

Each item in this checklist is explained in more detail in the handbook.

Quick Reference Checklist

What You Must Know Before Deciding to Appeal

You must consider certain basic matters before you commence or join a **planning appeal**. These are summarised in the following checklist, and are discussed in more detail in chapters one and two.

If you do not understand what we mean by **planning, development and appeals**, we recommend that you read the chapters on *Using the Law to Protect the Environment* and *Before You Appeal* before completing the checklist.

Do You Understand What A Planning Appeal Is?

Do you understand what planning is about?

Planning is concerned with how land should be used. The planning scheme is the most important tool to a planning appeal. If you are considering an appeal, it helps to know a little about planning.

See ‘What is Planning and Development?’ in Chapter 1

Do you know how a planning appeal works and what can be gained?

When you appeal to the court, you are asking the court, rather than the local government council, to consider a development application and decide whether to approve, refuse or impose conditions on the development.

See ‘What is a Planning Appeal?’ in Chapter 1

Can You Appeal Against The Development?

Can you appeal against the development decision, i.e., is the development classified as impact assessable development?

Not all development requires council approval and you cannot appeal to the court against all types of development. As a member of the public, you can only appeal against an application for development that is classified as an **impact assessable** development. To find out how a development is classified, you will need to check your local government council’s planning scheme.

See ‘Can I Appeal Against the Development?’ in Chapter 2

Each item in this checklist is explained in more detail in the handbook.

Did you lodge a valid submission?

When a development application is made for impact assessable development, the public is given an opportunity to write **submissions** to the local government council about the development. Only those people who write valid submissions to the council have the right to lodge or join in a court appeal against the development.

See 'Can You Appeal Against the Development?' Chapter 2

Are you within the time limits to apply to the court?

Time limits apply to your right to commence or join an appeal to the court. If you have written a submission to the local government council, and the council:

- **approves** the development application, you should receive a notice from the council of its approval decision. You then have 20 business days from the date you receive that notice to file the documents commencing an appeal in the court; or
- **refuses** a development application and the developer appeals to the court, you should receive notice from the developer of the appeal. You then have 10 business days from the date you receive notice of the appeal to elect to join the proceedings by filing documents with the court.

See 'Can You Appeal Against the Development?' in Chapter 2

Will You Win In Court?

Have you received advice on your chances of success from a solicitor or barrister?

Even when you represent yourself, you must obtain advice from an experienced **solicitor** or **barrister** about your chances of succeeding in court. This will save you wasting time, money and energy. While you may have good reasons for opposing a development, ask a solicitor or barrister to consider those reasons and give you an idea about whether those reasons are likely to persuade the court to refuse the development application or impose the conditions you seek.

See 'Will You Win in Court?' in Chapter 2

Have you received advice from experts?

Often the success or failure of a planning appeal hinges on evidence given to the Court by **experts**. Experts are people with experience, qualifications or special skill in a particular area and include such persons as **town planners** and flora and fauna consultants. If your appeal involves issues that require expert evidence, obtain expert opinion *before* you appeal.

See 'Will You Win in Court?' in Chapter 2

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What Are The Costs And Risks?

Do you have the time to run an appeal?

Running an appeal can be very time consuming, comparable to having a permanent part time job. Before you appeal, you must consider whether you can personally spare the time to prepare for and appear at the hearing.

See 'Costs of appealing in money and time?' in Chapter 2

Do you have the tools to run an appeal?

You will need certain facilities to conduct an appeal. To make life easier for yourself, have ready access to a telephone, computer, printer, the internet, a fax machine and a photocopier.

See 'Resources' in Chapter 2

Do you know approximately how much the appeal will cost you?

Draw up a budget as early as possible, because even if you have a good chance of success, you will still need money to run an appeal. Appeal costs can range from \$5,000 to \$75,000. The extent of your costs will depend upon whether you represent yourself or are represented by a solicitor and/or barrister. Your costs will also depend upon factors such as the number of experts and the length of the hearing.

See 'Costs of appealing in money and time' in Chapter 2

Are You Aware Of The Costs Risks?

The general rule in the Planning & Environment Court – with just the occasional exception – is that each party must pay its own costs. If you win, you generally cannot recover your costs from the other side. Similarly if you lose, you generally will not be required to pay the costs of the other side. To protect yourself, be familiar with the circumstances where costs orders can be made against you.

To further protect themselves from costs risks, some people and groups choose to form an incorporated association.

See 'Costs risks in the Planning and Environment Court' in Chapter 2

For Groups

Has your group gained agreement about objectives, finances and other matters relating to the appeal?

Residents often join together in opposing inappropriate development. A group must be clear about its reasons and objectives in commencing an appeal; how it will raise finances; and who will be the decision makers for the group.

See 'Groups' in Chapter 2