as a professional, an employee, a family member or a friend) to represent you if you wish;
- Prepare notes for an opening statement to the Tribunal;
- Carefully read any witness statements and other documents provided to you by the other party and prepare notes to cross examine any witness if you wish; and
- Prepare notes for a closing statement to the Tribunal.

What happens in a final hearing?

- Final hearings usually take place about six weeks after the date is set.
- The matter will be heard by one member.

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- The hearing is de novo (heard afresh) and is not confined to matters that were before the original decision maker.
- The parties may be represented by an agent (such as professional, an employee, a family member or a friend).
- The respondent will usually be called on first to explain and support the decision under review followed by the applicant to explain why the decision should be altered.
- The witness statements which were filed and provided to the other party in accordance with the Tribunal's orders usually become the evidence of the witness. The other party is entitled to cross-examine a witness and the Tribunal often asks questions of the witnesses.
- Experts in the same field will usually be required to give evidence together, will be asked questions by the Tribunal, and may ask each other questions.

What happens after the final hearing?

SAT may give an oral decision at the end of the hearing. If it does not give an oral decision, the Tribunal's decision must be given in writing usually within 90 days. The decision will be sent to the parties.

What happens if the matter is settled between the parties?

Where consent orders are sought to give effect to a settlement, a document recording the consent orders must be prepared by the parties and filed with SAT in hard copy signed beach of the parties or their representatives - and in electronic form. If plans, photographs or maps are to be attached to the consent orders, sufficient copies of these documents must be filed. SAT will only make a consent order if it is satisfied that it has power and that it is appropriate to do so.

When does the decision take effect?

Unless specified otherwise, SAT's decision has effect from the time when the original decision-maker's decision had effect.

Can an application for review be withdrawn?

Section 46 of the State Administrative Tribunal Act 2004 allows SAT to permit an application to be withdrawn. This could be used where the decision-maker changes its decision under section 31 and the applicant is happy with that decision, or, where the applicant does not wish to proceed with the review. If the applicant wants SAT to permit withdrawal of the application, it will be necessary for the applicant to obtain agreement from the respondent.

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3.0 Information about Class 2 planning applications to the State Administrative Tribunal

What is a class 2 planning application?

Class 2 planning applications involve:

- development with a value of $250,000 or more other than a single house on a single lot;
- a single house on a single lot with a value of $500,000 or more;
- subdivision of a lot into four or more lots;
- a direction given by a responsible authority in relation to alleged unauthorised development; and
- any other application for review under Part 14 of the Planning and Development Act 2005 which does not involve development or subdivision.

How do I make an application for review?

Application forms can be created on the SAT website www.sat.justice.wa.gov.au by using the 'SAT Wizard' on-line forms.

An application must be lodged with SAT within 28 days of the date on which the original decision-maker gives notice of the decision.

The application must be accompanied by a copy of the application to the original decision-maker including any plans in scalable form and a copy of the decision to be reviewed (where relevant).

A copy of the application must be given to the original decision-maker within 7 days.

Can I be represented by a lawyer or agent?

Parties may be represented by a lawyer or an agent such as a family member, friend or employee.

If the name and address of the lawyer or agent is not stated in the application, the lawyer or agent must, within seven days of receiving instructions to represent the party, file with SAT and give to each other party a notice of representation.

The notice of representation form is available on the SAT website.

If a party is represented by an agent the notice of representation must include a signed authority for the agent to represent the party.

What happens if my application is outside the 28 day time limit?

SAT has the power to extend the time for bringing an application even if the time limit has expired. If the application is out of time you need to ask for an extension of time in the application and explain why an extension should be granted.

The main considerations are the length of delay, the reasons for delay, whether there is an arguable case and whether there would be prejudice to any person if an extension were granted. SAT will consider whether or not to extend time at the first directions hearing.

What happens after my application is lodged?

SAT will set a time, date and place for a first directions hearing and send notice to the parties.

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

Parties may attend a directions hearing by telephone if they live outside Perth or have difficulty in attending in person. If you need to attend by telephone, please contact SAT as soon as possible after receiving notice of the directions hearing by phoning (08) 9219 3111 or 1300 306 017 (regional callers) or by emailing sat@justice.wa.gov.au.

What happens in a class 2 directions hearing?

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

All class 2 planning applications are listed in the Deputy President's directions list which is usually held on Friday mornings before either or both a Deputy President or SAT Senior Member. The only exception is applications in respect of a direction given by a responsible authority in relation to alleged unauthorised development to a person who is not represented by a lawyer or a town planner.

These are usually listed in the class 1 directions list on Wednesdays before a Member see the Info Sheet information about Class 1 Planning Applications.

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.

What documents will be required by SAT

The application to SAT must be accompanied by a copy of the application to the original decision-maker including any plans in scalable form and a copy of the decision to be reviewed (where relevant).

No other documents are generally required unless and until a matter is listed for final hearing or final determination on the documents.

The types of documents that SAT may require the parties to produce include:

- respondent's Statement of Issues, Facts and Contentions;
- applicant's responding Statement of Issues, Facts and Contentions;
- respondent's bundle of documents under Section 24 of the State Administrative Tribunal Act 2004;
- applicant's bundle of documents;
- witness statements; and
- where both parties intend to call evidence from expert witnesses in a common field, a joint statement of the expert witnesses as to matters agreed between them, matters not agreed and the reasons for any disagreement.

What do I need to do before a final hearing?

Before a final hearing you need to:

- comply with SAT orders about filing and providing to the other party witness statements and other documents;
- prepare notes for an opening statement;
- carefully read any witness statements and other documents provided to you by the other party and prepare notes to ask questions of any witness if you wish; and
- prepare notes for a closing statement.

What happens in a final hearing?

Final hearings usually take place about six weeks after the date is set.

- The hearing takes place before a Member or a panel of two or three Members.
- The hearing is not confined to matters that were before the original decision-maker, but usually focuses on the issues identified in the parties' Statements of Issues, Facts and Contentions.

