

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 SAT'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 SAT'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'.

Further information

For further information about planning matters see SAT's Info Sheets:

- 'Class 1 planning applications'
- 'Class 2 planning applications'
- 'Documents that may be required in planning applications'
- 'Invitation for an original decision-maker to reconsider a decision'.

These Info Sheets are available on the SAT website www.sat.justice.wa.gov.au or by calling SAT on (08) 9219 3111 or 1300 306 017 (country callers).

The SAT website also has a searchable decisions database including decisions concerning third party participation.