

Info Sheet 4

Class 2 planning applications

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 a 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 a 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 parties?

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.