- The respondent is usually called on first to explain and support the decision under review, followed by the applicant to explain why the decision should be altered.
- A witness statement which was filed and provided to the other party in accordance with the Tribunal's orders usually becomes the evidence of a witness. The other party is entitled to ask questions of a witness and the Tribunal often asks questions.
- Expert witnesses in the same field are usually required to give evidence together, are asked questions by the Tribunal, may ask each other questions and may be asked questions by the parties - see the Info Sheet *'A guide for experts giving evidence in the State Administrative Tribunal*'.
- Where appropriate, SAT views the development site accompanied by the parties or their representatives in order to understand the evidence.
- The applicant is usually invited to make a closing statement, followed by the respondent, with the applicant having a right of reply.

What happens after the final hearing?

SAT may give an oral decision at the end of the hearing. If it does not give an oral decision the Tribunal's decision must be given in writing within 90 days. The decision will be sent to the parties.

What happens if the matter is settled between the partied?

Where orders are sought by parties to give effect to a settlement, a document recording the consent orders must be prepared by the parties and filed in hard copy (signed by each of the parties or their representatives) and in electronic form. Any plans, photographs or maps which are to be attached to the consent orders must be filed electronically and in hard form with sufficient copies for SAT and each of the parties.

SAT will only make an order by consent if it is satisfied that it has power, and that it is appropriate to do so.

When does the decision take effect?

Unless SAT specifies otherwise, SAT's decision has effect from the time when the original decision-maker's decision had effect.

Can an application for review be withdrawn?

Section 46 of the State Administrative Tribunal Act 2004 allows SAT to grant leave for an application to be withdrawn. If an applicant wishes to obtain leave to withdraw the application it should obtain the respondent's written consent and provide it to SAT.

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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.

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

Within the Section 31 process it is the City's position that JDAP be requested by officers attending a mediation to include in any reconsideration orders provisions that:

a) Authorise the City to inform community members who objected to or otherwise participated in discussions with the City about the JDAP application of any orders made in mediation including the date by when the matter is to be reconsidered by the JDAP;

b) The parties consent to any amended plans provided to the City to be made available on the City's website for a period of 21 days before the JDAP meeting at which the DAP application will be reconsidered; and

c) Any timeline agreed at mediation include a period of 14 days after the preparation of the RAR before the DAP meeting at which the JDAP application will be reconsidered.

The purpose of these orders is to ensure that the community is aware of any revised plans and the date that the matter will be reconsidered by the JDAP.

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.

Local government officers may be called upon to provide information and give evidence at SAT proceedings. The SAT will be responsible for reviewing the decision made by the decision maker (in this case the DAP). In order to do so, it may be necessary for them to hear evidence from such officers. Local government officers may be called to give evidence even where the responsible authority's recommendations differ to the DAP's determination.

4.0 Documents that may be required in planning matters

Generally no documents other than the application for review, a copy of the application to the original decision-maker and the decision to be reviewed (where relevant) will be required until after the matter has been to a directions hearing.

At the directions hearing the member will make orders as to what documents need to be provided, and when. In most cases the preparation of documents will not be required unless and until the matter is listed for final hearing. However, in some cases the respondent (original decision-maker) may be required to prepare a Statement of Issues, Facts and Contentions after the first directions hearing to assist in the identification of issues in dispute.

The types of documents that SAT may require the parties to produce include:

- respondent's Statement of Issues, Facts and Contentions;
- applicant's responding Statement of Issues, Facts and Contentions;
- respondent's s 24 bundle of documents;
- applicant's bundle of documents;

- witness statements; and
- where expert evidence is to be given, a joint witness statement from the expert witnesses.

Statement of Issues, Facts and Contentions

A Statement of Issues, Facts and Contentions allows SAT to quickly understand the key issues, facts and arguments in a review application. The respondent is generally required to prepare a Statement of Issues, Facts and Contentions first as it has usually made a decision and is the original decision-maker.

The applicant is usually required to respond to each of the respondent's issues, facts and contentions by providing a responding Statement of Issues, Facts and Contentions and may raise any other issue, fact or contention that may be relevant to the proceedings. The issues in dispute may have changed from those originally in dispute when the review application was lodged, particularly if the matter has been to some form of mediation.

The example set out below is a simple illustration of what a respondent's Statement of Issues, Facts and Contentions might look like. It should be understood that the types of issues, the factual basis and the contentions (arguments) arising will vary considerably between different matters and may be more extensive than the example.

Example Respondent's Statement of Issues, Facts and Contentions

Issues:

1.0 Whether the proposed child-care centre will jeopardise the safety of motorists and pedestrians in the locality.

2.0 Whether the location and scale of the proposed child-care centre is inconsistent with the respondent's Policy No 12 'Location of Child care Centres'.

Facts:

Issue No 1.0

1.1 The proposed development is located on Main Road, adjacent to an existing shopping centre at the intersection of Main Road and Mayfair Road. Springfield Primary School is located approximately 100 metres north of Main Road.

1.2 Access to the child-care centre is proposed via a 6.0 metre crossover to Main Road. The proposed crossover is located 40 metres from the existing crossover servicing the existing shopping centre.

1.3 The proposed child-care centre will generate a maximum of 66 additional vehicles per hour (approximately 400 vehicles per day).

1.4 There is no restriction on right-turning vehicles either entering or exiting the subject land.

Issue No 2.0

2.1 Clause 8 of Policy No 12 'Location of Child Care Centres' recommends that child care centres be located in areas zoned 'Commercial'.

Contentions:

Issue No 1.0

1.1 The respondent contends that the additional traffic flow will jeopardise the safety of motorists and pedestrians in the locality because:

(i) …

(ii) … (etc)

Issue No 2.0

2.1 The proposal does not meet the criteria in clause 8 of Policy No 12 for the following reasons:

(i) …

(ii) … (etc)

In response to respondent's Statement of Issues, Facts and Contentions the applicant will be required by SAT to prepare a Statement of Issues, Facts and Contentions, the function of which is to:

- address the respondent's statement by reference to each paragraph number and indicate whether the applicant accepts or rejects the issue, fact or contention identified by the respondent; and
- set out any other issues, facts and contentions relevant to the decision under review.

