

Guide to ACAT review of planning decisions

Introduction

This fact sheet provides information on what to expect when ACAT conducts a review of decisions made under Planning Legislation. More general information about ACAT is available on the [ACAT website](#).

There is a legislative timeframe requiring ACAT to make a decision on planning reviews within 120 days. Keeping within that timeframe while ensuring fairness to the parties means the time available for providing material to ACAT and preparing for the final hearing is limited. All parties need to keep the 120-day timeframe in mind when participating in the review.

Indicative timetable

The directions hearing will establish the timetable for the provision of material by the parties and other steps in preparation for the final hearing. An indicative timetable is set out below. Parties should come to the first directions hearing with the expectation that this timetable will be used. Some applications may be able to have a final hearing more quickly, but a longer timetable will only be possible where an extension of time is granted by the ACAT President in the interests of justice.

Day	What will happen
0	The application is received by ACAT. ACAT will provide notice of the application for review and a copy of the application to the applicant and respondent (Planning Authority) within 4 business days, along with a notice of listing for the directions hearing and this factsheet. Prior to the directions hearing, the Planning Authority will provide details of who will be representing them. The Planning Authority will give a copy of the application, the listing notice, and this factsheet to each interested party (such as a neighbouring lessee or the lessee or developer) and will provide the applicant and ACAT with the reasons for decision and all documents relevant to the review (known as the T-docs). Any interested person who wishes to be joined as a party so that they can take part in the review should lodge an application to be joined, and pay the applicable fee, before the directions hearing.
28	Directions hearing The directions hearing will usually be conducted 28 days after the application is lodged. At the directions hearing the timetable leading up to the hearing, including the dates for any mediation or preliminary conference, will be set. The parties should be prepared to discuss what they see to be the issues for the review. Applications by any interested person to be joined as a party will be heard and decided at the directions hearing. Any new parties will be provided with a copy of the statement of reasons and relevant documents by the Planning Authority after the directions hearing. More detailed information about the first directions hearing is included later in this factsheet.
35	Possible mediation or conference ACAT encourages early use of alternative dispute resolution in every application. If an early mediation or conference is considered useful, it will generally be held within a week of the directions hearing. In some cases, the mediation or preliminary conference may be held on a later date.

More information about a preliminary conference or mediation is included later in this factsheet.

56 **Applicant's submissions and materials**

The applicant will generally have to lodge with ACAT all the material they want ACAT to consider in the review, such as experts reports and witness statements, as well as any submissions on why ACAT should make the orders sought, within 4 weeks of the first directions hearing. This includes setting out any proposed changes to the decision under review, including any new or varied conditions of approval, and providing copies of amended plans to be relied upon (if applicant is the development proponent).

The applicant must give a copy of their lodged evidence and submissions to the respondent, and each joined party.

Any joined party supporting the position of the applicant will usually lodge and provide copies of their material at the same time of the applicant.

63 **Itinerary for proposed site view**

The respondent will consult with all parties to prepare the form "Itinerary and Hazard Identification for Offsite View or Hearing" for any proposed site visit.

70 **Other Joined Parties' submissions and materials**

Any other joined party must lodge any submissions and material (such as experts' reports and witness statements) they want ACAT to consider, including any proposed amendments to the decision under review, within 2 weeks of the date the applicant's materials are due (6 weeks after the first directions hearing). This includes setting out any proposed changes to the decision under review, such as any new or varied conditions of approval, and providing copies of amended plans to be relied upon (if the joined party is the development proponent).

The joined party must give a copy of their lodged evidence and submissions to the respondent, the applicant, and any other joined party.

84 **Respondent's submissions and materials**

The respondent (Planning Authority) must lodge any submissions and additional material it wants ACAT to consider, including any expert reports and witness statements, within 4 weeks of receiving the applicant's materials. The respondent must give a copy of its lodged evidence and submissions to the applicant and every joined party.

Any subpoenas for persons to give evidence at the final hearing have to be served by this time – at least 2 weeks prior to the final hearing.

91 **Further submissions and materials in response**

The applicant and joined parties have an additional week to provide any further materials or submissions in response to the material filed by respondent.

94 **Pre-hearing last steps**

The respondent will consult with all parties to prepare an agreed index of documents to be used in the final hearing.

If any of the parties intend to rely on authorities (prior cases) in their submissions, they have to provide lists of authorities and copies of each authority to ACAT and to each other party at least 2 days prior to the hearing.

Parties may request a final directions hearing/compliance check prior to the final hearing if needed.

The Registry will advise the parties before the final hearing of whether the President has approved any proposed site view.

98 **Final Hearing commences**

Subject to the President's approval, the final hearing may commence with a visit to the site the subject of the review (this is called a **view**). The purpose of the view is to see things, but not to discuss them. After the view, the ACAT member/s return to ACAT to hear evidence and submissions.

