



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

The Planning and Environment Court

Factsheet 9

The Planning and Environment provides the main avenue for reviewing and appealing decisions and processes under the Integrated Planning Act 1997 ("IPA"). The Planning & Environment Court also has jurisdiction to hear matters under the Environmental Protection Act 1994.

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For more detailed information and example court documents see our new publication:

The Community Litigant's Handbook – Using the Planning Law to Protect the Environment

SUMMARY

The Planning & Environment Court:

- Hears appeals on -
 - Development applications;
 - Decisions of the building and development tribunal;
 - Enforcement notices issued by assessment authorities;
 - Decisions on compensation claims;
- Hears and determines applications for declarations on -
 - Matters done, to be done or that should have been done under the *Integrated Planning Act 1997*;
 - The construction of the Integrated Planning Act 1997 and planning instruments under the Act;
 - The lawfulness of land use or development;
 - Infrastructure charges;
 - Hears and determines proceedings to remedy or restrain the commission of development offences, through the issue of enforcement orders.

The Planning & Environment Court holds directions hearings before setting the matter down for the actual hearing. The parties are directed to engage in alternative dispute resolution.

Appeals from decisions of the Planning & Environment Court require leave from the Court of Appeal.

The only grounds of appeal are:

- Error or mistake in law by the court
- The Court not having the required jurisdiction to make a decision or in making a decision.

The Planning & Environment Court rules and decisions are also available at the website www.courts.qld.gov.au/.

The Planning and Environment Court

FULL TEXT

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

What jurisdiction and powers does the Court have?

The Planning and Environment Court is a specialist Court having jurisdiction over a wide range of building, development and environmental laws. District Court judges constitute the Court.

The Court was first established in 1966 and is presently established under the *Integrated Planning Act 1997*. That Act is the principal source of the Court's jurisdiction and powers but it also has jurisdiction conferred upon it by other Acts, notably the *Environmental Protection Act 1994*.

The Court's jurisdiction can be divided into three broad categories, being:

- Appellate;
- Declaratory; and
- Enforcement.

What appeals does the Court hear?

In its appellate jurisdiction the Court hears appeals against decisions made under the *Integrated Planning Act 1997* and *Environmental Protection Act 1994* and other legislation. Under the *Integrated Planning Act 1997* the Court hears mainly appeals about:

- development applications;
- decisions of the building and development tribunal;
- enforcement notices issued by assessing authorities; and
- decisions on compensation claims.

Under the *Environmental Protection Act 1994* the Court mainly hears appeals about:

- reviewing decisions relating to environmental authorities;
- environmental management plans; and
- contaminated land.

Appeals under the *Integrated Planning Act 1997* and the *Environmental Protection Act 1994* may be heard together where they relate to the same premises.

What declarations can the Court make?

In its declaratory jurisdiction under s4.1.21 of the *Integrated Planning Act 1997* the Court hears and determines applications for declarations about:

- matters done, to be done or that should have been done under the Act;
- the construction of the Act and planning instruments under the Act; and

- the lawfulness of land use or development.

Any person may bring proceedings for a declaration on their own behalf or on behalf of another person with that other person's consent. As well as making a declaration about a matter outlined above, the Court may make an order about a declaration e.g. it may declare a development or land use to be unlawful and then make an order restraining a person from continuing to carry on that development or use. The jurisdiction to grant a declaration is a very wide one.

The *Judicial Review Act 1991* does not apply to decisions made under the *Integrated Planning Act 1997*. This means that the Supreme Court does not have jurisdiction to review a decision made under the *Integrated Planning Act 1997* (s5.9.5).

What are the Court's powers of enforcement?

The Court hears and determines proceedings to remedy or restrain the commission of a development offence (s4.3.22 IPA). Like declaratory proceedings, you may bring enforcement proceedings on your own behalf or on behalf of another person with that other person's consent. The Court can make a wide range of enforcement orders including:

- orders to stop or not to start an activity that is or will be an offence; and
- orders to do anything about a development or use to comply with the Integrated Planning Act 1997.