The example set out below is a simple illustration of what an applicant's Statement of Issues, Facts and Contentions might look like.

Example Applicant's Statement of Issues, Facts and Contentions

Issues:

1.0 Agreed.

2.0 Agreed.

Facts:

Issue No 1.0

1.1 Agreed.

1.2 Not agreed. The Traffic Report prepared by Safe-Movements estimated that the proposed child-care centre will generate a maximum of 33 additional vehicles per hour (approximately 214 vehicles per day).

1.3 Agreed.

1.4 Agreed.

Additional Facts:

1.5 Vehicles leaving the shopping centre are restricted from making a right-turn movement onto Main Road. Similarly, vehicles on Main Road (travelling south) are unable to turn right to access the shopping centre car parking.

Issue No 2.0

2.1 Agreed. However, 'Child Care Centre' is listed as an 'AA' use in Table 1 of the respondent's Local Planning Scheme.

Example - Section 24 Bundle

Matter No: DR 555 of 2005

Acme Incorporated
and
Springfield Planning Authority
SECTION 24 BUNDLE

1.	**Decision Subject to Review**		
1.1	Application for planning approval & supporting documents	29 Dec 2004	Page 1
1.2	Decision letter	15 Feb 2005	Page 10
1.3	Resolution of Council	12 Feb 2005	Page 12
1.4	Application for review	3 Mar 2005	Page 14
2.	**Statutory and Policy Documents**		
2.1	Shire of Springfield Community Planning Scheme No 5	5 Aug 2004	Page 18
2.2	Local Planning Policy No 34	Sep 2003 www.springfield.wa.gov.au	
2.3	Draft Rural Strategy 5	Jul 1998 www.spa.wa.gov.au	
3.	**Other Material Relevant to the SAT's Review of the Decision**		
3.1	File note from Engineering, Department, Shire of Springfield, regarding road layout	undated	Page 100
3.2	Letter from applicant to CEO	15 Jan 2005	Page 101

Bundles of documents

Section 24 of the SAT Act required that the original decision-maker provide a bundle of documents to the Tribunal. Rule 12(3) of the State Administrative Tribunal Rules provides for a copy of the material to be given to the other party.

The decision-makers' bundle is to include:

- a statement of the reasons for the decision; and
- other documents and other material in the decision-maker's possession or under the decision-maker's control which are relevant to the Tribunal's review of the decision.

The bundle should be indexed and paginated and arranged in a logical order. Where a bulky document, such as a planning scheme, is available on the internet, it is sufficient to provide the website address where the document can be found in the index to the bundle rather than provide the hard copy. The benefits of the decision-makers bundle include that it can be referred to by both parties in witness statements and avoid duplication of documents.

Where appropriate, the applicant may also be required to file and give to the respondent a bundle of documents that have not already been provided in the section 24 bundle.

Witness statements

Anyone who is going to give evidence, including a party, generally needs to prepare a witness statement of his or her evidence to SAT. In some instances, SAT will accept the Statement of Issues, Facts and Contentions of the applicant as his or her witness statement.

If the applicant wishes this to occur, they should raise it at the directions hearing. The witness statement should set out all of the evidence that the witness intends to give.

Neither party should have new information sprung on them at the hearing, without the opportunity to consider it. This is why statements are prepared and exchanged between the parties prior to the final hearing.

Witness statements should relate closely to the issues set out in the Statements of Issues, Facts and Contentions. Any conclusions expressed in a witness statement need to be substantiated by evidence, such as documents or photographs.

Witness statements should include the witness' name, address and occupation, and should be signed and dated by the witness. Statements should preferably be typewritten, double spaced and with numbered paragraphs. If a document that is referred to in a witness statement is contained in one of the parties' bundles of documents, the bundle page reference should be provided and the document should not be reproduced.

Example Witness Statement

This example is to show a typical format of a witness statement - the contents will vary in each case.

Matter No: DR 555 of 2005
Acme Incorporated
and
Springfield Planning Authority

WITNESS STATEMENT OF MR JOHN WILSON SMITH

1. My name is John Wilson Smith and I reside at No 78 Evergreen Terrace, Springfield.
2. I am a dental technician, currently employed with Denture Care.
3. I am the registered proprietor of the subject land. I purchased the property in 1987.
4. As the lot is located adjacent to commercial premises I purchased it with the idea of perhaps establishing a dental technician's business in the existing residence.
5. I consider the land to be suitable for this type of activity as ...

Dated 4 July 2015

…….....

(Signed by John Wilson Smith)

Joint statements from expert witnesses

Where parties rely on expert evidence, SAT will usually require the experts in each field to confer in the absence of the parties and their advisers and prepare a joint statement of matters agreed, matters not agreed and the reasons for any disagreement. At the hearing the joint statement will be received as evidence, and expert evidence inconsistent with any agreement in the joint statement will only be allowed with SAT's permission. The expert witnesses in each field will usually give evidence together at the hearing.

5.0 Third party participation in planning matters

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 there 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.

Called as a witness to give evidence

The usual way in which a third party participates in a planning matter is by being called as a witness to give evidence at the hearing on behalf of the respondent. A third party should usually first speak to the respondent or its representative if they wish to give evidence.

Anyone giving evidence to SAT usually needs to prepare a witness statement of their evidence. A written submission made to the respondent may be accepted as a witness statement if it contains all of the evidence the person wishes to give and if the respondent makes it clear to SAT and the applicant when the respondent is required to file witness statements that it relies on the submission as a witness statement. Anyone giving evidence

must come to the final hearing to answer any questions from SAT or the parties or their representatives.