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Decision

In most cases a decision is not possible at the end of the hearing. The decision is usually **reserved** and will generally be provided within 120 days from when the application for review was filed, along with reasons where possible.

The directions hearing

When ACAT receives an application to review a planning decision, it will provide a notice of that application to the applicant and the respondent, the Planning Authority. That notice will include a time and date for the directions hearing, along with information on what parties should do to prepare for that directions hearing. In planning matters, the directions hearing will usually be conducted by the member or members who have been allocated to conduct the final hearing. The following questions are likely to be considered at the directions hearing:

- Details of parties
 - o Are the correct parties named (e.g. is the applicant able to bring an application for review?)
 - o Is the spelling of the parties' names accurate (for corporations is the ACN provided)?
 - o Is there authority for representation (other than lawyers) in place?
 - o Are the details of representation, mobile numbers and email addresses for service known to all parties?
- Materials
 - o Have the documents relevant to the review (known as the T-docs) and a statement of reasons been provided by the respondent in a way that is accessible by all parties?
- Interested Parties
 - o Have other 'interested persons' who are not already parties to the application been notified by the respondent?
 - o Are there any applications for interested parties to be joined to the proceedings?
- Issues for the review
 - o What do the parties consider are the main issues that are set out in the application?
 - o Are there likely to be any additional issues raised?
 - o Are there any preliminary or discrete issues that may be determinative of the outcome, eg standing, statutory preconditions, factual controversies, etc?
- Alternatives to a final hearing
 - o Is there any reason why mediation or a preliminary conference, where the parties are assisted in reaching agreement on the preferred outcome of the review, would not be appropriate?
 - o Should that mediation or preliminary conference occur early (within a week of the directions hearing), or later (after all the material to be considered in the review has been filed but before the final hearing)?
 - o Who must attend the mediation or conference, and will additional persons such as expert witnesses also attend?
- Preparing for the final hearing
 - o What witnesses are likely to be called, including any experts?
 - o How long is the hearing likely to go for?
 - o Will there be a view of the site? Is that appropriately done at the commencement of the hearing or another time?
 - o Are there any concerns that might require a private hearing or restrictions on publication or access to some material?

The directions hearing may also consider how proposed amendments to the decision under review can be identified and considered during the review, and how to ensure accessibility and transparency of the process for all participants.

Preliminary conferences and mediations

Many ACAT disputes can be resolved early through a preliminary conference or mediation. This is a less formal, private and without prejudice meeting which provides an opportunity for all parties to discuss ways to resolve the issues in dispute. Preliminary conferences and mediations for planning reviews take from 3 hours to a full day.

At a conference or mediation each party will get a chance to explain their point of view about the proposed development. All parties will get to talk about the issues that are in dispute. The aim is to come to an agreement about how the case should be resolved.

A Tribunal Member or Registrar will convene the conference or mediation. For a mediation, the Member or Registrar will also be an accredited mediator. The convenor may:

- guide and assist discussion,
- ask the parties questions to seek to identify and limit what is in dispute,
- if requested by the party, in a private session provide feedback about the parties' case,
- assist parties to work towards an agreed outcome.

A convenor cannot make the decision for the parties. It is an opportunity for you and the other party or parties to see if you can agree on an outcome.

Each party is to take part genuinely and constructively, and act in good faith.

If an agreement about outcomes is reached, ACAT can make orders finalising the matter. If this happens, the respondent will usually prepare a document setting out the terms of the agreement and seek the consent orders.

Communicating and lodging documents with the Tribunal

The [ACAT website](#) contains helpful information, template documents and forms for parties to use when preparing their case, such as [application for a review of decision](#), [subpoenas](#), [witness statements](#), and [fees](#).

ACAT also has a practice note about [communicating with the Tribunal](#), and a practice note about [pronunciation of names and gender pronouns](#), which parties should be aware of.

Final hearing

A final hearing is a public process which allows all parties a chance to give and hear evidence and ask questions of parties and their witnesses. ACAT listens to submissions and evidence, and makes a decision, either at the end of the hearing or at a later date. It is important you attend the final hearing. Every witness a party is relying upon must be made available to answer questions at the hearing, unless ACAT and the other parties have advised that the witness is not required.

For a planning review, the hearing may take several days.

Once a hearing has concluded, parties cannot provide additional documents, evidence or submissions about the case, unless ACAT has made an order that allows this.

A final order resolves (ends) a case. It is a record of the outcome or decision that has been made by ACAT. You may receive a decision on the day of the hearing, however for planning reviews it more common for the decision to be reserved (and given later).

Do you need assistance to participate in the review?

We can adjust our services to make them more accessible. If there are any factors which will impact on a party or witness being able to fully participate in the proceedings please let ACAT know. This includes matters such as when a party or witness has a vision or hearing impairment, requires an assistance animal or assistance to mobilise.

Further information about accessibility is available on our website [here](#). Please contact our Assistance Officers on (02) 6205 0322 or acatassistance@act.gov.au if you require further assistance.