



Fact Sheet

Appealing Planning Decisions in ACAT

Decisions are made under the [Planning and Development Act 2007 \(ACT\)](#) (PD Act) every day. These decisions impact on applicants and the general public alike, depending on the nature of the decision. Some, but not all, decisions made under the PD Act are reviewable. This factsheet discusses planning and development decisions that are reviewable at the ACT Civil and Administrative Tribunal (ACAT).

What is the ACT Civil and Administrative Tribunal (ACAT)?

ACAT is an independent body with exclusive jurisdiction to hear and determine particular disputes in the ACT. It is created under the [ACT Civil and Administrative Tribunal Act 2008 \(ACT\)](#). ACAT has many functions including the power to review a government decision. When making decisions, ACAT *stands in the shoes* of the decision-maker and decides whether the correct or preferable decision has been made. This is called 'merits review'.

What can ACAT do?

ACAT can exercise any function the original decision maker can exercise under an Act (see Part 6, [ACT Civil and Administrative Tribunal Act](#)). So, once ACAT has reviewed a decision, it may either:

- confirm the original decision ([section 68\(3\)\(a\)](#));
- vary the original decision ([section 68\(3\)\(b\)](#));
- set aside the decision and make a substitute decision ([section 68\(3\)\(c\)\(i\)](#)); or
- set aside the decision and send the matter back to the original decision-maker for reconsideration, with a direction or recommendation of the tribunal ([section 68\(3\)\(c\)\(ii\)](#)).

What decisions can ACAT review?

ACAT only has jurisdiction to review a matter if the decision is a "reviewable decision". A "reviewable decision" is a decision that ACAT is specifically allowed to review under an *authorising law* (this is a law that gives authority for ACAT to review the decision). There is a list of authorising laws on the [ACAT website](#).

ACAT can review some decisions made under the [Planning and Development Act 2007 \(ACT\)](#) - these are listed in [Schedule 1](#) of the PD Act. Some of the decisions ACAT can review are:

- A decision made under [s162](#) to approve a development application in the merit track (Item 4);
- A decision made under [s162](#) to approve a development application in the merit track (Item 6);
- A decision made under [s184\(3\)](#) to refuse to extend the period for finishing development (Item 9).



Do I have standing to bring an application for review to ACAT?

Schedule 1 of the *PD Act* lists the decisions that ACAT can review, and who can apply to ACAT for a review. Eligible entities are listed in Column 3 of Schedule 1. In order to have standing, you need to show that you comply with sections [408](#) and [419](#) of the *PD Act*, as well as the requirements set out in [Schedule 1](#).

As an example, if you want to apply to ACAT for the review of a decision made under section 162 of the *PD Act* to approve a development application in the merit track (Item 4), then you will have previously made a representation on the development proposal when the development application was open for public comment or you had a reasonable excuse for not making a representation (Item 4, Column 3(a)). In addition, you will need to prove that the approval of the development application may cause you to suffer *material detriment* (Item 4, Column 3(b)).

If you are an individual, *material detriment* means that the government decision is likely to have an adverse impact on your land ([section 419\(1\)\(a\)](#)). If you are an entity that has objects or purposes, *material detriment* means that the decision relates to a matter included in your entity's objects or purposes ([section 419\(1\)\(b\)](#)).



Are you in an organisation or group? There are special rules for standing for incorporated associations. See the EDO ACT *Incorporated Associations* factsheet and *Third Parties in Planning Appeals* for more information.

When do I need to apply to ACAT?

There are special timing rules for *planning* matters. If you are not the person applying for the development application, and you want a review of a decision under the *PD Act*, you need to lodge your application within **20 working days** after the decision has been made. ACAT cannot extend this time period for making an application (section 409 *PD Act*).

How do I apply to ACAT?

To make the application for ACAT to review a planning decision, you need to:

1. Fill in the form ([available on the ACAT website](#));
2. You then need to take the form to the ACAT registry (at Level 4, 1 Moore Street, Canberra City, ACT);
3. You need to pay a fee. Information about ACAT fees is available on the [ACAT website](#).

ACAT has 120 days to decide on your application (section 22P) if it is made under the *Heritage Act 2004 (ACT)*, *Planning and Development Act 2007 (ACT)*, or *Tree Protection Act 2005 (ACT)*. However, this time can be extended in some circumstances.