For further information about witness statements and what happens at a final hearing see the City's Info Sheets *'Documents that may be required in planning applications'*, *'Class 1 planning applications'* and *'Class 2 planning applications'*.

Making submissions

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'.

A third party who wishes to make submissions should write a letter to SAT dealing with these points and send a copy of the letter and any supporting documents to each of the parties. SAT will usually hold a directions hearing to determine whether to allow the third party to make submissions at which the third party and each of the parties may attend and explain their positions. 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.

Intervening

Under section 37(3) of the State Administrative Tribunal Act 2004, SAT may allow a third party to intervene in a planning matter. If SAT allows a third party to intervene, then the third party acquires rights and responsibilities as a party under section 36(1) of the State Administrative Tribunal Act 2004. But SAT may impose conditions on an intervention. Usually an intervener may give evidence, call witnesses, ask questions of witnesses and exercise any appeal right available to a party.

In order for SAT to allow a third party to intervene:

- the third party must have at least a sufficient interest in the matter to make submissions under section 242 of the Planning and Development Act 2005 as described above. However, merely demonstrating a sufficient interest does not by itself enliven a right to intervene;
- there must be something about the particular circumstances of the case which makes it necessary, in order for SAT to reach the correct and preferable decision, that the third party should be allowed to intervene;
- the third party will generally need to demonstrate that its intervention is necessary to enable SAT to meet its main objectives described in section 9 of the State Administrative Tribunal Act 2004 and the purposes of the Planning and Development Act 2005 described in section 3(1) of that Act;
- generally the third party must not simply seek to argue for or against the application on the same basis as an existing party; and
- SAT must determine that it is appropriate to allow the third party to intervene having regard to the considerations described above in relation to when SAT may allow a third party to make submissions under section 242 of the Planning and Development Act 2005 and any other relevant consideration.

A third party who wishes to intervene should write a letter to SAT dealing with these points and send a copy of the letter and any supporting documents to each of the parties. SAT will usually hold a directions hearing to determine whether to allow the third party to intervene at which the third party and each of the parties may attend and explain their positions.

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.

For further information about directions hearings and mediations see the City's Info Sheets *'Class 1 planning applications'* and *'Class 2 planning applications'*.

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*'.

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6.0 Invitation for an original decision-maker to reconsider a decision

There are two types of proceedings in the State Administrative Tribunal ('SAT'):

- Original proceedings where SAT makes the first decision on a matter. For example, when someone applies to SAT for an order under the Guardianship and Administration Act 1990.
- Review proceedings where SAT is reviewing the decision of a government decision-maker. For example, a local government's decision to deny an application for planning approval.

When reviewing a decision, SAT can invite a decision-maker (such as a local government) to reconsider their original decision. The decision-maker then returns to SAT with their response.

Why would SAT invite the reconsideration of a decision?

SAT can invite a decision-maker to reconsider a decision whenever it believes appropriate, but some likely reasons are:

Examples of changed circumstances

- Where the applicant has provided additional information or clarification since the original decision.
- Where the applicant has amended the application which is the subject of the decision.
- Where the factual or legal circumstances have changed since the decision was made.

Preliminary decision has been determined

- Where SAT has determined a preliminary issue that might affect the decision.

Inadequate reasons provided by the decision-maker

- Where the reasons given for the decision by the original decision-maker are inadequate.

Review of a deemed refusal

Under the Planning and Development Act 2005 there are time periods for decision-makers to give a decision. If they don't make a decision, it can be deemed that they refused the application. To facilitate the review proceedings, SAT may invite the decision-maker to reconsider their decision to provide a basis for the review.

When can SAT invite a decision-maker to reconsider their decision?

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.

What happens after a decision is reconsidered?

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

- Affirm the decision.
- Vary the decision.
- Set aside the decision and substitute a new decision.

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 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.

What is a section 31 invitation to reconsider?

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.

Can a section 31 reconsideration take place in a public meeting?

While SAT mediations are generally confidential, if an amended decision is proposed during a SAT mediation, the decision-maker does not need to reconsider the proposal in private.

Indeed, it is generally a good idea to consider an amended proposal under section 31 in a meeting open to the public, according to the normal functions and legislative framework of the original decision-maker.

While the amended proposal can be considered in a public meeting, anything said or done in the mediation cannot be discussed in a public meeting, unless agreed by all parties to the mediation.

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7.0 Mediation

What is mediation?

Mediation is a process in which a neutral third party (in SAT, a Member of the Tribunal) assists the parties to negotiate a resolution to their dispute or to identify and narrow the issues in dispute. The mediator helps to identify what has brought the parties into dispute, what their interests are, and what the options for resolution are.

Why use mediation?

Mediation is a flexible and informal approach to settling disputes. It gives parties an opportunity to have their say and agree on an acceptable solution to the dispute.

Mediation can be faster and less expensive than a formal hearing and provides more flexibility for parties to reach their own solutions. Even if mediation does not result in the resolution of the whole dispute, issues are often narrowed or resolved, so that the final hearing is faster and cheaper.

Which cases are mediated?

Each case is examined to see whether it is suitable for mediation. The timing of mediation will vary from case to case, but there are clear advantages in commencing mediation as soon as possible.
Mediation, and whether it is appropriate, will generally be discussed at the first directions hearing.

Who will be the mediator?

A SAT member trained in mediation will act as mediator.

Should I be represented at mediation?

There is no requirement that you be represented at mediation. It is an informal process and self-represented parties are generally well able to deal with the issues.

Who may attend mediation?

All parties involved in the matter and their representatives, if representatives are allowed, and any relevant expert witnesses may attend the mediation.

Generally, other people may not attend the mediation unless all parties agree. In particular circumstances, other people, such as officers of relevant government authorities, may be invited or permitted to attend the mediation.

In review matters in the development and resources area, SAT may invite the Mayor or President of a local government to attend or nominate one or more councillors or the Chief Executive Officer of the local government to attend the mediation.

Where will the mediation be held?

