

## Info Sheet 5

# 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) ...
  - (iii) ... (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	<a href="http://www.springfield.wa.gov.au">www.springfield.wa.gov.au</a>
2.3	Draft Rural Strategy 5	Jul 1998	<a href="http://www.spa.wa.gov.au">www.spa.wa.gov.au</a>
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-maker's 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.