How much will it cost?

There are [fees for making an administrative review application with the ACAT](#). In general, each ACAT party will pay for the cost of their own application, lawyers and other fees (section 48). However, if ACAT finds in your favour, it can ask that the other party pay for the cost of your application fee and other legal fees (section 48(2)(a)). If ACAT thinks that you have caused an unreasonable delay, or your application is frivolous or vexatious, it can order you to pay costs (section 48(2)(b)).

If your application for review of a decision is under the [Heritage Act 2004 \(ACT\)](#), [Planning and Development Act 2007 \(ACT\)](#), or [Tree Protection Act 2005 \(ACT\)](#), and ACAT makes an order under section 32(2) (Dismissing or striking out applications), ACAT may order you to pay the reasonable costs of the other party (section 48(2)(d)).

Do I need to be represented by a lawyer?

You do not need a lawyer to make an application for merits review before ACAT. ACAT is less formal than a court, and is designed for people to represent themselves. EDO ACT may assist you if your matter involves public interest environmental law issues.

Where can I go for more information?

- You can visit the [ACAT website](#);
- See the [EDO Environmental Law Handbook](#);
- [Get in contact](#) with the EDO ACT.

The ACAT process

Although an appeal in ACAT is a less formal process than going to court, it can still feel a little daunting.

The ACAT process is outlined below, step by step, in the following pages.

Disclaimer: The law described in this fact sheet is current at 30 June 2018. This fact sheet has been designed to give readers plain English background information in planning and environmental law in the ACT. It is brief, for general information purposes only and does not replace the need for professional legal advice in individual cases. To request free initial legal advice, please contact us on (02) 6243 3460. While every effort has been made to ensure the information is accurate, the EDO ACT does not accept any responsibility for any loss or damage resulting from any error in this fact sheet, or reliance or use of this work. Duplication and reproduction of the information is permitted with acknowledgment of the EDO ACT. This fact sheet was produced with the assistance of funds made available by the ACT Government through the Justice and Community Services Directorate.



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Step 1: Tribunal documents direction

The Tribunal Member will make a direction that the respondent give you and ACAT all relevant documents. These documents are called *tribunal documents* or 'T-docs.'

For heritage, planning and tree protection, the *respondent* has 14 days to produce these documents. For other matters, the documents must be produced within 28 days.

The government decision-maker is called the *respondent*.

If a developer is involved, they are *joined* to the ACAT proceeding, they are called a *party joined*

Step 2: First directions hearing

You, the respondent and the Tribunal Member meet at ACAT. You will talk about preliminary issues including whether there is a challenge to the ACAT's *jurisdiction* or your *standing*. Together, you will decide on a timetable for the rest of the steps.

Jurisdiction and *standing* are both explained in this factsheet.

Stage 3: Mediation

Mediation is an informal discussion between you, the *respondent* and the *party joined*. The goal of mediation is for you to reach an agreement. A *mediator* will guide you through this discussion. Not all matters go to mediation. If the parties agree that the matter is not suitable for mediation, the matter may go straight to hearing.

Everything that is said at the mediation is confidential and cannot be used later as evidence. You have a legal obligation to participate genuinely and constructively during mediation.

Stage 4: Your statement of facts and contentions or submissions

Sometimes ACAT will ask for a *statement of facts and contentions* or submissions. A statement of facts and contentions is a document containing all the information that you rely upon to argue that the government decision is incorrect and should be changed.

You may begin to prepare *witness statements* - signed statements made by witnesses or experts if you are relying on their opinion. These are normally filed separately.



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Stage 5: Respondent's statement of facts and contentions or submissions

The respondent will give you and ACAT their statement of facts and contentions or submissions, that will contain all the information they rely upon to argue that the government decision is correct and should not be changed.



Stage 6: Your Reply

You have an opportunity to address the respondent's arguments in their statement of facts and contentions or submissions.



Stage 7: Final Directions Hearing

This is a hearing to make sure that all the parties have filed everything and are prepared for the final hearing.



Stage 8: Hearing

The hearing starts with an opening statement by each party that outlines their case. You then explain your arguments, with supporting evidence and any witnesses. The respondent and the party joined then explain their arguments, with supporting evidence and witnesses. The hearing ends with any final submissions (arguments) from the parties.



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