Most mediations are held at the SAT premises at 565 Hay St, Perth. However, on occasion, if it is in the best interests of the parties, the mediation may be held on the site of the issue in dispute or some other appropriate place.

What will happen at mediation?

At the start of the mediation the mediator will explain what will happen. It usually begins with each party explaining how they see the dispute. Once each party understands the other party's position, options for settlement can be developed and explored, and agreement reached.

Mediation is an opportunity for you to deal with your dispute. Even if you are represented, the mediator may talk directly to you and expect you to contribute.

How do I prepare for mediation?

- Set aside the whole time the mediation is listed for, normally three hours.
- Be prepared to listen - you know what your case is about, but although you may think you know what the other side's point of view is, there is almost certainly more to it than you think.
- Be prepared to speak - the mediator will speak to you and in most cases expect you to talk to the other side.
- Be open minded - there may be options or solutions that you have not considered.
- Be prepared to make a decision - mediation empowers the parties to reach their own agreement. That requires that you accept responsibility for the solution.

Is mediation confidential?

Yes, mediation is confidential. 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.

In vocational matters, when a settlement is reached, the details of the settlement will usually be published on the SAT website.

Does the mediation cost anything?

There is no additional charge for mediation as it is included in the application fee. However, if you choose to be represented by a legal practitioner, or if a professional witness attends to support your case, you may need to pay that person.

Can my matter be referred directly to mediation?

Parties are encouraged to contact one another well before the first directions hearing to discuss whether their matter is amenable to mediation.

If the parties jointly write to SAT at least two days before the directions hearing and request that their matter be referred directly to mediation without having to attend the directions hearing, then SAT will consider the request.

If SAT agrees that the matter should go directly to mediation, it will advise the parties of the mediation date and any programming orders, and the parties will not have to come to the directions hearing.

However, if the parties do not receive a response from SAT to their request, then they should attend the directions hearing at the appointed time.

The parties should advise SAT in their letter of mutually available dates for mediation, the location where they suggest that the mediation should take place (usually at SAT or on site) and any programming orders that should be made to maximise the prospect of success.

For example, unless the issues in dispute are clear, SAT usually requires the respondent to file and give to the applicant a statement of issues for mediation or, in complex cases, a statement of issues, facts and contentions, before the mediation. Where appropriate, SAT may also invite councillors, officers of relevant authorities or other people to participate in the mediation. The parties should bring anyone who can assist in the discussion of issues to the mediation, but should advise SAT and each other of the people who will attend in advance of the mediation.

How long will mediation take?

Mediations are generally listed for three hours, but more time may be available if required. Mediations can also be adjourned to continue at a later date.

What happens if my mediation is successful?

The settlement may be reduced to writing and the mediator may make orders in the terms of the settlement.

If the dispute is resolved through mediation, that generally finishes the matter and you will not be required to make any further appearances before SAT.

Development and resources applications, SAT often invites the original decision maker to reconsider its decision under section 31 of the State Administrative Tribunal Act 2004 (WA) having regard to further information provided or amendments proposed through mediation - see the Info Sheet 'Invitation for an original decision-maker to reconsider a decision'.

What happens when mediation is unsuccessful?

If your mediation is unsuccessful, the matter will proceed to either another directions hearing or directly to final hearing, which will take place as soon as practicable after the mediation. Your matter will not be unduly delayed because you attempted to resolve it by mediation.
If your matter goes to a final hearing, the mediator will not be the person who hears the case (unless all the parties consent). A different member of SAT will hear the case who will know nothing about what was discussed at the mediation.

8.0 Guide for experts giving evidence

The purpose of this pamphlet

The quality and presentation of expert evidence is important in assisting the Tribunal to make reliable and correct decisions in the many areas of its jurisdiction. Experience shows that, when expert witnesses understand and observe their obligation to bring to proceedings an objective assessment of the issues within their expertise, their evidence is of great assistance. When expert witnesses are not objective, and assume the role of advocate for a party, their credibility and consequently the reliability of their evidence suffers.

To maximise the value of expert evidence, the Tribunal has developed standard procedures requiring experts in the same field to confer prior to the hearing, to prepare a joint statement for the hearing, and to give evidence together ("concurrently") at the hearing.

This pamphlet is intended to assist parties, their representatives and expert witnesses to understand experts' obligations and the requirements of these procedures. Similar documents have been issued by other tribunals and courts in Australia.

The Tribunal will usually make an order at the first directions hearing or at a subsequent directions hearing requiring a party who engages an expert to attend mediation or a compulsory conference or to give evidence at a hearing to give the expert:

a) this pamphlet, unless the party has already given the expert a copy of the pamphlet; and
b) a copy of the orders made by the Tribunal relating to expert evidence.

The Tribunal will also usually make an order at the first directions hearing or at a subsequent directions hearing requiring an expert witness to acknowledge in his or her statement of evidence and in any joint statement that he or she has read this pamphlet and the orders made by the Tribunal relating to expert evidence and agrees to be bound by the expert's obligations stated in the pamphlet and orders.

Directions hearings can also be used to clarify any questions that a party or an expert may have about expert evidence and how the procedures relating to expert witnesses operate in practice. A party or an expert witness may request the Tribunal to convene a directions hearing for this purpose.

Expert's obligations to the Tribunal

The Tribunal's rules state that an expert who attends a mediation, a compulsory conference or a conferral of experts directed by the Tribunal or who gives evidence at a hearing has the following obligations to the Tribunal:

(a) an overriding duty to assist the Tribunal impartially on matters relevant to their area of expertise;
(b) a paramount duty to the Tribunal and not to the party who engaged them; and
(c) a responsibility to convey their expert opinion to the Tribunal and not to act as an advocate for the party who engaged them.

It is fundamental that experts giving evidence in the Tribunal appreciate and acknowledge their obligations to the Tribunal.