Pending a full hearing the Court may make an interim order but may require the applicant for an interim order to undertake to pay any damages suffered by the respondent if the proceeding is ultimately unsuccessful. The Court also has a similar enforcement jurisdiction under *Environmental Protection Act 1994* to remedy or restrain environmental offences (ss505-507 *Environmental Protection Act 1994*).

About the court

How quickly does the Court conduct proceedings?

The Court has enjoyed for many years a reputation for efficiency and expedition. Most cases can be heard within about 4 months of being commenced in Brisbane - in court centres outside Brisbane delays are longer because there are fewer judges to share the workload.

Where does the Court sit and how often?

In Brisbane the Court sits almost continually throughout the year. In places outside Brisbane where there is a resident judge of the Court (Southport, Rockhampton, Townsville and Cairns) the Court sits at frequent intervals throughout the year. The Court is empowered to sit at any place and has often sat in places in regional Queensland outside those cities having courthouses

(e.g. Lockhart River, Town of 1770). The Court has a general policy of hearing cases, wherever possible and convenient to do so, in the locality where the dispute before it has arisen.

How formal is the Court? How do you address officers of the Court?

Proceedings in the Court are conducted in much the same way as proceedings in other courts of civil jurisdiction. The Court will normally hear and decide every proceeding in open court.

Although proceedings in the Court take the form of traditional Court proceedings, the Court is not overly formal. Anyone with a basic understanding of good manners can conduct a case in the Court without any fear of "doing the wrong thing" or offending anybody.

Address the judge as "Your Honour" and stand when speaking to the judge or examining a witness. Treat other people, be they lawyers, witnesses or court staff, with the same respect that you would expect them to show to you. Don't interrupt or talk over other people (unless you are objecting to evidence from a witness). Keep to the point and don't waffle. If the judge rules against you, accept the ruling and move on to your next point.

Where is the Court list published?

The list of cases being heard by the Court in Brisbane is published every day in the law list in the Courier-Mail. You can also access the court list on the internet at <http://www.courts.qld.gov.au/> - follow the link to "daily law list"

If you are involved in an appeal you should take the time to sit in on another appeal to see how proceedings are conducted.

What are the costs of running a Court case?

(See Factsheet 10 Appeals and chapter 2 of the Community Litigants Handbook)

Do I need a solicitor?

No. If you are a party to a proceeding in the Court you have three choices:

- you may represent yourself;
- you may be represented by a lawyer; or
- you may be represented by an agent who is not a lawyer.

Which choice is best for you depends on your circumstances and the nature of the case. Over the years agents such as town planners, architects and engineers have represented many people in the Court. If you choose to be represented by an agent you must file with the Registrar a document appointing the agent and defining the limits of the agent's authority. If you choose to represent yourself remember that you are responsible for the conduct of your case - don't expect to

be able to rely on the judge to give you advice about what to do. However much the judge might want to help you, he or she is an umpire not the coach for your team.

How can I start proceedings?

Appeals

An appeal is commenced by filing in the court registry a court document known as a “Notice of Appeal” and by paying the necessary filing fee.

Important time limits apply to commencing an appeal. If you lodged a written submission against the development, you will receive notice of the council’s decision to approve the development. This notice is called the “Decision Notice”.

Submitters have **20 business** days from the date of receiving the decision notice within which to commence proceedings by filing the Notice of Appeal.

NB – not all development requires council approval and you can not appeal against all types of development approvals. For a detailed discussion of the types of development you can appeal, how to commence an appeal, and how to prepare, file and serve the court documents, see *The Community Litigant’s Handbook – Using the Planning Law to Protect the Environment*.

How can I join proceedings?

Where a developer appeals against a refusal or the conditions of an approval, a submitter may elect to become correspondents in the appeal. You must file an election to correspond within **10 business days** of receiving notice of the appeal.

Declarations and enforcement orders

Filing an originating application with the Registrar and paying the necessary filing fee starts other proceedings (e.g. applications for a declaration or an enforcement order). The application must be served on the persons against whom you are applying for an order and also on the chief executive of the Department of Local Government, Planning, Sport and Recreation.

What forms do I use and where do I file them?

The form of a notice of appeal and application can be found in the Planning and Environment Court Rules – available online at:
<http://www.courts.qld.gov.au/practice/legislation/acts.htm>.

