

Info Sheet 7

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.