Nevertheless, when the expert attends mediation, a compulsory conference or a conferral of experts directed by the Tribunal, or gives evidence at a hearing, he or she must appreciate and acknowledge the obligations set out above.

Expert's statement of evidence

The Tribunal will usually require a party who proposes to call an expert to give evidence at a hearing, by a date specified in the order, to file with the Tribunal, and give to the other party, a signed statement of the expert's evidence.

In that statement, the expert must:

(a) acknowledge that he or she has read this pamphlet and the Tribunal's orders relating to expert evidence and agrees to be bound by the expert's obligations to the Tribunal stated in the pamphlet and orders; and
(b) specify:

a. his or her qualifications, training and experience in the field of expertise;
b. the facts, matters and assumptions on which the opinions in the statement of evidence are based (a letter of instructions may be annexed);
c. reasons for each opinion expressed;
d. if applicable, that a particular question or issue falls outside his or her field of expertise;
e. any literature or other materials utilised in support of the opinions; and
f. any examinations, tests or other investigations on which he or she has relied and identify and give details of the qualifications, training and experience of the person who carried them out.

If the expert believes that the statement may be incomplete or inaccurate without some qualification (for example that his or her opinion is not a concluded opinion because of insufficient research or insufficient data), then that qualification must be stated.

If a document referred to in the statement of evidence is contained in a bundle of documents filed by any party, then the document must be identified by reference to the relevant bundle and page number in the bundle and must not be attached to the statement. Any document referred to in the statement that is not contained in a bundle of documents filed by any party must be attached to the statement and numbered.

Conferral and joint statement of expert witnesses

In accordance with Tribunal's rules, the Tribunal will usually require the expert witnesses in each field of expertise or in a particular field of expertise to confer with one another in the absence of the parties and their representatives, either on their own (an "unchaired conferral") or facilitated by a Tribunal member (a "chaired conferral"), and prepare a joint statement of:

(a) the issues arising in the proceeding which are within their expertise;
(b) the matters upon which they agree in relation to those issues;
(c) the matters upon which they disagree in relation to those issues;
(d) the reasons for any disagreement; and
(e) any other matters that the experts consider to be relevant in the proceeding.

It will usually be desirable for the experts to meet face to face and to work through the issues together. In some cases, where the issues are relatively narrow, it may be adequate for them

to confer by telephone. It may be necessary to meet on more than one occasion to finalise the conferral process. The experts who confer determine the arrangements for the conferral, for example, where and when to meet, who keeps notes, who writes up the joint statement, and who sends the signed joint statement to the Tribunal and the parties.

The experts may jointly request the parties to provide a venue or facilities for the conferral and joint statement.

A conferral between expert witnesses, whether on their own or before a Tribunal member, is not a mediation and its purpose is not to settle the matter or compromise on issues by negotiation. Rather, the purpose of an experts' conferral is to assist the Tribunal to resolve the matter correctly, quickly and with minimum costs to the parties. It is expected that, consistently with their obligations to the Tribunal, the experts will make a genuine attempt to identify the matters of agreement between them and to clearly state their respective reasons for any disagreement. This enables the Tribunal and the parties at the hearing to focus their attention on the key matters of expert evidence that require resolution.

An expert must exercise his or her independent professional judgment in relation to the conferral and joint statement and must not act on any instruction or request by a party, representative or any other person to withhold or avoid agreement.

An expert must not discuss the content of a draft joint statement with a party, representative or any other person (other than an expert who participated in the conferral). An expert must not disclose anything said or done in the course of a conferral of expert witnesses, other than the joint statement, to a party, representative or any other person (other than an expert who participated in the conferral) unless the Tribunal grants leave.

The experts must each sign the joint statement at the conclusion of their conferral. If the statement is in handwriting, the experts must appoint one of them to generate a typed version of it, and each must sign the typed document.

The experts must file the joint statement with the Tribunal and give copies of it to the parties by the date specified in the Tribunal’s orders.

Late filing of the joint statement may result in an adjournment of the hearing, causing inconvenience, delay and expense for the parties, witnesses and the Tribunal. It is therefore important for experts to adhere to the timetable set by the Tribunal’s orders.

Usually the conferral will be followed by a hearing, but experts may also recommend that a further directions hearing should be convened for programming orders to be reviewed.

The joint statement will be admitted into evidence at the hearing and a party will not be permitted to present any evidence inconsistent with any agreement in the joint statement unless the Tribunal grants leave.

Anything said or done in the course of the conferral, other than the joint statement, may not be referred to in evidence during the hearing unless the Tribunal grants leave.

Concurrent evidence of expert witnesses

In accordance with Tribunal's rules, the evidence of expert witnesses must be given concurrently at the hearing in each field of expertise (unless the Tribunal directs otherwise). Concurrent evidence involves the expert witnesses being:

(a) Called to give evidence together;
(b) Asked questions by the tribunal;
(c) Given the opportunity by the tribunal to respond directly to each other's evidence;
(d) Given the opportunity by the tribunal to ask each other any questions which they consider might assist the tribunal; and
(e) Asked questions by the parties or their representatives.

Experts will be given an opportunity at the commencement of their evidence to ask the Tribunal any questions about the operation of the concurrent evidence process.

The concurrent evidence process enables the Tribunal to gain a clear understanding of the different opinions of the experts and gives the experts the opportunity to explain in greater detail the reasons for their conclusions.

The process gives the experts the opportunity to highlight any flaws that they see in another expert's opinions directly to the Tribunal.

The concurrent evidence process may, and frequently does, involve more than two experts in a particular field. It is important that parties make arrangements with their expert witnesses in sufficient time to ensure that the experts can manage the conferral process within their work schedules. This is particularly important where a number of experts are involved in the process. Similarly, parties need to make early arrangements to ensure that expert witnesses are available at the same time to give their evidence concurrently.

9.0 Interpreters at SAT

The State Administrative Tribunal (SAT) provides interpreters for witnesses and parties.

They are available for people whose first language is not English, and for people with a hearing impairment. If you need an interpreter, SAT will organise and pay for an interpreter.