Example Notices of Appeal appear in *The Community Litigants Handbook*. The grounds of appeal will vary depending on the facts of each case. We recommend that you obtain legal advice and assistance before filing a notice of appeal or application.

Each court location will have a 'registry' within which to file court documents. A list of registries appear on the court website: <http://www.courts.qld.gov.au>. Contact the registry to find out the current filing fees for each document.

What are Directions Hearings?

The practice of the Court is to hold a directions hearing in every proceeding before setting the matter down for hearing. The purpose of a directions hearing is to give directions to the parties about the preparation and conduct of the case. The orders made at the directions hearing should ordinarily include:

- compliance with public notification requirements;
- compliance with requirements for serving notice of the appeal on other persons;
- a time for identification of the issues in dispute;
- a time for requests for particulars and responses;
- a time for disclosure of documents;
- a dispute resolution plan;
- a time for meetings of experts and exchanging expert reports;
- an estimate of the likely duration of the hearing and the month when the matter is expected to be ready for hearing.

The orders and directions made at a directions hearing will vary from case to case. Directions hearings in Brisbane are conducted every Wednesday and Friday and outside Brisbane by arrangement with the Court registry.

For more information about directions hearings, see *The Community Litigants Handbook*.

Alternative Dispute Resolution

The directions made during the first directions hearing should ordinarily include directions regarding dispute resolution. The term 'dispute resolution' encompasses a range of different methods aimed at resolving the dispute, or some issues in the dispute, before the matter is heard by the judge.

For more information about dispute resolution, see 'Exploring Settlement Options' in *The Community Litigants Handbook*.

How do I find the Court's Rules and Decisions

The easiest way to obtain copies of court rules and decisions is on the Queensland court's website: <http://www.courts.qld.gov.au>.

If you do not have access to the internet, the Planning and Environment Court Rules may be purchased from the Government Printer. The Supreme Court

library holds copies of legislation and rules relating to the Court as well as decisions of the Court.

How do I obtain transcripts of a case?

Sometimes, when you are conducting your own appeal, you may need a transcript of everything that was said during the appeal. The State Reporting Bureau records and transcribes the evidence given in the Court and provides both hard copy and computer disc versions of the transcript to the parties upon payment of a fee. Order forms for a transcript can be obtained from the court reporters who generally ask the parties at the commencement of the hearing if they require a transcript.

Appeals to the Court of Appeal

An appeal from the Planning and Environment Court to the Court of Appeal may be brought only with the leave of the Court of Appeal. The grounds of such an appeal are limited to:

- error or mistake in law by the Court;
- not having the jurisdiction to make a decision.

The last ground rarely arises in practice - almost all appeals are brought under the first ground of error or mistake in law.

An application to the Court of Appeal for leave to appeal must be made within 30 business days after the Court's decision is given.

There has not yet emerged from the Court of Appeal any clear guidelines as to the circumstances in which leave to appeal is likely to be granted but the following factors are likely to be relevant:

- the strength of the case for saying that an error or mistake of law was made;
- whether, if an error or mistake was made, it could have materially affected the outcome of the case; and
- the importance or significance of the legal issue said to have been decided erroneously to the parties and to other persons.

Further Information

Environmental Defenders Office (Qld) Inc
Ph: (07) 3211 4466
Fax: (07) 3211 4655
Email: edoqld@edo.org.au
Web: www.edo.org.au/edoqld

Environmental Defenders Office of Northern Queensland Inc

Ph: (07) 4031 4766

Fax: (07) 4041 4535

Email: edonq@edo.org.au

Web: www.edo.org.au/edonq

Planning and Environment Court Registry

Ph: (07) 3247 5407

Fax: (07) 3247 4394

Court website: www.courts.qld.gov.au

A more detailed account of the Court and its practice and procedure can be found in the Butterworths publication, *Court Forms Precedents & Pleading: Queensland*, Volume 3, title 'Planning and Environment Court' by John Haydon.

Relevant Laws

Integrated Planning Act 1997

Environmental Protection Act 1994

Planning and Environment Court Rules 1999