How do I tell SAT I need an interpreter?

The SAT application form asks if any of the parties will need an interpreter. You can also contact SAT before the hearing to tell us an interpreter is needed. Parties may also raise the need for an interpreter at the directions hearing.

Attendance and cancellations

Parties must advise SAT immediately if an interpreter who has been booked to attend a hearing will not be required; for example, because the witness for whom the interpreter has been arranged will not be required to answer questions by either party or the case has been settled. Interpreters may be cancelled up to 24 hours before a hearing without charge to SAT.

SAT may require a party to pay for the cost of an interpreter if the party acted unreasonably, for example, by failing to advise SAT in sufficient time that an interpreter who has been arranged will not be required or if the party does not attend a hearing for which an interpreter has been booked.

Methods of interpretation used in SAT

The following methods of interpretation are used at SAT:

Consecutive interpreting:

- The interpreter listens and takes notes while listening.
- The interpreter speaks while the speaker pauses.

Normally used when interpreting the evidence of a witness, so SAT can understand it.

Simultaneous interpreting:

- The interpreter listens to what the people in the hearing are saying.
- The interpreter quietly interprets what is being said a few seconds later.

Normally used to interpret the SAT hearing for a party, so they can understand what is being said. Simultaneous interpreting is also used when hearing impaired parties require AUSLAN sign language.

Language assistance

Where a party or witness does not require everything to be interpreted, but sometimes needs assistance to fully understand or accurately express themselves.

Information for Interpreters

- Interpreter's duties and obligations to SAT:

Interpreters have a duty to assist SAT to provide justice which overrides their duty to the parties.

Impartiality

An interpreter is not an advocate for any party, including any party who may have retained the interpreter. It is important that interpreters remain impartial, as they may interpret the evidence of witnesses called by both parties to the same hearing.

An interpreter must also be careful not to do anything that might make people question their impartiality. For example, when interpreting, an interpreter should not engage in general social conversation with the person for whom they are interpreting or another party. The interpreter should promptly leave once the hearing is over.

Confidentiality

An interpreter must not disclose to any person any information acquired during the course of an assignment.

Interpreting evidence

When evidence is interpreted, the evidence must be as close as possible to the witness's own words. Everything the witness says must be interpreted precisely, including derogatory or vulgar remarks, and even things that the interpreter suspects may be untrue. The interpreter should not make any personal comments or additions.

Hesitations

An interpreter must use their best endeavours to convey any hesitation or changes in the witness's answer.

First person interpreting

The interpretation must be given only in the first person, for example, 'I went to school', rather than 'He says he went to school'.

Correcting mistakes:

An interpreter must acknowledge and promptly rectify any interpreting mistakes. If anything is unclear, the interpreter must ask for repetition, rephrasing or explanation. If an interpreter has a lapse of memory that leads to inadequate interpreting, they should inform the presiding member and ask for a pause and time to reconsider.

Discussions with the person being interpreted:

There should not be any non-interpreted exchanges between the interpreter and the witness. If a witness seeks clarification of a statement or question being interpreted to them, the interpreter must interpret this question for SAT.

The interpreter should then provide the interpreter's response in English followed by their response to the witness in the witness's language.

Conflict of interest and cultural Issues

If an interpreter is unable to meet their duties and obligations, they must immediately advise SAT. Interpreters must immediately inform SAT of any potential conflict of interest. For example, if the party or witness is a family member, associate, or they have a financial interest in the matter.

A party or interpreter must also immediately inform SAT if they become aware of any potential cultural difficulty or constraint with the use of a particular interpreter.

Qualifications

SAT will presume that an interpreter is competent if they hold one of the following:

- a National Accreditation Authority for Translators and Interpreters Ltd credential as a Professional Interpreter (formerly known as a Level 3 interpreter), or
- a nationally accredited Advanced Diploma in Interpreting. Otherwise, the presiding member at the hearing will need to be satisfied that the interpreter is competent.

10.0 Summons to Witness

A summons to witness is a legal document SAT can use to compel a person to attend SAT or produce a document or other material before SAT. A summons may be issued at the request of a party, or at the initiative of SAT. A party to a proceeding can request a summons if a person is, or may be, unwilling to give evidence or to provide documents to SAT.

The summons generally requires the attendance of the person summoned at the final hearing, the time of which is stated in the summons.
Before you request a summons, you should try to get the required information by asking the person to provide it to you.

A party who is summoned is required by law to comply, and commits a criminal offence if they do not do so.

When should I request a summons to witness?

A summons is usually directed to 'third parties' – that is, people other than the parties to the proceeding.

A summons is not usually directed to the parties to a proceeding, because SAT will usually require the parties to file and give to the other party documents and witness statements during the normal course of the proceeding. Where a party desires that documents sought from a third party be produced prior to the final hearing, the party should seek an order under s 35(1) of the State Administrative Tribunal Act 2004. This may be appropriate where, for example, a large number of documents are expected, or when you expect the documents to be particularly important for the proceedings.

What is a document?

A document doesn't just include documents such as contracts, invoices and letters. It can also include information which is stored electronically, such as emails, SMS messages and web pages.

How do I apply for a summons to witness?

A party seeking the issue of a summons to witness should submit a copy of the summons to witness form to SAT and pay the fee under Schedule 20 of the State Administrative Tribunal Regulations 2004. The summons to witness form and details of the current fee may be obtained:

(a) from SAT's website at www.sat.justice.wa.gov.au;
(b) by calling SAT on (08) 9219 3111 or 1300 306 017 (STD callers); or
(c) by emailing SAT at sat@justice.wa.gov.au.

SAT will consider whether your draft summons to witness is suitable to be issued. If SAT issues your summons, we will notify you that the summons to witness is available to be collected.

It is then your responsibility to 'serve' the summons on the witness. If your draft summons is not considered suitable, you will be notified accordingly.

What happens to summoned documents?

Any party may be given permission by SAT to view or to view and copy documents produced in accordance with a summons. The documents will be held by SAT until their release is ordered, or until the proceedings are finalised and the appeal period has expired.
Original copies of documents are not required to be produced unless specifically directed by SAT.

Serving a summons to witness

'Serving' a summons to witness means giving it to the person it is addressed to. If SAT issues the summons you requested, you must 'personally serve' it on the person it is addressed to.

Rule 31 of the State Administrative Tribunal Rules sets out the requirements for personal service. If you are serving a summons to witness on an individual, the summons to witness is personally served by physically giving a copy to the person or, if they do not accept it, leaving it with them and explaining the document. The Rules also deal with service on a corporation, an unincorporated association and individuals who do not have full legal capacity.

The party relying on the summons to witness must also serve a copy of the summons to witness on any other party to the proceeding as soon as practicable after it is served on the person to whom it is directed.

If necessary, proof of service of a summons to witness may be given by completing a declaration of service form, located on SAT's website at www.sat.justice.wa.gov.au. This may be necessary where a witness has been served with a summons to witness but fails to appear before SAT.

A party serving a summons to witness is required to provide the person being served with 'conduct money', which will usually include travel expenses, and sometimes accommodation, meal and incidental expenses.

Practice Note 11 Conduct Money on Summoning of Witnesses explains what conduct money is and how to calculate the appropriate amount of conduct money to be provided.

What should you do if you receive a summons to witness?

If you are served with a summons to witness you should attend the hearing, produce the requested documents, or both, as required in the summons. In the case of production of documents, they can be delivered to the Executive Officer or SAT reception before the time and date on the summons to witness document. If you have been served with a summons to witness, you can apply to have the summons set aside or to limit access to any document required by the summons. There must be proper grounds for your application.

The application can be made at the hearing related to the summons or by contacting SAT before the summons is due. You should give notice of this application to the party who served the summons before the hearing. You must be ready to give evidence or produce the documents required by the summons in the event that your application is unsuccessful.

If you're unable to attend SAT on the date the hearing, notify SAT as soon as possible. Arrangements may be made to postpone the hearing or for you to attend by teleconference.

11.0 Enforcing Orders

State Administrative Tribunal (SAT) orders are enforced in different ways depending on the type of order. They fall into these general categories:

- Final order for the payment of money.
- Final order other than for the payment of money.
- Final order which become the decision of a government body.
- Procedural orders.

The party having the benefit of a final order is responsible for the enforcement of that order.

Enforcement by civil proceedings

Monetary orders:

A monetary order is enforced by lodging the order with the 'court of competent jurisdiction'. The court of competent jurisdiction depends on the value of the amount payable.

· Magistrates Court $ 75,000 or less;
· District Court - more than $75,000, and not more than $750,000.
· Supreme Court unlimited monetary jurisdiction.

To file the order for enforcement, you need:

- A copy of the order that the SAT Executive Officer has certified to be a true copy; and
- The party's affidavit as to the amount not paid under the order; and,
- If the order is to take effect on any default, as to the making of that default.

The court won't charge a fee to file an order for enforcement (as required by section 85 of the State Administrative Tribunal Act 2004), but once it is filed it is enforced according to the procedures of that court, which may involve enforcement fees. SAT does not enforce its orders. You should seek advice from staff of the relevant court or a legal practitioner if you require assistance with the court's procedures.

Non-monetary orders:

A nonmonetary order is usually an order requiring another party to do or refrain from doing something. They are enforced in the Supreme Court.

To file a non-monetary order in the Supreme Court, you need:

- A certificate of 'appropriateness for enforcement'. You can write to SAT and request this certificate. This is completed by a SAT judicial member who considers the nature of the decision and determines whether it is appropriate for filing in the Supreme Court. The range of non-monetary orders available means this is more complicated than for monetary orders.
- A copy of the order certified by SAT.
- An affidavit describing the noncompliance.

The same conditions apply regarding filing fees as for monetary orders.

Review jurisdiction

There is an exception to the normal process for monetary and non-monetary orders. If the SAT order varies or replaces the decision of a government body such as a Development Assessment Panel, the SAT order is treated as though it is a decision of the original decision maker.

SAT's ability to make this type of order comes from section 29 of the State Administrative Tribunal Act 2004.

Due to being treated as a decision of the original decision-maker, it is enforced or appealed according to the legislation that applies to that decision-maker, rather than SAT's legislation. You should consider obtaining independent legal advice if this applies to your situation.

Enforcing procedural orders

In the course of a proceeding at SAT, the Tribunal often makes orders of a procedural kind. SAT has powers to deal with a party's failure to comply with procedural orders in various ways.

If a party to a proceeding fails to comply with procedural orders made by SAT leading up to a final hearing, or the making of final orders, the party aggrieved by the default of the other party may apply to SAT to deal with the default.

Amongst other things, SAT can consider striking out the proceeding under section 48 of the State Administrative Tribunal Act 2004 by:

- making a costs order against the defaulting party;
- initiating proceedings for contempt against the defaulting party under section 100 of the Act; or
- prosecution for an offence may be instituted by SAT under section 95 of the State Administrative Tribunal Act 2004 where a person fails to comply with a SAT order. This action is at the discretion of SAT. A person found guilty of an offence under section 95 of the Act may have a penalty of up to $10,000 imposed. The making of a section 95 order may lead to a criminal prosecution if the circumstances require such an order.

General advice

As explained above, it is not a function of SAT ordinarily to take enforcement action in relation to its orders. SAT also is not in a position to give a party advice about what particular type of enforcement action they should choose to take. If a party requires further information about how they should go about enforcing a SAT order, they should seek independent advice from a legal practitioner.

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Disclaimer:

This information is produced by the City of Stirling in good faith and the City accepts no responsibility for any ramifications or repercussions for providing this information. Verification with the original Local Laws, planning schemes and other relevant documents is recommended for detailed references.

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